

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELLE M. OCHLAN and U.S. POSTAL SERVICE,
POST OFFICE, Bay Port, NY

*Docket No. 03-1552; Submitted on the Record;
Issued March 24, 2004*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of January 30, 2000; and (2) whether the Office properly determined that appellant's designated representative was qualified to serve as her authorized representative.

This is the third time this case has been before the Board. Appellant, then a 28-year-old letter carrier, injured her neck on March 18, 1993. The Office accepted the claim for trapezius strain and cervical strain and paid appropriate compensation. By decision dated January 21, 2000, relying on the impartial medical report of Dr. Suranganee DeLanerolle, a Board-certified neurologist, the Office terminated appellant's compensation, effective January 30, 2000; the Office found that his independent medical opinion, contained in reports dated February 8 and April 29, 1999 represented the weight of the medical evidence. By letter dated February 11, 2000, appellant requested a hearing, which was held on June 11, 2000. The letter further stated that appellant was designating Ed Oliver, a postal clerk with the employing establishment, as her representative. Mr. Oliver appeared at the hearing in his capacity as appellant's representative. At the close of the hearing, he asserted that he was an employee for the employing establishment who had taken a day off from work so that he could represent appellant at the hearing; he stated that he had been denied official leave for the day. Mr. Oliver requested that he be reimbursed with paid leave. By decision dated August 31, 2000, an Office hearing representative affirmed the January 21, 2000 termination decision. The Office made no findings with regard to Mr. Oliver's request for reimbursement. In a decision dated December 21, 2001,¹ the Board affirmed the Office's August 31, 2000 decision affirming the termination of appellant's compensation.

In a letter received by the Office on February 14, 2002, appellant requested reconsideration.

¹ Docket No. 01-417 (issued December 21, 2001).

In her February 14, 2002 request for reconsideration, appellant argued that the Office committed an error of fact because it omitted mentioning that her claim had been accepted for lumbar strain in addition to trapezius strain and cervical strain. She also contended that Dr. Sahrma's second opinion was inadequate because he did not rely on magnetic resonance imaging scan testing, as did Dr. David Besser, Board-certified in psychiatry and neurology and appellant's treating physician, and did not conduct a proper examination of appellant; this was partly because Dr. Sahrma administered the physical examination while appellant was fully clothed and partly because he was insufficiently thorough. Appellant further asserted that the Office erred in giving greater weight to the opinion of Dr. DeLanerolle than that of Dr. Besser, who asserted that appellant continued to have residual cervical and lumbar pain stemming from her March 18, 1993 work injury. Finally, appellant contended that the Office erred by failing to recognize diagnostic evidence of her continuing disability. She did not submit any additional medical evidence with her request.

In a nonmerit decision dated March 18, 2002, the Office denied reconsideration, finding that appellant's request was untimely and did not demonstrate clear evidence of error.

By decision dated December 27, 2002,² the Board, granting the Director's motion, set aside the Office's March 18, 2002 decision on the grounds that appellant's February 14, 2002 reconsideration request was timely because it was filed within one year of the Board's December 21, 2001 decision. The Board, therefore, remanded the case to the Office for a merit review pursuant to 20 C.F.R. § 10.608.

By decision dated May 1, 2003, the Office denied reconsideration. In addition, the Office, after conducting a merit review, affirmed its termination of appellant's compensation. In an addendum determination, the Office found that appellant's designated representative, Mr. Oliver, was not qualified to serve as her authorized representative. The hearing representative stated that, pursuant to 20 C.F.R. § 10.701,³ a federal employee may act as a representative only on behalf of immediate family members or in the capacity as union representative working without fee or gratuity. As Mr. Oliver was merely a coworker of appellant and was neither an immediate family member nor a union representative, the Office found that Mr. Oliver was not authorized to represent appellant in any proceedings before the Office.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as of January 30, 2000.

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.⁴ After it has determined that an employee has disability causally related to his or her federal

² Docket No. 02-1713 (issued December 27, 2002).

³ 20 C.F.R. § 10.701.

