U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARY C. KALBFELL and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Pittsburgh, PA

*Docket No. 00-131; Submitted on the Record;*
*Issued April 24, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

Appellant, a 39-year-old mailhandler, filed a notice of occupational disease alleging that she injured her chest in the performance of duty on March 21, 1988. The Office accepted appellant's claim for cervical sprain. Appellant returned to light-duty work four hours a day in April 1989 and the Office authorized compensation benefits. In a letter dated November 27, 1995, the Office proposed to terminate appellant's compensation benefits as the weight of the medical evidence established that she could return to her date-of-injury position with no restrictions. By decision dated January 10, 1996, the Office terminated appellant's compensation benefits. Appellant requested an oral hearing on February 2, 1996. By decision dated January 10, 1997, the hearing representative affirmed the Office's January 10, 1996 decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

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

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

[2] *Id.*

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

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.[4]

In this case, appellant's attending physician, Dr. Andrew D. Kranik, a Board-certified orthopedic surgeon, submitted a series of notes providing appellant's work restrictions and indicating that she could work only four hours a day.

The Office referred appellant for a second opinion evaluation with Dr. Robert M. Yanchus, a Board-certified orthopedic surgeon, on November 9, 1994. In his December 12, 1994 report, Dr. Yanchus noted appellant's history of injury and provided findings on physical examination. He stated that the employment injury resulted in a sprain of the anterior chest wall and cervical sprain which had resolved. Dr. Yanchus stated that appellant could perform light-duty work eight hours a day with no restrictions.

The Office found a conflict of medical opinion evidence between Dr. Kranik, appellant's attending physician, who continued to find that appellant could work only four hours a day and the second opinion physician, Dr. Yanchus, who found that appellant could work eight hours a day. Section 8123(a) of the Federal Employees' Compensation Act,[5] provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." The Office therefore properly referred appellant to Dr. Herbert R. Tauberg, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence.

In a report dated April 5, 1995, Dr. Tauberg noted appellant's history of injury and provided his findings on physical examination. Dr. Tauberg noted that appellant had no muscle spasm, no atrophy and normal range of motion. He found that appellant's employment injury had resolved. Dr. Tauberg stated, "I can find no objective findings at present to substantiate any of her present complaints." He concluded, "I therefore feel that this examinee can return to her former employment, working full time with no restriction, and that she has long since recovered from her original injury of 1985."

In situations were there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[6] In this case, Dr. Tauberg provided a detailed history, findings on physical examination and offered his opinion that appellant's work-related condition had ceased and that she was no longer disabled for her date-of-injury position. The Board finds that this report must be given special weight and establishes that the Office properly terminated appellant's compensation benefits.

Following the Office's January 10, 1996 decision, appellant submitted additional medical evidence from Dr. Kranik. In a January 11, 1996 report, Dr. Kranik noted appellant's history of

[4] *Id.*

[5] 5 U.S.C. §§ 8101-8193, 8123(a).

[6] *Nathan L. Harrell,* 41 ECAB 401, 407 (1990).

injury and listed his findings on physical examination. He found moderate muscle spasm in appellant's paraspinal, trapezius, and parascapular muscles bilaterally. Dr. Kranik also found moderate thoracic spasm. He diagnosed cervical strain/sprain and cervical radiculitis. On October 17 and November 19, 1996 Dr. Kranik diagnosed left shoulder synovitis, cervical sprain syndrome and post-traumatic fibromyalgia. He provided work restrictions.

Dr. Kranik failed to provide medical reasoning explaining how and why appellant's current conditions were causally related to her 1988 employment injury. Without the necessary medical rationale offered to support his conclusions, Dr. Kranik's reports are not sufficient to overcome the special weight accorded Dr. Tauberg's report. Furthermore, as Dr. Kranik was on one side of the conflict that Dr. Tauberg resolved, the additional report from Dr. Kranik is insufficient to overcome the weight accorded Dr. Tauberg's report as the impartial medical specialist or to create a new conflict with it.[7]

The January 10, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 24, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

[7] *Dorothy Sidwell,* 41 ECAB 857, 874 (1990).