

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN WRIGHT and U.S. POSTAL SERVICE,
SMOKEY POINT BRANCH, Arlington, WA

*Docket No. 98-403; Submitted on the Record;
Issued August 23, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

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

The Board has duly reviewed the case on appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

Appellant filed a claim on November 7, 1996 alleging on July 16, 1996 she realized that her neck and back condition were due to factors of her federal employment. The Office accepted appellant's claim for temporary aggravation of degenerative disc disease, lumbar and cervical spines, as well as temporary aggravation of cervical and lumbar radiculopathy. The Office proposed to terminate appellant's compensation benefits on July 21, 1997 and by decision dated August 27, 1997, terminated her benefits.

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 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 Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

Appellant's attending physician, Dr. C.W. Koullisis, a Board-certified orthopedic surgeon, completed a report on January 10, 1997 and opined that appellant's cervical condition was permanently aggravated by her employment injury, but that her lumbar condition would resolve.

The Office referred appellant for a second opinion evaluation with Dr. Leland E. Rogge, a Board-certified orthopedic surgeon, on March 5, 1997. In a report dated March 20, 1997, Dr. Rogge noted appellant's history of injury and medical history. He reviewed appellant's diagnostic tests and performed a physical examination. Dr. Rogge diagnosed degenerative disc disease of C5-6 and C6-7. He stated that the degenerative C6-7 disc predated the injury of July 1996 but probably was aggravated by appellant's work. Dr. Rogge stated, "The C5-6 disc is degenerative and I think this injury probably occurred at the time of the patient's injury in July." He opined that lifting and carrying in the performance of duty aggravated both cervical discs. Dr. Rogge concluded:

"I believe the aggravations of these discs are permanent findings, not temporary. Regarding the C5-6 disc, the anterolisthesis of the C6 on C7 and the opening and closing of the disc space on flexion and extension are objective findings on the MRI [magnetic resonance imaging] and I think these are permanent findings. The degenerative disc at C6-7 probably does not show material change in its appearance from before the accident, though I have not seen the preaccident x-rays."

The Office referred appellant for a second opinion evaluation with Dr. Timothy Steege, a Board-certified neurosurgeon, on May 19, 1997. In his June 13, 1997 report, Dr. Steege noted appellant's history of injury, her recitation of symptoms, performed a physical examination and reviewed diagnostic tests. Dr. Steege diagnosed myofascial pain syndrome of the neck and low back. He found that x-rays, MRI and physical examination did not provide any objective findings to support appellant's claim for continuing disability. Dr. Steege stated that the only finding was appellant's subjective complaints of pain. In a supplemental report dated June 30, 1997, Dr. Steege stated that appellant had a lot of pain complaints with no objective findings attributable to the July 16, 1996 employment injury and that there was no objective reason to restrict appellant's work activities.

The Board finds that Dr. Steege's reports are not sufficient to meet the Office's burden of proof to terminate appellant's compensation benefits. Dr. Steege did not provide medical reasoning in support of his conclusion that appellant's diagnostic tests did not support any condition causally related to her accepted employment injury. This reasoning is necessary as Dr. Rogge, a Board-certified orthopedic surgeon and Office referral physician, found that these tests provided evidence of a permanent aggravation of appellant's underlying condition. Furthermore, appellant's attending physician, Dr. Koullisis also indicated that appellant's employment injury had caused a permanent aggravation of her cervical condition. Without medical rationale, Dr. Steege's report is not entitled to the weight of the medical evidence and is

not sufficient to establish that appellant's employment-related aggravation had ceased and that she was no longer disabled due to the accepted conditions.⁵

The decision of the Office of Workers' Compensation Programs dated August 27, 1997 is hereby reversed.

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

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁵ Following the Office's August 27, 1997 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c).