

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA HOLDEN and U.S. POSTAL SERVICE,
REMOTE ENCODING CENTER, Kearny, NJ

*Docket No. 98-404; Submitted on the Record;
Issued August 13, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective November 2, 1995.

The Board has duly reviewed the case record in this appeal and finds that the Office improperly terminated appellant's compensation effective November 2, 1995.

On April 26, 1995 appellant, then a data conversion operator, filed a claim for an occupational disease (Form CA-2) alleging that she first realized that her right wrist strain was caused or aggravated by her employment on April 22, 1995. Thereafter, appellant performed limited-duty work.

By letter dated August 1, 1995, the Office accepted appellant's claim for right carpal tunnel syndrome and authorized right carpal tunnel release which was performed on August 23, 1995.

On August 29, 1995 appellant filed a claim (Form CA-2a) alleging that she sustained a recurrence of disability on August 23, 1995. Appellant stopped work on August 23, 1995. Appellant returned to limited-duty work on October 16, 1995.

By decision dated February 7, 1996, the Office terminated appellant's compensation effective November 2, 1995 on the grounds that she no longer had any disability caused by her employment-related right carpal tunnel syndrome.

On March 10, 1996 appellant filed a Form CA-2a alleging that she sustained a recurrence of disability on November 12, 1995.¹ By letter dated April 30, 1996, the Office advised

¹ Appellant was terminated by the employing establishment on November 12, 1995 inasmuch as her temporary appointment had expired.

appellant that no action would be taken on her recurrence claim because her claim for compensation was denied and accompanied by appeal rights on February 7, 1996. The Office then advised appellant to exercise her appeal rights.

In a December 2, 1996 letter appellant, through her counsel, requested reconsideration of the Office's February 7, 1996 decision accompanied by medical evidence. By letter dated January 13, 1997, the Office advised appellant's counsel to submit additional factual and medical evidence. The Office also advised the employing establishment by copy of this letter to submit factual evidence. In response, appellant submitted additional factual evidence by letter dated February 14, 1997.

By decision dated March 4, 1997, the Office denied appellant's request for modification based on a merit review of the claim. In a May 12, 1997 letter, appellant, through her counsel, requested reconsideration of the Office's February 7, 1996 and March 4, 1997 decisions accompanied by medical evidence.

By decision dated August 11, 1997, the Office denied appellant's request for reconsideration of its March 4, 1997 decision without a review of the merits on the grounds that the evidence submitted was irrelevant and thus, insufficient to warrant review of the prior decision.

By decision dated August 12, 1997, the Office denied appellant's request for reconsideration of its February 7, 1996 decision without a review of the merits on the grounds that it was untimely filed and that it did not establish clear evidence of error in its prior decision.²

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits.³ 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.⁴ The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In the present case, the Office terminated appellant's compensation based on a certificate of fitness report dated November 2, 1995 and signed by a physician whose signature is illegible. This report indicated that appellant had reached maximum medical improvement, that she was discharged from treatment on November 2, 1995 and that she could return to her regular work duties on that date. The Board has carefully reviewed this illegibly signed report and finds that it

² The Board notes that subsequent to its August 12, 1997 decision, the Office received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see* 20 C.F.R. § 501.2(c)(1).

³ *Curtis Hall*, 45 ECAB 316 (1994); *John E. Lemker*, 45 ECAB 258 (1993); *Robert C. Fay*, 39 ECAB 163 (1987).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁵ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

is insufficient to carry the weight of the medical evidence on the relevant issue of the present case, in that it does not contain any medical rationale in support of its conclusions. The report did not explain why appellant had reached maximum medical improvement and why appellant would no longer have residuals of her accepted employment injury.

Because the Office did not provide an adequate basis for its determination that appellant ceased to have residuals of her accepted employment injury, the Office did not meet its burden of proof to terminate appellant's compensation effective November 2, 1995.

The decisions of the Office of Workers' Compensation Programs dated August 11, 12 and March 4, 1997 are hereby reversed.⁶

Dated, Washington, D.C.
August 13, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁶ The Board notes that the Office abused its discretion in its August 12, 1997 decision by refusing to reopen appellant's case for merit review under 5 U.S.C. § 8128(a) on the grounds that appellant's May 12, 1997 request for reconsideration of its February 7, 1996 decision was untimely filed and failed to present clear evidence of error. The Office issued its last merit decision in this case on March 4, 1997 wherein it denied appellant's request for modification of its February 7, 1996 decision. Because appellant's May 12, 1997 request for reconsideration was made within the one-year time limitation, the Board finds that it was timely filed; see 20 C.F.R. § 10.138(b)(2); *Larry Lilton*, 44 ECAB 243 (1992); *Gregory Griffin*, 41 ECAB 186 (1989).