

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY A. DOUGHTY and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 99-1269; Submitted on the Record;
Issued March 22, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained recurrences of disability from December 9, 1995 through February 16, 1996, March 2 through March 29, April 13 through May 10 and June 8 through July 5, 1996 causally related to her September 16, 1993 employment injury; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits on the grounds that there were no residuals from the April 30, 1998 work injury.

The Office accepted that appellant, a 37-year-old mail processor clerk, sustained an injury at work while lifting heavy mail on September 16, 1993. The claim was accepted for right shoulder, lumbar and cervical strains. Appellant returned to limited-duty assignments on June 3, 1994 and filed numerous claims for recurrences of disability from December 9, 1995 through July 5, 1996.

By decision dated January 28, 1997, the Office denied appellant's claims. The Office also found that the weight of the medical opinion evidence failed to demonstrate that appellant had any residuals from the September 16, 1993 work injury necessitating further medical benefits. Accordingly, the Office terminated further medical treatment.

By decision dated March 18, 1998, the Office found that the evidence submitted in support of appellant's reconsideration request was not sufficient to warrant modification of its prior decision on the claimed recurrences of disability. The Office modified its prior decision and reinstated medical benefits because it had failed to follow its own procedures. By letter dated March 18, 1998, the Office notified appellant of its proposed termination of medical benefits and provided 30 days for additional evidence or argument to be submitted. She did not respond to the proposal to terminate medical care. The Office terminated medical benefits by decision dated April 30, 1998.

The Board finds that appellant has not established that she sustained a recurrence of disability between December 9, 1995 and July 5, 1996 causally related to her September 16, 1993 employment injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁴

In this case, the Office accepted appellant's claim for right shoulder, lumbar and cervical strains. She was working full-time limited duty consistent with her restrictions during the claimed recurrences. Appellant did not claim that her duties had changed; rather, her medical condition had worsened.

Dr. Corey K. Ruth, an orthopedic surgeon and appellant's treating physician, diagnosed a chronic lumbar strain/sprain and a C3-4 herniated nucleus pulposus with right C5-6 cervical radiculopathy. In December 1995 Dr. Ruth stated that orthopedic examination of the spine indicated cervical tenderness with spasm in the trapezium and tenderness from L4 through S1. She recommended that appellant return to limited duty.

In a January 3, 1996 report, Dr. Ruth noted a cervical injection and stated that appellant was released to full-time limited duty on January 8, 1996. In a January 18, 1996 report, appellant complained of severe neck and low back pain. C3-4 herniated nucleus pulposus with right C5-6 cervical radiculitis along with lumbar strain/sprain were diagnosed. Appellant was released to full-time, limited-duty work on January 22, 1996. Dr. Ruth commented that appellant had been disabled from December 15, 1995 through January 22, 1996 due to her neck and back injuries. Follow-up reports from Dr. Ruth during the claimed recurrence periods

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁴ *Mary A. Howard*, 45 ECAB 646 (1994).

continued to diagnosis C3-4 herniated nucleus pulposus with right C5-6 radiculitis and lumbar strain/sprain. Dr. Ruth's reports are not sufficient to establish that appellant's disability was caused by a worsening of the accepted employment injuries. She failed to indicate whether the diagnosed cervical conditions represented a worsening of appellant's accepted condition sufficient to disable her from performing her limited-duty assignments. On the contrary, she continued to release appellant to her light-duty position. Moreover, Dr. Ruth's reports are not based on a proper factual background. These include the fact that appellant visited the emergency room after shoveling snow in January 1996 and that, while a 1993 magnetic resonance imaging (MRI) scan showed a herniated disc, one taken in 1996 did not demonstrate the same condition.⁵ Although in her July 30, 1996 report, Dr. Ruth reviewed the June 17, 1996 MRI scan and concurred with the results in subsequent reports issued thereafter she noted the bulging disc but did not provide any medical reasoning or rationale as to the causal relationship between appellant's current condition and the September 16, 1993 accepted work injury.⁶ Moreover, Dr. Lam stated in an September 12, 1996 report that appellant had received maximum benefit of physical therapy for any cervical strain and lumbosacral strain and that she would have completely recovered if it was an uncomplicated strain. Dr. Lam stated that appellant's arthritis contributes a lot to her existing symptomatology and that most likely the arthritic condition is not related to work. Appellant therefore did not submit the probative rationalized medical evidence necessary to establish a recurrence of total disability.

