

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of GLORIA D. LEWIS and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 00-506; Submitted on the Record;
Issued September 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant's left elbow and bilateral shoulder conditions resolved by March 28, 1998.

On June 7, 1994 appellant filed a claim for sharp pains in her shoulders and her left elbow on May 16, 1994 while culling mail. The Office of Workers' Compensation Programs accepted that appellant sustained bilateral shoulder tendinitis and left epicondylitis. Appellant received continuation of pay from June 10 to July 24, 1994, after which the Office began paying her compensation for temporary total disability.¹ Appellant underwent surgery on her left elbow on February 7, 1995 as authorized by the Office.

On January 15, 1998 the Office issued a notice of proposed termination of compensation on the basis that the weight of the medical evidence demonstrated no residuals and no disability from her May 16, 1994 employment injury. By decision dated March 27, 1998, the Office terminated appellant's compensation effective March 28, 1998. Appellant requested a hearing, which was held on September 14, 1998. By decision dated October 30, 1998, an Office hearing representative found that the Office met its burden of proof to terminate appellant's compensation on March 28, 1998. Appellant requested reconsideration and submitted additional evidence. By decision dated September 28, 1999, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions.

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

¹ At the time of her May 16, 1994 employment injury, appellant was working limited duty for six hours per day and receiving compensation for loss of wage-earning capacity.

employment.² To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further treatment.³

The Board finds that the medical evidence establishes that appellant's left elbow condition resolved by March 28, 1998.

In a report dated December 18, 1995, Dr. Clarence A. Boyd, Jr., a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion evaluation, addressed appellant's left elbow condition, as follows:

"The physical examination revealed that there were no findings consistent with any residual effects of lateral epicondylitis or extensor tendinitis. Again, the provocative tests for these diagnoses were negative. [Appellant] displayed full active range of motion of both her left elbow and left forearm and there were no muscular abnormalities. Not only are her symptoms, therefore, inconsistent with any ongoing residual of the left elbow lateral epicondylitis and left common extensor tendinitis, but the physical examination reveals no findings consistent with any ongoing effects of those diagnoses. Also, it was noted that there was no difficulty with gripping of her left hand and as discussed above, this typically aggravates or precipitates the symptoms of lateral epicondylitis and common extensor tendinitis. It is again my assessment, therefore, that [appellant] displays no residuals of the reported left elbow injury of May 16, 1994."

There is no medical evidence contradicting Dr. Boyd's conclusion that appellant's left elbow condition had resolved. Appellant's attending Board-certified orthopedic surgeon, Dr. Jerrald R. Goldman, stated in a report dated December 27, 1995, that appellant's "left elbow continues to be pain-free" and that "her left arm is now functional." Dr. Goldman's statement in this report that appellant's "strength was gradually improving," does not show that appellant continued to have weakness as a residual of appellant's May 16, 1994 injury. Dr. Goldman submitted numerous reports subsequent to his December 27, 1995 and none of these reports indicates appellant has any residual left elbow condition. Although it was prepared after appellant's compensation was terminated on March 28, 1998, a July 8, 1998 report appellant submitted from Dr. William C. Lyon, a Board-certified orthopedic surgeon, confirms that appellant has no residual left elbow condition by stating that she had a greater range of left than right elbow motion, that left wrist motion was not associated with pain about the epicondyle and that she had good strength of the extensor muscle group on the left. The medical evidence shows that appellant's left elbow condition resolved by March 28, 1998.

The Board finds that the medical evidence establishes that appellant's left shoulder condition resolved by March 28, 1998.

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

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

In his December 18, 1995 report, Dr. Boyd stated that appellant displayed full active range of motion of both shoulders, no evidence of crepitus or instability at either shoulder joint and negative impingement signs of both shoulders. Dr. Boyd explained the negative impingement signs: "In other words, the active abduction arc, both with increasing and decreasing abduction of both shoulders, produced no complaints of pain or any other discomfort from [appellant]." Dr. Boyd also stated that appellant's "symptoms at both shoulders are not consistent with any specific pathology or abnormality including rotator cuff syndrome, impingement syndrome, or any specific tendinitis." Dr. Boyd concluded: "Neither [appellant's] symptoms or physical findings at her shoulders, therefore, are consistent with any abnormality. She has a normal physical examination of both shoulders and there is no basis for any pathology."

The other medical evidence does not contradict Dr. Boyd's conclusion that appellant had no left shoulder pathology at the time of his examination or thereafter. Except for a July 12, 1995 report indicating appellant's left shoulder was worse than her right and a December 27, 1995 report stating that her shoulders were bothering her, Dr. Goldman consistently indicated appellant's right shoulder was worse. Dr. Goldman injected the right shoulder on August 4, 1994 and in a January 11, 1995 report noted that appellant's right shoulder was improved and her left shoulder was improved "to a great extent." Closer to the time of the Office's termination of appellant's compensation, Dr. Goldman stated in a March 2, 1998 report: "For the last year, it is clearly her right shoulder that has been far worse than her left." The reports appellant submitted following the Office's termination of her compensation -- the July 8, 1998 report from Dr. Lyon and June 15, July 20 and August 9, 1999 reports from Dr. Anthony B. Brentlinger, a Board-certified orthopedic surgeon -- indicate appellant has only right shoulder pathology. The Board finds that Dr. Boyd's opinion is sufficient to establish that appellant's left shoulder tendinitis had resolved by March 28, 1998.

The Board further finds that there is a conflict of medical opinion on the question of whether appellant has residuals of a right shoulder condition due to the accepted injury.

As noted above, Dr. Boyd, the Office's referral physician, concluded that, at the time of his examination of appellant on December 18, 1995, she did not have any right shoulder pathology. He specifically stated that her impingement test was negative, in that abduction of the shoulder did not produce complaints of pain or discomfort. Appellant's attending physician, Dr. Goldman, stated in a February 21, 1996 report that, Dr. Boyd had "perhaps, even distorted a very simple diagnostic study -- the impingement test." In a report dated March 2, 1998, Dr. Goldman indicated that appellant's impingement test was positive, in that flexion, abduction and internal rotation of her right arm reproduced her symptom of pain in her shoulder. In a report dated June 15, 1999, Dr. Brentlinger also stated that appellant had a positive impingement sign, in that she had "pain with abduction of the shoulder and pain with resisted abduction and external rotation." He diagnosed chronic impingement syndrome of the right shoulder. In his July 8, 1998 report, Dr. Lyon also diagnosed impingement syndrome. In this case, the Office accepted tendinitis of the shoulder, while impingement syndrome of the right shoulder was a diagnosis of Dr. Goldman and Dr. Brentlinger. Dr. Boyd, however, found no evidence of impingement to the right shoulder. It is unclear as to whether appellant still has right shoulder pathology causally related to the accepted injury. There is a conflict of medical opinion on the

issue of whether appellant has an impingement syndrome of the right shoulder casually related to the accepted injury.

The decisions of the Office of Workers' Compensation Programs dated September 28, 1999 and October 30, 1998 are affirmed with regard to the Office's termination of medical benefits for treatment of appellant's left elbow and left shoulder conditions. The Office's decisions are reversed as to the right shoulder condition.

Dated, Washington, DC
September 15, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member