

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

In the Matter of DOLORIS BENNETT and U.S. POSTAL SERVICE,
POST OFFICE, Wilmington, DE

*Docket No. 99-1608; Submitted on the Record;
Issued September 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a period of disability causally related to her July 29, 1998 lumbosacral strain; and (2) whether the Office met its burden of proof to terminate appellant's compensation benefits finding that she had no residuals of her July 29, 1998 employment injury.

Appellant, a clerk, filed a claim on August 10, 1998 alleging that on July 29, 1998 she injured her back carrying a tray of mail. The Office accepted her claim for lumbosacral strain on October 20, 1998. By decision dated December 10, 1998, the Office denied appellant's claim for disability causally related to the July 29, 1998 employment injury. Appellant requested reconsideration on January 7, 1999. By decision dated February 16, 1999, the Office declined to reopen appellant's claim for review of the merits finding that the evidence submitted was repetitious. On February 25, 1999 the Office proposed to terminate appellant's compensation benefits as she had no residuals of the July 29, 1998 employment injury. By decision dated March 26, 1999, the Office terminated appellant's medical and compensation benefits.

An employee seeking benefits under the Federal Employee's Compensation Act¹ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

¹ 5 U.S.C. §§ 8101-8193.

² Kathryn Haggerty, 45 ECAB 383, 388 (1994).

In this case, the Office found that appellant had not submitted sufficient medical evidence to establish that she sustained any period of disability causally related to her July 29, 1998 employment injury accepted for lumbosacral strain. Appellant first sought medical treatment for her injury on August 3, 1998. Dr. Michael J. Carunchio, a Board-certified neurologist, diagnosed lumbosacral radicular pain syndrome with involvement of the left leg. He did not provide any period of disability.

Appellant submitted a series of work release notes from Dr. Pierre LeRoy, a Board-certified neurosurgeon, beginning August 26, 1998. He provided a variety of diagnoses and did not distinguish the cause of appellant's total disability. In a treatment note dated August 26, 1998, Dr. LeRoy noted that he was reexamining appellant and noted her history of injury on July 29, 1998. He diagnosed "post-traumatic July 29, 1998; acute recurrence" and stated that appellant was unable to work. Dr. LeRoy repeated these findings on September 3, 1998.

On September 5, 1998 Dr. Leonard A Hershon, a general practitioner, completed a note finding appellant had low back injuries and that she could return to limited duty on September 10, 1998. On September 16, 1998 Dr. Hershon indicated that appellant could perform limited duty. He stated that appellant was totally disabled from July 29 through September 10, 1998 and that she was treated for a low back strain "work[-]related injury."

On September 8, 1998 Dr. LeRoy released appellant to return to light duty. His report of that date stated that appellant's low back pain had continued since the July 29, 1998 work injury. Dr. LeRoy indicated that appellant could return to work with restrictions.

Dr. LeRoy reported on September 14, 1998 that appellant felt that she was unable to work eight-hours a day due to increased pain. Appellant stated that the employing establishment did not comply with her restrictions. He restricted appellant to six-hours a day and released her to return to work on September 17, 1998. On September 30, 1998 Dr. LeRoy stated that appellant was totally disabled from September 30 to November 11, 1998. He listed several conditions.

On October 26, 1998 the Office requested a narrative report from Dr. LeRoy addressing appellant's medical conditions.

Dr. Hershon completed a note on October 16, 1998 and stated, "Treated low back sprain return to work on October 19[, 1998]." On November 10, 1998 he stated that he treated low back injuries and radiculopathy and that appellant could return to work on November 12, 1998.

On November 11, 1998 Dr. LeRoy provided work restrictions. Dr. LeRoy's office also provided a review of appellant's medical records including a back injury in 1988, a November 9, 1989 motor vehicle accident resulting in back injuries, an August 9, 1995 shoulder injury and the July 29, 1998 injury. However, Dr. LeRoy did not provide an opinion regarding appellant's periods of disability due to any specific condition.

Although appellant has submitted several medical reports, notes and releases from work, she has failed to provide a narrative report describing her accepted employment injury on July 29, 1998 and providing an opinion on the periods of disability causally related to that injury.

However, Dr. Hershon does indicate that appellant was totally disabled from July 29 through September 10, 1998 due to her accepted employment injury. He also indicated that she was totally disabled on September 26 and 27, 1998. While these reports are not sufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between appellant's accepted lumbar strain on July 29, 1998 and her alleged periods of disability and are sufficient to require the Office to undertake further development of appellant's claim.³

The December 10, 1998 decision, of the Office is hereby set aside and remanded for further development of the medical evidence regarding appellant's periods of disability due to her accepted employment injury.⁴

The Board further finds that the Office met its burden of proof to terminate appellant's compensation benefits effective March 26, 1999.

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.⁵ 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.⁶ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

In this case, appellant has submitted several treatment notes from Drs. LeRoy and Hershon indicating that she was partially disabled through November 1998. The Office referred appellant for a second opinion evaluation with Dr. Steven J. Valentino, an osteopath. In a report dated February 4, 1999, Dr. Valentino stated that appellant denied any current low back symptomatology. He noted that appellant was working light duty eight-hours a day. Dr. Valentino stated that appellant's physical and neurological examinations were normal. He reviewed the medical evidence of record and diagnosed resolved lumbosacral strain. Dr. Valentino stated, "Based on today's evaluation, review of medical records and diagnostic studies, [appellant] is fully, totally and completely recovered from her work-related lumbosacral sprain apportioned to her work history of July 29, 1998. She has reached maximum medical improvement and is not in need of ongoing supervised medical care or treatment of any type or variety."

³ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

⁴ Due to the disposition of this issue, it is not necessary for the Board to address whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits on February 16, 1999.

⁵ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁶ *Id.*

⁷ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁸ *Id.*

Dr. Valentino provided a detailed and well-rationalized report finding that appellant had no residuals and no continuing disability causally related to her accepted employment injury. As there is no contemporaneous medical evidence to support appellant's continued need for medical treatment or continuing disability causally related to her July 29, 1998 employment injury, the Board finds that the Office met its burden of proof to terminate appellant's medical and compensation benefits effective March 26, 1999.

The March 26, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed. The December 10, 1998 decision is remanded for further development consistent with this opinion.

Dated, Washington, D.C.
September 8, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member