U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA DRYBREAD and U.S. POSTAL SERVICE,
POST OFFICE, Grand Prairie, Tex.

Docket No. 96-1772; Submitted on the Record;
Issued May 8, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits effective May 26, 1996.

The Board has duly reviewed the case on appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits effective May 26, 1996.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[1] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[2] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[3] To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment related condition which require further medical treatment.[4]

In the present case, the Office accepted that on June 5, 1995 appellant, then a 33-year-old letter carrier, sustained a lumbar strain and multiple contusions and lacerations when she was involved in a motor vehicle accident in the performance of duty. Appellant remained off work until July 31, 1995 when she returned to a limited-duty position working approximately four hours a day. By order of her treating physician, Dr. Anagnostis, appellant was restricted from lifting more than ten pounds intermittently and was restricted from walking more than one hour a

[1] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[2] *Id.*

[3] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[4] *Id.*

day. Appellant gradually increased her work hours, occasionally working an eight-hour day. However, when the results of a magnetic resonance imaging (MRI) scan revealed that appellant had a bulging disc, her treating physician further restricted her to an entirely sedentary position, sitting for eight hours per day. The employing establishment was not able to accommodate these restrictions and sent appellant home on September 15, 1995. Appellant has not returned to work.

On January 9, 1996 the Office arranged for appellant to be examined by Dr. Benzel MacMaster, a Board-certified orthopedic surgeon, for the purpose of obtaining a second opinion. In his report dated February 7, 1996, Dr. MacMaster reviewed the history of appellant's employment injury, noting that she complained of persistent low back problems since that time. He also noted that appellant had a prior hip fracture which had required surgery, but that appellant reported that her hip condition had not appreciably changed after the employment incident. Dr. MacMaster diagnosed low back pain of undetermined etiology and stated:

> "Basically, the finding of a 2 mm central bulge at 4/5 does not constitute a significant finding in a 34-year-old white female with no radicular symptoms and no evidence of progressive deficit. It certainly does not constitute a surgical lesion. In my opinion, the restrictions previously placed on the patient are inappropriate given the physical findings on today's examination. I do think the patient is likely to be limited in the amount of weight she can lift and carry throughout the day. I would base this as much on her preexistent hip disease as on her low back problem. In fact, the patient states that the only restriction she has is the amount of weight she can carry. I have completed OWCP-5 form outlining my findings and my opinion as to what specific restrictions are necessary for this patient. I think this patient could return to an eight-hour day under those restrictions."

On the accompanying Form OWCP-5 Dr. MacMaster restricted appellant to lifting 35 pounds frequently and 50 pounds on occasion. He added "The lifting is partially due to the employment injury. Lifting limitation also partially due to preexisting hip injury." He concluded that he expected these restrictions to be permanent "since no improvement can be expected in the hip injury."

By letter dated March 1, 1996, the Office asked Dr. MacMaster to clarify his prior opinion with respect to whether appellant's bulging disc was attributable to the employment accident and whether appellant had any residuals from the accepted conditions.

In a follow-up report dated March 6, 1996, Dr. MacMaster stated that the disc bulge was not of any clinical significance whether it was an accepted injury or not, and that it was simply something very often seen in patients of appellant's age and did not represent an acute or severe injury. He added that he found no specific evidence of any ongoing problems with respect to

appellant's accepted lacerations and abrasions, and further found no specific evidence that appellant's accepted acute sprain still existed. Dr. MacMaster added:

> "In the fourth paragraph of your letter, you asked me if I felt that the disc bulge is a result of the work injury and I do not feel that it is directly related to the injury in question. I found no medical reason that the patient could not return to an 8-hour day. The patient has some obvious problems with her hip that were preexistent and do in fact limit her ability to certain activities.
>
> "I have previously filed an OWCP[-]5 form stating what her permanent physical limitations are. Most if not all of those limitations, however, in my opinion are due to the prior hip injury. I think that all significant injuries that occurred as a result of the accident have healed and that there are no significant residuals. I do not think that further treatment is necessary in this case."

Appellant also submitted a Form OWCP-5 completed by her current treating physician, Dr. Jay D. Pond, an orthopedic surgeon. In his report dated March 13, 1996, Dr. Pond stated that appellant was restricted to kneeling intermittently one hour per day, standing intermittently two hours per day, bending intermittently two hours a day, twisting intermittently two hours a day, reaching intermittently two hours a day, lifting intermittently no more than ten pounds two hours a day and sitting intermittently six hours per day. Within these restrictions, appellant was released to work eight hours a day. Dr. Pond indicated that all of appellant's restrictions were due to the employment injury and that appellant did not have any restrictions due to preexisting or nonwork-related problems.

Based on Dr. MacMaster's reports, on March 28, 1996 the Office issued a notice of proposed termination. Subsequently, on May 3, 1996, the Office terminated appellant's benefits effective May 26, 1996. The Office specifically found that subsequent to the notice of proposed termination, appellant had "not provided any additional medical evidence that would prevent her from performing her regular duties."

Although Dr. MacMaster attempted to clarify his report with respect to whether appellant had any residuals of her employment injury, his report remains internally inconsistent and insufficiently explained to carry the Office's burden. In his supplemental report, Dr. MacMaster stated that there was no specific evidence of any ongoing problems with respect to appellant's accepted lacerations, abrasions, or acute sprain, that he did not feel that appellant's bulging disc was related to the accident, and that there was no medical reason that the patient could not return to an 8-hour day. Dr. MacMaster then referenced the previously completed Form OWCP-5, on which he had indicated that appellant was restricted to lifting more than 35 pounds, or more than 50 pounds occasionally, and had also indicated that these restrictions were partially due to her employment-related injury and partially due to her preexisting condition. In his supplemental report, Dr. MacMaster continued to attribute these restrictions, at least in part, to her employment-related injury, stating, that "most if not all" of his recommended limitations were due to appellant's prior hip injury. Furthermore, contrary to the Office's determination, Dr. MacMaster's report does not establish that appellant could return to her regular duties as a mail carrier, which require lifting up to 70 pounds. As Dr. MacMaster did not affirmatively opine that no part of appellant's lifting restriction is related to her accepted employment injury,

his report was not sufficient to meet the Office's burden of proof in establishing that appellant had no continuing disability nor medical residual after May 26, 1996.[5]

The decision of the Office of Workers' Compensation Programs dated May 3, 1996 are hereby reversed.

Dated, Washington, D.C.
May 8, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[5] *Furman G. Peake*, *supra* note 3.