

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CELESTINE AUSTIN-BASTAIN and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 98-407; Submitted on the Record;
Issued December 27, 1999*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant's disability and need for medical treatment causally related to her February 3, 1995 employment injury ended by January 5, 1996.

The Office of Workers' Compensation Programs accepted that appellant's February 3, 1995 employment injury resulted in contusions of the left shoulder and left hip. Appellant was originally released to limited duty with restrictions on February 10, 1995 and had additional restrictions added March 3, 1995. She continues to work limited duty.

By decision dated January 5, 1996, the Office terminated appellant's compensation effective the same day on the basis that she no longer had any disability or medical condition causally related to her employment injury. This decision was affirmed by an Office hearing representative in a decision dated October 6, 1997.

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. The Office also has the burden of proof to terminate authorization for medical treatment and, to do so, must establish that appellant no longer has residuals of an employment-related condition which require further treatment.¹

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.² Therefore, the Office

¹ *Furman G. Peake*, 41 ECAB 361 (1990).

² *Dawn Sweazey*, 44 ECAB 824 (1993).

must establish that appellant's condition was no longer aggravated by employment factors after January 5, 1996, and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

The Board finds that the Office has not met its burden of proof in terminating medical benefits.

In a June 27, 1995 report, Dr. John J. Phillips, a Board-certified orthopedic surgeon, indicated that appellant had full range of motion of her shoulder, no weakness of her deltoid or rotator cuff, and no limitation in motion. Dr. Phillips stated that although a little tenderness persisted anteriorly over the shoulder, he opined that appellant had recovered to the point where she could gradually resume her regular full activities with restrictions. In a September 26, 1995 report, Dr. Thomas J. Banton, Jr., a Board-certified orthopedic surgeon, stated that appellant could continue with regular work and that she would be put on restricted duty if her shoulder continued to bother her. In an October 26, 1995 report, Dr. Banton indicated that appellant is "having all kinds of trouble with [her] left shoulder." He recommended a magnetic resonance imaging (MRI) scan. A November 3, 1995 MRI scan came out negative. In his report of November 9, 1995, Dr. Banton indicated that the MRI scan was absolutely negative, and advised appellant to continue with her medication and continue with her work. In a November 20, 1995 report, he stated that appellant apparently pulled her shoulder yesterday.⁴ Dr. Banton found that appellant had decent motion, although she does have some pain. His impression was an acute subdeltoid bursitis.

The Office, in a November 28, 1995 letter, asked Dr. Banton to provide the objective findings on examination and/or test results which show appellant continues to have residuals of the February 3, 1995 work injury. He was advised that he provided no explanation as to how an acute subdeltoid bursitis diagnosed on March 7, 1995 resulted from the February 3, 1995 incident. Dr. Banton was further advised that his reports contained no objective findings on examination and that the MRI scan was negative. In a December 14, 1995 reply, he indicated that appellant continued to be followed because of pain in the upper extremities, particularly the left forearm and left arm. Dr. Banton stated that although this is purely a subjective finding and not an objective finding, he believed her pain was legitimate and that he has continued to keep her on restricted duty for that reason only. He further restricted appellant to carrying one bundle of letters in hand per relay due to her complaints of pain and weakness in the left upper extremity when carrying heavy stuff at the office.

The Board notes that there is no clear medical opinion which states that appellant's accepted conditions of contusions to the left shoulder and the left hip have resolved or that appellant is no longer suffering from residuals of the accepted conditions. In keeping appellant on restricted limited duty, Dr. Banton maintained that appellant had continuing symptoms due to her pain. Likewise, although Dr. Phillips had opined that appellant could gradually resume her regular full activities with restrictions, he did not specifically state that appellant's accepted

³ *Mary Lou Barragy*, 46 ECAB 781 (1995).

⁴ The record reflects that this would have been a Sunday injury, which is a nonwork day for appellant.

conditions had resolved as he noted an anterior tenderness over the shoulder. Inasmuch as there was no clear opinion that appellant's employment injury had resolved or that there were no continuing residuals from the conditions accepted by the Office, has not met its burden of proof in terminating medical benefits as it did not have a sufficient basis upon which to terminate appellant's compensation.⁵

In a January 5, 1996 report, Dr. Mark E. Belew, an orthopedic surgeon, stated that appellant has persistent pain in her shoulder. Dr. Belew's examination revealed positive impingement with a negative drop arm. Anterolateral tenderness was noted. Appellant was neurovascularly intact, with a 4/5 cuff strength in supraspinatus and internal rotation directions, 5/5 external. Dr. Belew diagnosed rotator cuff tendinitis with chronic impingement and recommended a cortisone injection to assist appellant in resolving the residual inflammation.

