

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORRAINE M. FRIEDRICH and DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION, San Diego, CA

*Docket No. 99-2336; Submitted on the Record;
Issued January 12, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that residuals of her accepted injury had ceased; and (2) whether the Office properly denied appellant's February 20, 1999 request for reconsideration.

On January 23, 1997 appellant, a staffing assistant, sustained an injury while in the performance of her duties when she slipped and fell on a loading dock. She stopped work that day. The Office accepted her claim for right buttock contusion and cervical strain and, subsequently, for lumbar and cervical subluxations.

On February 13, 1997 appellant was released to return to duty with no restrictions but continued to receive medical care. Her attending orthopedic surgeon, Dr. Richard Greenfield, reported overall improvement in appellant's condition through 1997. On December 4, 1997 he reported that overall appellant was significantly improved, that she no longer needed anti-inflammatory medication, that she would not require ongoing chiropractic care, but that she would benefit from a headphone and by going to a physical therapist for two to three weeks to learn a new and updated home exercise program to maintain her current level of function.

The Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. William E. Temple, an orthopedic surgeon, who in a report dated January 26, 1998, indicated that he saw appellant on January 5, 1998. Dr. Temple related appellant's chief complaint, history of present problem and findings on physical examination. After reviewing the medical records provided by the Office, he diagnosed, among other conditions, status eleven and a half months postcontusion, right glutei (resolved) and sprain, neck and back. Dr. Temple reported that these conditions were medically connected by direct cause to the injury described in the statement of accepted facts. He did not take x-rays because they were taken and described by Dr. Greenfield in his report of April 21, 1997. Dr. Temple explained that subluxation was a reflection of serious injury and generally the result of severe trauma. If there were any

subluxation evidence in the films read by Dr. Greenfield, he stated, such would have been reported. Dr. Temple reported that, based on appellant's history and physical examination, she continued to suffer minimal subjective residuals of the incident of January 23, 1997. He stated that the prognosis for complete recovery from appellant's fall was excellent and that she required no current treatment as a result of her fall.

In a report dated January 12, 1998, Dr. Greenfield stated that he saw appellant that day. He reported that appellant's back had flared-up as a result of a test done during Dr. Temple's examination:

“[Appellant] says during the examination she was on her stomach and her legs were extended and this gave her pain in her back and down to her legs. She missed two days of work. [Appellant] had pain in the right gluteal area and into the right knee. She also had pain along the right posterior superior iliac spine.”

After describing his findings on physical examination, Dr. Greenfield reported that appellant's temporary total disability post examination was appropriate. He prescribed medication, did not anticipate any permanent residuals from her recent flare-up in symptomatology but did report that appellant required ongoing care.

In a report dated January 23, 1998, Dr. Greenfield noted that appellant had some soreness that day about the base of the cervical spine, the right shoulder girdle and in the mid and low back. After describing his findings on physical examination, he stated that appellant had made some progress, that she needed to return to chiropractic care twice a week for the next three weeks to treat a flare in symptomatology that appellant experienced over the previous several weeks.

On February 20, 1998 the Office issued a notice of proposed termination of all benefits. The Office advised appellant that the weight of the medical evidence established that she had no residuals or need for medical care causally related to the January 23, 1997 work injury.

In a report dated March 30, 1998, Dr. Greenfield noted continued tightness on the right side of appellant's neck and pain in her lower back while lying down or sitting up. He reported that appellant was taking no medications and that she had completed her chiropractic management. After describing his findings on physical examination, Dr. Greenfield recommended a home exercise program and scheduled a reevaluation in five weeks.

In a report dated June 18, 1998, Dr. Greenfield stated that appellant was doing extremely well, though she would have an occasional headache with muscle tightness in her neck. He noted repetitive right gluteal tightness and pain while forward. Dr. Greenfield described his findings on physical examination, recommended a footstool, advised appellant to increase her level of home exercise and scheduled “a final check” in six weeks.

In a report dated August 18, 1998, Dr. Greenfield stated that appellant continued to do well in regards to her neck, with no upper back pain and with her thoracolumbar spine much improved. He related ostensibly normal findings on physical examination and noted that appellant would continue her home exercise program. Dr. Greenfield scheduled a “permanent

and stationary” evaluation in six weeks and anticipated that appellant would not be left with any significant residual disability or deformity.

In a report dated September 28, 1998, Dr. Greenfield stated that appellant would have some rare, strange pains down into her arm, particularly if she played computer games, which would give her neck and right arm pain. Otherwise, he stated, appellant was doing well. Dr. Greenfield reported no positive findings on physical examination and declared appellant permanent and stationary. He reported that subjective factors of disability were minimal, intermittent pain, the right neck and right upper extremity, becoming slight intermittent pain with repetitive tasks such as computer games. Objectively, Dr. Greenfield stated, appellant had full, unrestricted range of motion of the cervicothoracic and lumbar spine with no motor or sensory deficit. He reported that appellant would be seen on an “as needed” basis. Though he placed no actual work restrictions on appellant, he recommended that she avoid repetitive tasks such as prolonged use of a computer mouse or repetitive tasks of the right upper extremity. Dr. Greenfield stated that future conservative medical care should be made available.