⁴ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵

In the present case, as appellant has not presented any additional medical evidence with her request for reconsideration, she is essentially requesting a reweighing of the medical evidence. Although she argues that Dr. Sharma's second opinion report was inadequate, both the Board and the Office have repeatedly accepted Dr. Sharma's opinion as sufficient to serve as one side of the medical conflict. Appellant has submitted no evidence demonstrating that Dr. Sharma's opinion was inadequate for this purpose. Moreover, contrary to appellant's assertion, the record contains no evidence indicating that the Office ever accepted a lumbar condition causally related to the March 18, 1993 employment injury. Appellant stated on her March 18, 1993 Form CA-1, that she strained her neck when she slipped on an icy surface and her claim was accepted only for trapezius strain and cervical strain. While several of the reports submitted by Dr. Besser, appellant's attending physician, indicate that appellant was treated for a lumbar condition, no claim for any lumbar-related condition was ever filed by appellant or accepted by the Office.

The Board and the Office have previously found that the weight of the medical evidence was represented by the impartial medical opinion of Dr. DeLanerolle, who served as the impartial medical specialist, which constituted sufficient medical rationale to support the Office's January 21, 2000 decision terminating appellant's compensation. The Office relied on Dr. DeLanerolle's opinion in its January 21, 2000 termination decision, finding that all residuals of the previously accepted condition had ceased and that appellant currently suffered from no condition or disability causally related to her March 18, 1993 accepted employment injury. The Office affirmed the January 21, 2000 termination decision in its August 31, 2000 decision and the Board held in its December 21, 2001 decision that the Office acted correctly in according Dr. DeLanerolle's opinion the special weight of an impartial medical examiner.⁶ As appellant submitted no additional medical evidence with her request for reconsideration; therefore, the Board affirms the May 1, 2003 Office decision.⁷

The Board finds that the Office properly determined that appellant's designated representative was not qualified to serve as her authorized representative.

In her letter of appeal to the Board, appellant requested that Mr. Oliver be reimbursed for 16 hours of official time for traveling to and appearing at the June 13, 2000 hearing as her

⁵ *Id.*

⁶ Where there exists a conflict of medical opinion 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 upon a proper factual background, is entitled to special weight. *Gary R. Seiber*, 46 ECAB 215 (1994); *Aubrey Belnavis*, 37 ECAB 206 (1985).

⁷ All of the statements of accepted facts contained in the record through June 1999, indicate that appellant's claim had been accepted only for trapezius strain and cervical strain.

designated representative. In determining that Mr. Oliver was not qualified to serve as appellant's authorized representative,⁸ the Office cited the regulation at 20 C.F.R. § 10.701, which states:

“A claimant may authorize any individual to represent him or her in regard to a claim under the Federal Employees' Compensation Act, unless that individual's services as a representative would violate any applicable provision of law (such as 18 U.S.C. §§ 205 and 208). A [f]ederal employee may act as a representative only:

- (a) On behalf of immediate family members, defined as a spouse, children, parents and siblings of the representative, provided no fee or gratuity is charged; or
- (b) While acting as union representative, defined as any officially sanctioned union official and no fee or gratuity is charged.”

The Office then noted that its review of the case file indicated that Mr. Oliver was neither a family member nor a member of appellant's union and had not been appointed by an authorized representative of appellant's union to represent her. In her February 11, 2000 letter, appellant stated that she was designating Mr. Oliver, a postal clerk with the employing establishment, as her representative. She did not state, however, whether he was an immediate family member or whether he was anything more than a coworker. Mr. Oliver appeared at the hearing in his capacity as appellant's representative and stated that he was a postal service employee who had been denied official leave to take a day off work so that he could represent appellant at the hearing. He requested that he be paid 16 hours of leave to cover the days he took off work to travel to the hearing and to represent appellant at the hearing. Again, however, he did not indicate whether he was an immediate relative of appellant's or whether he was a union representative. Based on these facts, therefore, the Office properly found that Mr. Oliver was not authorized to represent appellant.⁹

⁸ The Office also noted that Mr. Oliver had requested reimbursement for 16 hours time serving as appellant's representative. This included payment for overtime, travel expenses and per diem. The Office stated that it lacked the jurisdiction to consider this issue.

⁹ The Office did advise appellant that she could request review at any time by submitting documentary evidence to show that Mr. Oliver is an immediate family member or submit evidence through the employing establishment to show that Mr. Oliver is an authorized representative. Appellant has not submitted any additional evidence pertaining to this issue.

The decision of the Office of Workers' Compensation Programs dated May 1, 2003 is hereby affirmed.

Dated, Washington, DC
March 24, 2004

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member