In a February 16, 1996 report, Dr. Belew noted that appellant still has persistent symptoms in the shoulder. He stated that appellant is on light duty which is seemingly helping. On examination, appellant has sensation intact to light touch. She has 2+ biceps reflex and 1+ triceps and brachial radialis with negative Hoffman. There was no midline cervical tenderness. Appellant had positive impingement with limited range of motion of the extremes compatible to partial ankylosis of the shoulder. Dr. Belew opined that appellant's symptoms were likely to continue to variable degrees depending on her line of work. He stated that he did not foresee appellant getting back into full active duty since it has been over a year since her original injury. Dr. Belew stated that appellant had essentially reached maximum medical improvement.

In an April 15, 1996 report, Dr. Belew noted that appellant had sharp, recurrent pains in her shoulder and arm, radiating all the way down into her hand with associated numbness. Some neck pain was also noted. Appellant denied similar symptoms in her right arm. On examination, Dr. Belew reported midline cervical tenderness and tenderness over the biceps tendon with positive impingement and negative drop arm. Sensation was intact to light touch. Appellant had 1+ reflexes in the biceps, triceps and brachioradialis, with a negative Hoffman's. Dr. Belew opined that it was possible that appellant could have a plexopathy or a lateral recess stenosis with radicular symptoms. He stated that this could account for her shoulder as well as the remainder of her arm pain. Dr. Belew stated that he would obtain an electromyogram (EMG) and nerve conduction study. These tests, however, are not in the record.

In a June 6, 1996 report, Dr. Rick Hummel, an internist, provided a history of appellant's injury. Dr. Hummel stated that although her workplace had been receptive to her medical care, appellant developed a chronic subdeltoid bursitis which has left her with a great deal of pain in the left shoulder. He stated that this pain is greatly exacerbated by carrying a mailbag on her delivery route. Dr. Hummel further stated that appellant continues to have mild symptoms of her bursitis despite no longer carrying the mailbag, but that not carrying the mailbag has yielded significant improvement. He stated that appellant was unable to carry a mail delivery bag and recommended that her workplace provide her with a push cart. Dr. Hummel stated that with a push cart, appellant would be able to get back to full-time work and that this would dramatically

⁵ The termination of wage loss does not appear to be an issue in this case as there is no indication in the record that the Office paid appellant compensation.

diminish the exacerbation of her bursitis and tendinitis. Medical restrictions of no more than 40 pounds of lifting, on bundle per relay of letter mail, no more than 5 hours delivery time on the street and no more than 8 hours per day were provided.

In a November 19, 1996 report, Dr. Terry J. Weis, an osteopath, stated that he examined appellant on April 22, 1996 and noted appellant's history of the injury. Appellant related a "drawing" pain in the left shoulder and stated that she has popping and snapping within the shoulder. After performing an examination and reviewing x-rays, Dr. Weis diagnosed left bicipital tendonitis. He noted that on October 21, 1996, he told appellant that although she had tenderness over the biceps tendon, she had reached her maximum degree of medical improvement and released appellant for unlimited activity. Dr. Weis further indicated that appellant has a 15 percent permanent disability of her shoulder secondary to her injuries.

Review of the subsequent reports of record indicate that appellant was continuing to experience problems with her left shoulder until Dr. Weis released her to unlimited activity on October 21, 1996. In a January 5, 1996 report, Dr. Belew diagnosed rotator cuff tendinitis with chronic impingement and recommended cortisone injections to resolve the residual inflammation. In his February 16, 1996 report, he noted that appellant's positive impingement with limited range of motion of the extremities were compatible to partial ankylosis of the shoulder. In his April 15, 1996 report, Dr. Belew stated that it was possible that appellant had a plexopathy or a lateral recess stenosis with radicular symptoms. Dr. Hummel, in his June 6, 1996 report stated that appellant had developed a work-related chronic subdeltoid bursitis which had resulted in a painful left shoulder. Dr. Weis, in his November 19, 1996 report, diagnosed left bicipital tendonitis. Although Drs. Weis, Belew and Hummel did not cite to particular employment factors as a cause or aggravating factor for appellant's condition or offer any explanation or rationale relating appellant's condition to her accepted employment injury, the burden of proof to terminate medical benefits remains with the Office, not appellant. Although Dr. Weis stated that appellant was released for unlimited activity on October 21, 1996, his treatment notes of that date lack a rationalized explanation as to why she was released for unlimited activity as he noted that appellant was still tender over the biceps tendon and one month later concluded in his November 19, 1996 report that appellant had some permanent impairment secondary to her injuries. As there is no rationalized medical opinion to support that appellant's accepted conditions have resolved or that she no longer suffers from residuals, the Office has not met its burden of proof in terminating medical benefits.

The decision of the Office of Workers' Compensation Programs dated October 6, 1997 is hereby reversed.

Dated, Washington, D.C.
December 27, 1999

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member