In a report dated November 13, 1998, Dr. Greenfield stated that appellant had contacted his office on November 10, 1998 indicating that she had a flare-up of her neck symptomatology. He stated that appellant’s neck started hurting while she was at work and after a long meeting. There was a sudden pop and it had since bothered her. Dr. Greenfield reported that appellant had limited motion and pain and some dysesthesias in the upper extremities. He noted that appellant was temporarily totally disabled and prescribed therapy three times a week for the next month.

In a report dated December 7, 1998, Dr. Greenfield stated that appellant was continuing to have neck pain, that she was tight, particularly on side-to-side bending and that she was making progress in therapy but not as much as he would like to see. He reported that appellant would continue her therapy program. Dr. Greenfield prescribed medication on an “as needed” basis for sleep and for relief of pain and inflammation for her neck and head region.

In a decision dated February 2, 1999, the Office terminated appellant’s compensation benefits effective that date¹ on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Temple, established that appellant had no residuals or need for medical care causally related to her January 23, 1997 employment injury.

Appellant requested reconsideration. She stated that Dr. Temple’s examination exacerbated her problem and indicated that Dr. Greenfield’s continued care disputed Dr. Temple’s opinion that appellant had recovered. She stated that Dr. Greenfield was of the belief that she was still suffering from the fall on January 27, 1997 and that he was prepared to submit appropriate documentation to substantiate this. Appellant also asserted that she never received the February 20, 1998 notice of proposed termination.

¹ In the original, the Office gave the effective date of termination as February 2, 1998 but subsequently corrected the year to 1999 to coincide with the date of the decision.

In a decision dated April 9, 1999, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support thereof was irrelevant and insufficient to warrant review of its prior decision.

The Board finds that the Office properly terminated appellant's compensation benefits.

It is well established that, once the Office accepts a claim, it has the burden of proof 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

The medical evidence in this case justified the termination of appellant's compensation benefits. By December 1997 Dr. Greenfield reported that appellant was significantly improved overall, that she no longer needed anti-inflammatory medication and that she would not require ongoing chiropractic care. On January 26, 1998 Dr. Temple reported that appellant continued to suffer minimal subjective residuals of the incident of January 23, 1997. He stated that the prognosis for complete recovery was excellent and that she required no current treatment as a result of her fall. Although his examination of appellant appeared to cause a flare-up of symptomatology, Dr. Greenfield's reports of August 18 and September 28, 1998 show that appellant had basically recovered from her employment injury. Consistent with Dr. Temple's earlier report, Dr. Greenfield reported no objective findings and only minimal subjective findings requiring no regular medical attention.

Because the medical evidence established that appellant had no disability for work and no longer needed regular medical attention, the Board finds that the Office met its burden of proof to justify the termination of compensation benefits effective February 2, 1999, which the Board notes was four months after Dr. Greenfield declared appellant permanent and stationary. Although appellant appeared to reinjure herself in November 1998 when she felt a sudden pop in her neck following a long meeting, Dr. Greenfield has not explained whether or in what manner this was related to appellant's slip and fall on January 23, 1997, nor has he explained how appellant's long meeting or other work activities caused this disabling neck condition. Appellant bears the burden of proof to establish an entitlement to compensation benefits for the disabling neck condition that arose in November 1998, and she must discharge that burden by submitting well-reasoned medical opinion evidence based on a complete and accurate factual and medical background.

The Board also finds that the Office properly denied appellant's February 20, 1999 request for reconsideration.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

erroneously applied or interpreted a point of law, or (2) advancing a point of law or a fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴

Appellant has not shown that the Office erroneously applied or interpreted a point of law, nor has she submitted relevant and pertinent evidence not previously considered by the Office. She is therefore not entitled to a merit review of her claim under the first or third criterion above. Appellant has, instead, advanced several arguments, but these are immaterial or have no validity. She notes that Dr. Temple's examination exacerbated her problem. Although the record tends to support this, it does not diminish the fact that appellant subsequently recovered extremely well and was released from regular medical attention before October 1998. Dr. Greenfield did continue appellant's care after Dr. Temple's examination, but whether this was because of an exacerbation caused by the examination or because Dr. Greenfield disagreed with the opinion given by Dr. Temple is of no consequence in view of appellant's subsequent recovery. As the record shows, appellant's entitlement to compensation benefits for the residuals of her accepted employment injury did not cease with the receipt of Dr. Temple's opinion but continued through February 2, 1999. If Dr. Greenfield believes that appellant is still suffering from the fall of January 27, 1997, he should indeed submit a well-reasoned opinion explaining this.

As for appellant's argument that she did not receive the February 20, 1998 notice of proposed termination, the record shows that the Office properly addressed this notice. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.⁵ This presumption arises when it appears from the record that the notice was properly addressed and duly mailed.⁶ The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the Office itself, will raise the presumption that the original was received by the addressee.⁷

Because appellant's February 20, 1999 request for reconsideration did not meet at least one of the three criteria for obtaining a merit review of her claim requirements, the Board finds that the Office properly denied her request.⁸

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ *George F. Gidicsin*, 36 ECAB 175 (1984) (when the Office sends a letter of notice to a claimant, it must be presumed, absent any other evidence, that the claimant received the notice).

⁶ *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁷ See *Larry L. Hill*, 42 ECAB 596 (1991); see generally Annotation, *Proof of Mailing by Evidence of Business or Office Custom*, 45 A.L.R. 4th 476, 481 (1986).

⁸ 20 C.F.R. § 10.138(b)(2).

The April 9 and February 2, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
January 12, 2000

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member