

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EDDIE L. HAWKINS and U.S. POSTAL SERVICE,
ELLCOTT CITY POST OFFICE, Ellicott City, Md.

*Docket No. 96-1485; Submitted on the Record;
Issued May 15, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant is entitled to any compensation for the period February 21 to September 11, 1995 due to the effects of his April 21, 1994 employment injury; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 20, 1996.

On April 21, 1994 appellant, then a 41-year-old casual clerk, developed pain in his right wrist while lifting trays of mail and tubs of flats. The Office accepted appellant's claim for a sprain of the right wrist and, subsequently, for de Quervain's stenosing tenosynovitis. Appellant's employment with the employing establishment was terminated effective June 29, 1994. The Office paid temporary total disability compensation for the period June 10 through June 29, 1994 and subsequently for the period June 30, 1994 through February 20, 1995. The Office made one final payment of temporary total disability compensation for the period September 12, 1995 through February 20, 1996. In a March 11, 1996 decision, the Office terminated appellant's compensation effective February 20, 1996 on the grounds that appellant was capable of returning to work on that date. In a March 13, 1996 decision, the Office rejected appellant's claim for compensation for the period February 21 through September 11, 1995 on the grounds that the medical evidence of record failed to support temporary total disability for the period as causally related to the employment injury.

The Board finds that appellant is entitled to compensation for the period February 21 through September 11, 1995.

Once the Office accepts a claim it has the burden of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to his employment the Office may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.¹ The

¹ *Edwin Lester*, 34 ECAB 1807 (1983).

fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant. The burden is on the Office with respect to the period subsequent to the date when compensation is terminated or modified.² The Office retroactively paid appellant compensation for the periods June 10, 1994 through February 20, 1995 and September 12, 1995 through February 20, 1996. It therefore has the burden of showing that appellant was not entitled to compensation for the period February 21 through September 11, 1995.

In a May 2, 1994 report, Dr. Lawrence Shin, an orthopedic surgeon, diagnosed a sprain of the right wrist. In a May 16, 1994 report, Dr. Paul M. Apostolo, a Board-certified orthopedic surgeon specializing in hand surgery, diagnosed de Quervain's stenosing tenosynovitis. In a November 23, 1994 report, Dr. Apostolo stated that appellant required surgery for decompression and tenosynovectomy of the first dorsal compartment of the right wrist. He noted that appellant had pain and an inability to work. He stated that appellant's de Quervain's stenosing tenosynovitis was related to appellant's April 21, 1994 employment injury because the condition was a common post-traumatic condition about the radial aspect of the wrist. In a December 21, 1994 report, Dr. Apostolo indicated that he had treated appellant with splinting with no improvement. He stated that appellant was awaiting approval of surgery from the Office. In a February 20, 1995 report, Dr. Apostolo stated that with prolonged rest appellant's wrist was completely recovered, noting however that appellant had indicated that the wrist would bother him after prolonged work. The doctor reported that on examination all radial-side discomfort was gone, the Finkelstein test was negative, there was no palpation tenderness over the first dorsal compartment. He stated that appellant had recovered to the point where he could return to work. In a March 20, 1995 report, the Office finally authorized appellant's surgery to the right wrist. In a September 14, 1995 report, Dr. Denis Franks, a Board-certified plastic surgeon stated that in a September 12, 1995 examination appellant had a strongly positive Finkelstein test with tenderness over the dorsal third and fourth metacarpal-phalangeal joints. He concluded that appellant had residual de Quervain's syndrome and tendinitis involving the third and fourth extensor tendons. On October 12, 1995 appellant underwent surgery for the de Quervain's syndrome. In a January 31, 1996 report, Dr. Franks stated that appellant had underwent a release of his de Quervain's syndrome which had preexisted Dr. Franks' September 12, 1995 examination. He indicated that, in this examination, appellant clearly showed evidence of de Quervain's syndrome and was treated conservatively. Dr. Franks commented that, because of the increase and persistence of appellant's symptoms, he was clearly temporarily disabled. He stated that appellant's condition was clearly the same as it was before. Dr. Franks indicated that the reason Dr. Apostolo had released appellant on February 20, 1995 was because appellant had refused surgery.

The Office based its decision that appellant was not entitled to compensation for the period February 20 through September 11, 1995 on Dr. Apostolo's report that appellant was fully recovered from his de Quervain's syndrome and was able to return to work. However, although Dr. Apostolo stated that appellant had recovered from the employment injury by February 20, 1995, Dr. Franks indicated that in a September 12, 1995 examination appellant still

² See *George J. Hoffman*, 41 CAB 135 (1989); *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

had residual de Quervain's syndrome and had tendinitis of the third and fourth extensor tendons. This report contradicts Dr. Apostolo's report seven months previously that appellant had recovered completely from the accepted condition of de Quervain's syndrome. The record shows that while appellant wanted to undergo surgery, he refused to have surgery performed by Dr. Apostolo. The Office's reliance on Dr. Apostolo's report is misplaced because the medical evidence of record shows that outside of Dr. Apostolo's February 20, 1995 report, appellant had symptoms of de Quervain's syndrome that disabled him for work and had been accepted as causally related to the employment injury. It is more reasonable to conclude from the medical evidence that appellant's disability due to de Quervain's syndrome continued throughout the period prior to his surgery rather than resolved spontaneously only to cause disability seven months later. Appellant therefore is entitled to compensation for the entire period of February 21 through September 11, 1995.

The Board finds that the Office properly terminated appellant's compensation effective February 20, 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.³

In a December 13, 1995 report, Dr. Franks indicated that appellant had completed his post-surgical therapy. He noted appellant reported some pain with certain activities. Dr. Franks suggested that he would try appellant at a 20-pound lifting limit with modification at work as of December 18, 1995. He commented that if such work was not available, work hardening might be an alternative for appellant. In a January 24, 1996 report, Dr. Franks indicated that appellant continued to attend work hardening but his attendance at the work hardening had not been consistent because of the weather. He stated that appellant had a full range of motion with mild tenderness over the surgical incision of the right wrist. After a February 6, 1996 examination, Dr. Franks indicated that appellant was clearly improving although he reported increasing pain.

In a February 20, 1996 report, Dr. Franks indicated that appellant could return to regular full-time work as of that date. The employing establishment indicated that appellant would be required to lift and carry 20 pounds continuously and 100 pounds intermittently and would be required to stand, walk, bend, stoop, twist, kneel, push, pull and grasp continuously for eight hours a day. He would also be required to climb a half hour a day. Dr. Franks reported that appellant could lift up to 20 pounds continuously and 150 pounds intermittently. He indicated that appellant could perform all the activities specified by the employing establishment eight hours a day. This report shows that appellant was fully recovered from the accepted condition of de Quervain's syndrome and was able to return to the duties of the position he had held previously. The Office therefore properly concluded that appellant's disability had ceased by February 20, 1996.

³ *Jason C. Armstrong*, 40 ECAB 907 (1989)

The decision of the Office of Workers' Compensation Programs, dated March 13, 1996, is hereby reversed and the case remanded for payment of appropriate compensation for the period February 21 through September 11, 1996. The decision of the Office dated March 11, 1996, terminating compensation effective February 20, 1996 is hereby affirmed.

Dated, Washington, D.C.
May 15, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member