

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEVIN K. DO and U.S. POSTAL SERVICE,
POST OFFICE, Newport Beach, CA

*Docket No. 01-399; Submitted on the Record;
Issued October 2, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective June 1, 1999 on the grounds that he had no residual disability causally related to his October 19, 1996 employment injury; and (2) whether the Office properly denied appellant's request for reconsideration.

On October 19, 1996 appellant sustained right cervical radiculopathy in the performance of duty. He returned to work for six hours a day in September 1998 and eight hours a day on April 6, 1999 with work restrictions.

In reports dated May 1 and 12, 1998, Dr. Huy Kim Hoang, appellant's attending internist, stated that his disability due to cervical radiculopathy with radiation to the right upper extremity prevented him from working eight hours a day.

In work restriction evaluation forms dated May 24 to December 9, 1999, Dr. Hoang indicated that appellant could work up to eight hours a day with restrictions, depending on the tasks assigned.

In a report dated December 4, 1998, Dr. Ibrahim Yashruti, a Board-certified orthopedic surgeon and Office referral physician, provided findings on examination and diagnosed a small disc protrusion at C5-6. He stated that appellant could work eight hours a day.

In a supplemental report dated April 21, 1999, Dr. Yashruti stated that appellant could work without restrictions.

By letter dated April 30, 1999, the Office advised appellant that it proposed to terminate his compensation on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Yashruti, established that appellant had no residual disability causally related to his October 19, 1996 employment injury.

By decision dated June 1, 1999, the Office terminated appellant's wage-loss compensation. Medical benefits for the employment-related condition were not terminated.

By letter dated June 7, 1999, appellant requested an oral hearing that was held on December 16, 1999.

By decision dated March 20, 2000, an Office hearing representative affirmed the Office's June 1, 1999 decision on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Yashruti, established that appellant had no residual disability causally related to his October 19, 1996 employment injury.

At the hearing appellant submitted a report dated December 9, 1999 in which Dr. Hoang stated that appellant was still disabled from his regular full-time job. He completed a work restriction evaluation form noting that appellant could work eight hours a day depending on the tasks assigned and required medical treatment on an as-needed basis.

By letter dated September 8, 2000, appellant requested reconsideration and submitted additional evidence.

In reports dated August 10, 2000, Dr. Hoang diagnosed right cervical radiculopathy, cervical disc disease, and subluxation and stated that appellant's condition had worsened since June 1, 1999 with repetitive movements. He stated that appellant could work eight hours a day with restrictions.

In an undated report, Dr. Hoang indicated his disagreement with the reports of the Office referral physicians and stated his opinion that appellant was still disabled from his regular work.

By decision dated October 26, 2000, the Office denied appellant's request for reconsideration.

The Board finds that the Office did not meet its burden to terminate compensation due to an unresolved conflict of medical opinion.

In a report dated December 4, 1998, Dr. Yashruti provided findings on examination and diagnosed a small disc protrusion at C5-6. He stated that appellant could work eight hours a day. In a supplemental report dated April 21, 1999, Dr. Yashruti stated that appellant could work without restrictions.

In work restriction evaluation forms dated May 24 to December 9, 1999, Dr. Hoang indicated that appellant could work up to eight hours a day with restrictions, depending on the tasks assigned.

In a report dated December 9, 1999, Dr. Hoang stated that appellant was still disabled from his regular full-time job. He completed a work restriction evaluation form noting that appellant could work eight hours a day depending on the tasks and required medical treatment on an as-needed basis.

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The Federal Employees' Compensation Act provides, in pertinent part, "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."¹

Due to the unresolved conflict in the medical evidence between Drs. Yashruti and Hoang on the issue of whether appellant has any residual disability causally related to his October 19, 1996 employment injury, the Office did not meet its burden of proof to terminate appellant's compensation.

In light of the Board's resolution of the first issue in this case, the second issue is moot.

The March 20, 2000 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC
October 2, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ 5 U.S.C. § 8123(a); *see James P. Roberts*, 31 ECAB 1010 (1980).