

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA M. WHITTINGHAM and U.S. POSTAL SERVICE,
POST OFFICE, Capitol Heights, MD

*Docket No. 97-2168; Submitted on the Record;
Issued January 10, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of May 25, 1997.

On June 28, 1993 appellant, a 32-year-old postal distributor, injured her left arm, left shoulder, left thigh and the left side of her lower back when she was struck by a container. She filed a claim for benefits on June 30, 1993.

In a report dated December 21, 1993, Dr. Neil Spiegel, an osteopath, noted appellant's history of injury on June 28, 1993 and stated that he had been treating appellant for the effects of cumulative trauma or repetitive stress secondary to her job description. Dr. Spiegel stated:

"It is my opinion that prior to this she was suffering from neck and upper back pain.... I believe that these [complaints] are part of the same problem. The actual event which occurred on June 28, 1993 only exacerbated an underlying condition. Her job description involves a lot of repetitive motion of her upper extremities and therefore she has developed myofascial-like pain which can occur from repetitive stress."

By decision dated May 6, 1994, the Office accepted appellant's claim for aggravation of preexisting left shoulder tendinitis.¹ The Office paid appellant compensation for appropriate periods. Appellant was eventually placed on the periodic rolls.

Dr. Spiegel periodically issued progress reports which indicated that appellant's disability was continuing. In a report dated November 7, 1994, Dr. Spiegel stated that appellant had recently undergone a functional capacity evaluation which indicated that she had the

¹ Appellant's claim was initially denied by Office decisions dated September 29 and December 6, 1993. She requested reconsideration of the December 1993 decision on January 26, 1994.

capacity to work at a light level. He therefore released her for light-duty work, progressing to full time over a four to six week period. Appellant, however, did not return to work with the employing establishment.

In order to determine whether appellant continued to suffer residuals from her accepted left shoulder condition and whether she was currently totally disabled due to this condition, the Office referred appellant for a second opinion examination with Dr. Kevin E. McGovern, a Board-certified orthopedic surgeon, for October 5, 1994.

In a report dated October 10, 1994, Dr. McGovern noted appellant's medical history, stated his findings on examination and concluded:

“The only condition that appears to be related to work is her rotator cuff tendinitis. At this time there are no objective findings of continued disability to her left shoulder.... It is noted that this condition was present prior to this injury as a result of another work-related injury. There is no evidence of any continued disability as a result of her June 28, 1993 injury. [Appellant] is not totally disabled due to her work injury of June 28, 1993. I have reviewed her job description, which requires continuous lifting of up to 20 pounds and occasional lifting of up to 50 to 70 pounds. It is my feeling that she is capable of performing the duties of her job that she had at the time of her injury. I feel she is capable of doing this eight hours a day.”

The Office found that there was a conflict in the medical evidence between Drs. Spiegel and McGovern regarding whether appellant continued to suffer residuals from her accepted left shoulder condition and scheduled an independent referee medical examination for appellant with Dr. Nathan J. Price, a Board-certified orthopedic surgeon, for January 20, 1995.

In a report issued the date of the examination, Dr. Price, after examining appellant, reviewing the medical records and stating findings on examination, stated that appellant had an overuse syndrome a few years prior to her injury, but stated that it was difficult to believe she still had residuals from that syndrome. Dr. Price felt that appellant was capable of returning to work with no further diagnostic tests; however, he advised that he was unable to make a definitive diagnosis until appellant underwent a magnetic resonance imaging (MRI) scan, the results of which he needed to review prior to rendering his opinion.

By letter dated February 27, 1996, the Office scheduled a follow-up examination with Dr. Price, following an MRI scan of appellant, in order to clarify the nature and extent of appellant's current condition.

In a report dated June 14, 1996, Dr. Price, noting that the results of appellant's March 25, 1996 MRI scan were normal, advised that she had no orthopedic pathology at that time and opined that she could return to full-time work from an orthopedic standpoint. He further stated that any problems from which appellant currently suffered were psychological in nature and that she required no further orthopedic management. Dr. Price concluded that appellant had no restrictions from an orthopedic standpoint.

On April 8, 1997 the Office issued a notice of proposed termination of compensation to appellant. The Office found that the weight of the medical evidence, as represented by Dr. Price's referee opinion, established that her employment-related disability had ceased and that she could return to full-time work without restrictions. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination. Appellant did not respond to this notice within 30 days.

By decision dated May 13, 1997, the Office terminated appellant's compensation, effective May 25, 1997.

The Board finds the Office met its burden of proof to terminate appellant's compensation benefits as of May 25, 1997.

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.² 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.³

In the present case, the Office based its decision to terminate appellant's compensation on the June 14, 1996 report from Dr. Price, the independent medical examiner. In his referee medical report, Dr. Price rejected any causal relationship between factors of appellant's employment and her claimed current condition, stated that she had restrictions from an orthopedic standpoint, and found that she was fit to return to full duty. The Office relied on Dr. Price's opinion in its May 13, 1998 termination decision, finding that all residuals of the previously accepted condition had ceased and that appellant currently suffered from no condition or disability causally related to her June 28, 1993 accepted employment injury.

The Board holds that the Office properly found that Dr. Price's referee opinion negating a causal relationship between appellant's claimed current condition and disability and her June 28, 1993 employment injury and that she no longer had any residuals from the employment injury was sufficiently probative, rationalized, and based upon a proper factual background, and that therefore, the Office acted correctly in according Dr. Price's June 14 1996 report the special weight of an independent medical examiner.⁴ Accordingly, the Board finds that Dr. Price's opinion constituted sufficient medical rationale to support the Office's May 13, 1997 decision terminating appellant's compensation. The Board therefore affirms the May 13, 1997 decision terminating compensation as of May 25, 1997.

The decision of the Office of Workers' Compensation Programs dated May 13, 1997 is hereby affirmed.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

⁴ *Gary R. Seiber*, 46 ECAB 215 (1994).

Dated, Washington, D.C.
January 10, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member