

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEITH L. SWEET and U.S. POSTAL SERVICE,
POST OFFICE, Monroe, Mich.

*Docket No. 97-2268; Submitted on the Record;
Issued June 14, 1999*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective January 4, 1997.

The Board has duly reviewed the case on appeal and finds that the Office met its burden to terminate appellant's compensation benefits.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.¹

The facts in this case, indicate that on February 26, 1974 the Office accepted that appellant, then a 25-year-old flexible carrier, sustained an employment-related nonunion fracture of the left navicular for which he received appropriate compensation.² On May 22, 1996 the Office referred appellant, along with a statement of accepted facts, to Dr. Michael Yurkanin, appellant's treating osteopathic orthopedic surgeon, for an opinion regarding whether appellant had any continuing disability related to the employment injury. By report dated May 29, 1996, Dr. Yurkanin diagnosed nonunion fracture of the left carpal navicular and stated:

“[Appellant] will have chronic and recurrent left wrist pain incident to this fracture nonunion with probable post-traumatic arthritic changes of the wrist at some point due to this nonunion. He is able to work with this disability but I

¹ See Patricia A. Keller, 45 ECAB 278 (1993).

² The record indicates that on October 21, 1976 appellant was granted a schedule award for a 40 percent permanent loss of use of the left arm, for a total of 124.8 weeks, to run for the period August 19, 1976 to January 9, 1979. By decision dated February 28, 1985, the Office reduced his compensation, finding that his actual earnings as a liquor store manager fairly and reasonably represented his wage-earning capacity.

would recommend that he be allowed to utilize a wrist splint at such times as the wrist is painful.”

In a July 9, 1996 letter, an Office rehabilitation nurse asked Dr. Yurkanin to provide an opinion regarding whether appellant could return to work as a mail carrier and, if so, for how many hours per day or week he could work. In an August 27, 1996 report, Dr. Yurkanin advised that appellant could return to work full time as a mail carrier if he wore a splint on his left hand.

By letter dated November 27, 1996, the Office informed appellant that it proposed to terminate his compensation. By decision dated January 3, 1997, the Office noted that appellant had submitted nothing in response to the November 27, 1996 notice and terminated his wage-loss compensation, effective January 4, 1997, based on Dr. Yurkanin’s report that he could return to work as a letter carrier. Medical benefits were not terminated.

The Board finds that the weight of the medical evidence rests with the well-rationalized opinion of Dr. Yurkanin, appellant’s treating physician, who advised that appellant could return to work as a mail carrier, subject to wearing a wrist splint. The weight of medical opinion establishes appellant, therefore, has no employment-related disability on or after January 4, 1997. The Office met its burden of proof to terminate his wage-loss compensation on that date.

The decision of the Office of Workers’ Compensation Programs dated January 3, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 14, 1999

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member