Dr. Steven J. Valentino, an osteopath and an Office referral physician, clearly opined that appellant had no objective findings and no need for further medical care. In an October 10, 1996 report, he reviewed the history of appellant's September 16, 1993 employment injury and noted appellant's previous injuries from motor vehicle accidents, which were unrelated to work. Dr. Valentino noted that the June 17, 1996 MRI scan of the cervical spine revealed a combination of small bulge and osteophyte asymmetric to the right associated with right

⁵ A January 23, 1996 physical therapy report noted that appellant had reported to the emergency room with severe lower back and cervical spine symptoms from shoveling snow during the storm on January 7 to 8, 1996. An April 14, 1996 report from the Graduate Emergency Department noted that appellant presented complaining of severe lower back pain which she reported she had been experiencing for approximately one month. The emergency room physician opined that appellant probably has lower back strain with no definite neurologic deficit, just poor effort from appellant. A June 17, 1996 cervical MRI scan revealed a combination of a small bulge and osteophyte noted asymmetric to the right associated with mild right neural foraminal narrowing at C3-4. A June 26, 1996 report from the Graduate Emergency Department noted that appellant developed pain to her right shoulder while casing mail. A work history of injury to her neck and right shoulder in 1993 was provided. Clinical impressions were: (1) acute exacerbation of chronic right shoulder pain; (2) cervical disc herniation by history; and (3) right cervical axillary plexopathy. In a July 3, 1996 report, Dr. Louis Lam, an internist, advised that appellant had cervical strain and lumbosacral strain, but, based on the results of the repeat MRI scan, there were no herniated discs. He advised that appellant and her personal physician, Dr. Ruth, were contacted. Dr. Lam further noted that Dr. Ruth was of the opinion that appellant had diffuse arthritis of the thoracic and lumbosacral spine. Dr. Lam took appellant off work for two days until July 6, 1996 when he stated she could return to light duty. Other medical reports during the claimed recurrences period, although diagnosing cervical and lumbosacral strain, noted that appellant could return to work immediately within restrictions that were consistent with her light-duty assignment.

⁶ Although Dr. Ruth indicated in her July 30, 1996 report that appellant had a C3-4 bulging disc and spondylosis with right C5-6 cervical radiculopathy, the Board notes that Dr. Ruth, without explanation or additional objective testing, states in her reports of January, February and March 1997 that appellant has C4-5 herniated nucleus pulposus with right C5-6 cervical radiculitis.

neuroforaminal narrowing at C3-4. He stated that this was degenerative in nature and was not acute or traumatic in nature and could not be responsible for appellant's current symptoms. Dr. Valentino further stated that he reviewed the March 11, 1994 MRI scan of the cervical spine which revealed an off center right disc herniation at C3-4, but stated that the finding was less than certain. X-ray reports, February 1, 1994 electromyogram (EMG) reports, October 21, 1993 EMG reports and nerve conduction studies, along with the medical reports of record were also reviewed along with the statement of accepted facts. Dr. Valentino conducted a physical examination including motion testing of appellant's lumbar and cervical spines. He opined that appellant had resolved right shoulder strain, lumbar strain, cervical strain and right radiculitis. Dr. Valentino stated that, as a result of the review of appellant's diagnostic reports, multiple medical records and the opportunity to perform a thorough history and comprehensive orthopedic, neurologic and spinal examination, appellant had recovered from her history of work injury in September 1993 and any subsequent recurrence she might have had. He noted that appellant's examination revealed no evidence of positive objective findings. Dr. Valentino opined that there was no need for ongoing medical care nor the need to impose any restrictions on her ability to function.

The notices of decision from the Social Security Administration (SSA)⁷ and the Pennsylvania Department of Labor and Industry concerning unemployment benefits are not determinative in this case.⁸ The Board notes that the state unemployment notice covers periods commencing in 1997 whereas the periods claimed herein are for 1995 and 1996. Therefore, it is not pertinent to this recurrence claim.

The Board also finds that the Office met its burden in terminating appellant's medical benefits effective April 30, 1998.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.⁹ After it has determined that an employee has disability causally related to her federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.¹⁰ Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.¹¹ To terminate authorization or

⁷ The SSA determined that appellant was not entitled to disability insurance benefits. It noted that appellant stated she was unable to work because of diffused arthritis. The SSA found that appellant's work restrictions of record did not prevent her from performing her work.

⁸ The findings of an administrative agency with respect to entitlement to benefits under a specific statutory authority is not determinative of entitlement to compensation under the Act. *Burney L. Kent*, 6 ECAB 378 (1953) (findings by the Veterans Administration had no bearing on proceedings under the Act); see also *Daniel Deparini*, 44 ECAB 657 (1993) (findings of the SSA are not determinative of disability under the Act).

⁹ *Frederick Justiniano*, 45 ECAB 491 (1994).

¹⁰ *Id.*

¹¹ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.¹²

Appellant was advised of the Office's proposal to terminate medical benefits and did not submit additional evidence or argument within the lotted timeframe. Inasmuch as Dr. Valentino, the Office referral physician, concluded that, following a complete review of appellant's records and comprehensive orthopedic, neurological and spinal examination, there were no objective findings and no need for further medical care, the weight of the medical evidence rests with the October 10, 1996 report of Dr. Valentino which demonstrates that appellant no longer suffers from residuals of her accepted work injury of September 16, 1993.

The decisions of the Office of Workers' Compensation Programs dated April 30 and March 18, 1998 are affirmed.

Dated, Washington, DC
March 21, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹² *Id.*