

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUELLA EDWARDS and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, Tex.

*Docket No. 97-113; Submitted on the Record;
Issued April 6, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of February 27, 1996.

On March 4, 1995 appellant, a 42-year-old mailhandler, injured her lower back, left leg and left foot when a coworker struck her while driving a forklift. Appellant filed a Form CA-1 claim for benefits based on traumatic injury on March 4, 1995, which the Office accepted for lumbar strain and contusions of the left leg and left foot based on reports from Dr. Lloyd McGriff, a Board-certified surgeon. Dr. McGriff stated that he had appellant undergo a magnetic resonance imaging (MRI) scan which indicated a small broad based posterior disc protrusion at L4-5 with slight asymmetry toward the left, and a mild posterior disc bulge at L5-S1, also slightly asymmetric toward the left. Dr. McGriff concluded that given these MRI findings, it appeared that appellant suffered an injury more significant than just lumbar strains and contusions which would likely take longer to resolve.

Dr. McGriff periodically issued progress report forms indicating that appellant's disability was continuing.

In a two-way memorandum dated December 12, 1995, the employing establishment requested that the Office secure a second opinion to ascertain appellant's current condition and whether appellant's residuals resolved.

By letters dated December 14, 1995, the Office scheduled a second opinion examination for appellant for January 2, 1996 by Dr. Frank Gottshalk, a Board-certified orthopedic surgeon. In a report dated January 2, 1996, Dr. Gottshalk stated that there were no objective findings of a current lumbar strain, back contusion, or left leg and foot contusion related to the March 4, 1995 employment injury, which was substantiated by the inconsistency of her complaints and voicing of discomfort related to the major clinical findings. He opined that physically, appellant should be able to return to work, but that psychologically, she was unprepared for the type of work

noted in her job description due to psychosocial dysfunction, which required some form of additional psychosocial evaluation and physical treatment to permit her to return to work in her regular job. Dr. Gottshalk recommended that appellant be referred to Dr. Peter Polatin, a psychiatrist, for a broad-based treatment program.

On January 17, 1996 the Office issued a notice of proposed termination of compensation to appellant. In the memorandum accompanying the notice of proposed termination, the Office noted Dr. McGriff had only submitted “form-type” disability slips which indicated that appellant’s disability continued without providing a diagnosis or objective findings of examination and, therefore, these reports were of diminished probative value. The Office stated that the weight of medical opinion was represented by Dr. Gottshalk, who provided a report based on a thorough physical examination and review of the prior medical evidence which found that there were no objective findings of a continued employment-related condition and that appellant was physically capable of returning to work. The Office stated that, although Dr. Gottshalk indicated appellant was disabled from work, this disability was based on a psychological condition which was neither claimed nor accepted in relation to the March 4, 1995 employment injury. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

By decision dated February 27, 1996, the Office terminated appellant’s compensation. In the memorandum incorporated by reference in the decision, the Office noted that Dr. McGriff’s report had submitted an additional medical report dated February 7, 1996 which noted that appellant had tenderness and complained of pain, but did not provide a detailed description of findings on examination, and did not provide medical rationale supporting his opinion that appellant remained disabled due to residuals of the March 4, 1995 employment injury.

In a letter dated August 5, 1996, appellant requested reconsideration of the Office’s February 27, 1996 decision. Accompanying appellant’s letter was an April 8, 1996 report from Dr. McGriff, who opined that appellant had not reached maximum medical improvement, still experienced moderate to severe pain in her lower back and legs, and recommended an additional three weeks of work hardening. Appellant also submitted medical reports documenting physical therapy treatment.

By decision dated August 9, 1996, the Office found that the evidence appellant submitted was not sufficient to warrant modification of its February 27, 1996 termination decision.

The Board finds that the Office met its burden of proof to terminate appellant’s compensation benefits as of February 27, 1996.

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

¹ *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.²

In the present case, appellant sustained injury on March 4, 1995, accepted for a lumbar strain and contusions of the left leg and foot. The Office based its decision to terminate appellant's compensation on the medical report of Dr. Gottshalk, a Board-Certified orthopedic surgeon, who stated that there were no objective findings of residuals from the March 4, 1995 employment injury. Rather, he noted an inconsistency of her complaints, and concluded that appellant could physically return to work. Dr. Gottshalk did note, however, that appellant was psychologically unprepared for the type of work noted in her job description due to psychosocial dysfunction. However, the Office has never accepted a claim based on an emotional or psychological condition in this case, and this aspect of Dr. Gottshalk's report is not irrelevant to a determination of whether appellant's employment-related physical conditions had resolved.³ Therefore, as the Office properly based its termination decision on Dr. Gottshalk's well-rationalized opinion that there were no objective findings of residuals from her accepted employment injury and that appellant should physically be able to return to work, the Board will affirm the Office's February 27, 1996 termination decision.

The decisions of the Office of Workers' Compensation Programs dated August 9 and February 27, 1996 are hereby affirmed.

Dated, Washington, D.C.
April 6, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

² *Id.*

³ Appellant retains the burden of proof of establishing any emotional condition related to the accepted employment injury; see *Ruby I. Fish*, 46 ECAB 276 (1994); *Kimper Lee*, 45 ECAB 565 (1994).