

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE GILLEN and U.S. POSTAL SERVICE,
POST OFFICE, Chardon, OH

*Docket No. 98-333; Submitted on the Record;
Issued August 23, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the residuals of appellant's July 30, 1996 employment injury ended by September 15, 1997.

The Office of Workers' Compensation Programs accepted that appellant's July 30, 1996 injury, sustained while dragging a mailbag weighing 53½ pounds, resulted in a neck strain. Appellant received continuation of pay from July 31 to September 13, 1996, after which the Office began paying compensation for temporary total disability. On August 13, 1997 the Office issued a notice of proposed termination of compensation. By decision dated September 15, 1997, the Office terminated appellant's compensation, including her entitlement to medical benefits, on the basis that the weight of the medical evidence established that appellant's conditions related to her July 30, 1996 employment injury had resolved.

The Board finds that the residuals of appellant's July 30, 1996 employment injury ended by September 15, 1997.

There was a conflict of medical opinion in this case, on the questions of whether appellant continued to have residuals of her July 30, 1996 employment injury and whether appellant continued to be disabled. Appellant's attending physician, Dr. Jack Anstandig, a Board-certified neurologist, referred appellant to a pain clinic on January 21, 1997 for evaluation for cervical blocks, which he felt "may be helpful in reducing her most disturbing radicular symptoms." In a report dated January 24, 1997, Dr. Naga Thota, a Board-certified anesthesiologist, at a pain clinic, stated that appellant was unable to work due to her pain. In a report dated February 25, 1997, Dr. Anstandig stated that appellant's "chronic regional myofascitis and radiculitis had persisted with noninvasive physical therapy modalities and chiropractic care." In this report he also stated that appellant "has suffered from recurrent pain ... which was exacerbated on July 30, 1996," and that he "doubt[ed] if she would be able to perform any significant manual related labor. This would include lifting any object over 10 pounds or activities which would require repetitive arm or neck movements."

In a report dated June 6, 1997, Dr. Moses Leeb, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion, concluded:

“Based on the present examination there are no objective findings of residual impairment of function other than a mild limitation of motion of the cervical spine as described above, which cannot be completely attributable either to the January 1995 injury¹ or July 1996 injuries. There is no evidence of radiculopathy.

“Based on the above findings, it is my opinion that this patient could return to her former occupation as a Distribution Clerk with a weight-lifting restriction of 20 [pounds].² These restrictions are not solely due to the allowed condition of cervical strain but due to residuals of her previous injuries, especially the cervical fusion performed in January 1994. It is also my opinion that based on the objective findings there appears to be no indication for continued treatment inasmuch as the present treatment is for management of residual subjective pain.”

To resolve the conflict of medical opinion between appellant’s physicians and the Office’s referral physician, the Office, pursuant to section 8123(a) of the Federal Employees’ Compensation Act,³ referred appellant, the case record and a statement of accepted facts to Dr. Richard S. Kaufman, a Board-certified orthopedic surgeon. In a report dated July 3, 1997, Dr. Kaufman set forth appellant’s history and her findings on physical examination and reviewed the prior medical evidence. He concluded:

“After examination of the patient and review of the records, it is my opinion that [appellant] probably suffered a cervical sprain as a result of the accident of January 1995 and a second accident at work of July 1996. In addition, she has had two automobile accidents.⁴ At the time of my examination, I found no objective signs of continuing neck sprain. It is my opinion that her continuing symptoms are probably related, at least in a large part if not entirely, to her preexisting condition. It is my opinion that the sprain which she sustained at the time of these two accidents has healed. It is my opinion that she does not require any further treatment as a result of the industrial accidents.

¹ Appellant sustained an employment injury on January 6, 1995, which the Office accepted for aggravation of cervical sprain. Appellant received continuation of pay or compensation until she returned to limited duty on February 27, 1995.

² At the time of her July 30, 1996 injury, appellant was performing limited duty with a lifting restriction of 20 pounds.

³ 5 U.S.C. § 8123(a) states 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.”

⁴ These automobile accidents were not related to appellant’s employment.

“It is my opinion that she could probably return to work as a mail sorter not lifting more than 20 pounds. The work limitation is probably due to her preexisting condition and unrelated to her industrial accidents.”

In situations where there are opposing medical reports of virtually equal weight and rationale 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 on a proper factual background, must be given special weight.⁵ The report of Dr. Kaufman, a Board-certified orthopedic surgeon, selected by the Office to resolve a conflict of medical opinion, meets these criteria. It was based on an accurate history and concluded, based on findings on physical examination, that appellant’s accepted cervical strain had resolved. This report constitutes the weight of the medical evidence and is sufficient to establish that the residuals of appellant’s employment-related condition ended by September 15, 1997.

The decision of the Office of Workers’ Compensation Programs dated September 15, 1997 is affirmed.

Dated, Washington, D.C.
August 23, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *James P. Roberts*, 31 ECAB 1010 (1980).