

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE M. BRIDGES and U.S. POSTAL SERVICE,
CLAYTON BRANCH, St. Louis, Mo.

*Docket No. 97-2723; Submitted on the Record;
Issued June 17, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective May 20, 1996.

On February 1, 1995 appellant, then a 63-year-old letter carrier, was driving her postal vehicle when a car in the left lane made a sudden right turn in front of her, causing a collision. Appellant claimed that she had pain in the back, pelvis, upper arms and shoulders. She stopped working February 2, 1995. The Office accepted appellant's claim for low back strain and thoracic strain. She returned to light-duty work on February 27, 1995.

In a May 20, 1996 decision, the Office terminated appellant's compensation and medical benefits on the grounds that the medical evidence of record established that appellant had recovered from all residuals of the February 1, 1995 employment injury. In a March 25, 1997 decision, an Office hearing representative affirmed the Office's May 20, 1996 decision. In an August 6, 1997 merit decision, the Office denied appellant's request for modification of the Office's decision.

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.¹

¹ Jason C. Armstrong, 40 ECAB 907 (1989).

In a February 9, 1995 report, Dr. Richard F. Fernandez, Board-certified in emergency medicine, indicated that appellant had lumbar paraspinal muscle spasms and decreased range of motion of the back. Dr. Fernandez diagnosed lumbar strain. In a May 2, 1995 report, Dr. Frank R. Luechtefeld, a Board-certified orthopedic surgeon, indicated that after the employment injury appellant complained of low back and bilateral shoulder pain. Dr. Luechtefeld noted that in April 1995 appellant's shoulders and low back condition had improved with some pain continuing in the right shoulder. In a May 8, 1995 report, Dr. Donald H. Brancato, a Board-certified orthopedic surgeon, stated that appellant's right shoulder condition was probably due to an inflammatory rotator cuff tendinitis. Dr. Brancato indicated that appellant's low back condition was consistent with severe degenerative changes probably due to appellant's weight. He reported that appellant's pain was concentrated in the low back with no radiation into the legs. Dr. Brancato noted that appellant's neurological examination was basically intact. He indicated that appellant had decreased pinprick sensation on the right in the L5-S1 distribution which did not correspond to low back pain on the left.

In a June 20, 1995 report, Dr. Luechtefeld indicated that appellant was still feeling pain in the right shoulder and low back. He referred appellant for a magnetic resonance imaging (MRI) scan. In a July 17, 1995 report, Dr. Luechtefeld stated that the MRI scan showed asymmetric disc bulge to the left with possible herniated nucleus pulposus at L5-S1. He also noted appellant had disc bulges at L2-3, L3-4 and L4-5. Dr. Luechtefeld noted that appellant also had mild scoliosis.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Daniel Phillips, a Board-certified neurologist, for an examination and second opinion. In an April 2, 1996 report, Dr. Phillips indicated that he had reviewed appellant's MRI scan which showed a chronic decrease in disc height at L5-S1, a bulge at L4-5 toward the right neural foramina and a bulge at L5-S1 into the left neural foramina. He commented that these findings did not appear to be disc herniations but bulges related to chronic degenerative changes and to an underlying scoliosis. Dr. Phillips concluded that appellant had chronic degenerative changes in the lumbar spine which predated the employment injury. He indicated that the examination of appellant's right shoulder appeared to self-limiting and commented that he suspected that the range of motion in the right shoulder was full and normal. Dr. Phillips stated that she did not currently have a thoracic strain and the low back symptoms were a reflection of appellant's underlying scoliosis. He concluded that, with regard to the February 1, 1995 employment injury, appellant was capable of returning to her job as a letter carrier although appellant was planning to retire in November 1996. Dr. Phillips indicated that in view of appellant's retirement it would be best if she remained at her present capacity although he found the restriction not to be organically related to the effects of the employment injury.

Dr. Phillips' report was thorough and well rationalized and established that the effects of the employment injury had ceased. He related appellant's condition to preexisting, underlying degenerative changes and scoliosis of the lumbar spine. The reports of Drs. Luechtefeld and Brancato submitted prior to Dr. Phillips report did not discuss the relation of appellant's continuing symptoms to the employment injury. Dr. Luechtefeld did not specifically find that appellant's employment injury caused a herniated lumbar disc which would contradict Dr. Phillips' conclusion that the MRI scan showed a chronic degenerative condition of the

lumbar spine. His report represents the weight of the medical evidence and indicates that the effects of appellant's employment injury had ceased by May 20, 1996. The Office therefore had a sufficient basis to terminate appellant's compensation.

In a March 17, 1997 report, Dr. Luechtefeld reviewed appellant's medical history. He noted that in an April 23, 1996 examination appellant had right leg pain with occasional right leg numbness. Dr. Luechtefeld reported that straight leg raising on the right was positive at 50 degrees. He indicated that the impression at that time was a suspected herniated disc versus degenerative changes in the lumbar spine. Dr. Luechtefeld stated that appellant's complaints were felt to be related to the previous back problems which she had after the February 1, 1995 employment injury. He indicated that, if nothing else, appellant would have some permanent partial disability secondary to the lumbar injury. This report is equivocal and lacks any rationalized explanation on how the effects of the employment injury would persist for over a year after the employment injury. It therefore has little probative value and is insufficient to cause a conflict with the report of Dr. Phillips.

The decisions of the Office of Workers' Compensation Programs dated August 6 and March 25, 1997 are hereby affirmed.

Dated, Washington, D.C.
June 17, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member