

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACKIE F. COOMER and U.S. POSTAL SERVICE,
POST OFFICE, Chaffee, MO

*Docket No. 03-584; Submitted on the Record;
Issued May 5, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation effective March 2, 2001.

On March 10, 1999 appellant, a 54-year-old part-time rural letter carrier, was involved in an employment-related motor vehicle accident. Appellant stopped working the day of his injury. The Office accepted appellant's claim for multiple rib fractures and left pneumothorax. Appellant received appropriate wage-loss compensation and the Office placed him on the periodic compensation rolls effective June 20, 1999. On August 26, 2000 appellant returned to work as a modified rural carrier, working eight hours per week.¹ On December 27, 2000 the employing establishment attempted to return appellant to full-work duties; however, appellant stopped work on December 30, 2000.²

In a decision dated March 2, 2001, the Office terminated appellant's claim for wage-loss compensation on the basis that the medical evidence did not demonstrate that he was totally disabled due to his accepted work-related conditions.³

Appellant requested an oral hearing which was held August 23, 2001. By decision dated November 15, 2001 and finalized November 16, 2001, the Office hearing affirmed the March 2, 2001 decision denying compensation.

¹ Appellant's return to work was delayed, in part, by a myocardial infarction he suffered on December 2, 1999. He underwent quintuple bypass surgery on December 6, 1999.

² On December 6, 2000 appellant's treating physician, Dr. Scott R. Gibbs, a Board-certified neurosurgeon, stated that there was no neurological impairment that should prevent appellant from resuming his part-time work, eight hours per day. However, Dr. Gibbs noted that appellant may be limited by his subjective complaints of pain.

³ Appellant received wage-loss compensation through December 29, 2000.

On November 30, 2001 appellant requested reconsideration and submitted additional evidence. The Office reviewed the claim on the merits and denied modification by decision dated January 8, 2002. Appellant again requested reconsideration on August 16, 2002 and submitted a February 21, 2002 report from his current physician, Dr. Panduranga R. Kini, a Board-certified neurologist. In a decision dated October 18, 2002, the Office denied modification.

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation effective March 2, 2001.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵

As early as July 1999, appellant's then-treating physician, Dr. Kee B. Park, a Board-certified neurosurgeon, found that appellant was capable, from a neurological standpoint, of performing his full duties without restriction.

In November 1999, the Office referred appellant for evaluation by Dr. Bernard C. Burns, an osteopath specializing in physical medicine and rehabilitation. In a report dated December 1, 1999, Dr. Burns found appellant able to perform part-time work at light to light-medium levels. Shortly after his examination by Dr. Burns, appellant suffered a myocardial infarction on December 2, 1999 and he underwent quintuple bypass surgery on December 6, 1999.

Appellant was also under the care of Dr. Ronald M. Richmond, a Board-certified surgeon, who reviewed Dr. Burns' December 1, 1999 report and, in a letter dated January 14, 2000, noted his agreement concurrence with Dr. Burns' assessment and recommendations.

Appellant's cardiologist, Dr. Allen L. Spitler, a Board-certified internist, recommended that he remain off work for several months following his bypass surgery. On May 11, 2000 Dr. Spitler advised that appellant should remain off work until evaluated by Dr. Richmond.

Dr. Richmond examined appellant on June 13, 2000 and noted that appellant continued to complain of pain in his back and neck. He stated that on examination appellant had significant tenderness at T2 radiating toward the left shoulder. Dr. Richmond did not otherwise comment on appellant's ability to resume work. He noted, however, that he had nothing further to offer appellant. Dr. Richmond recommended that appellant see Dr. Gibbs, a Board-certified neurosurgeon.

Dr. Gibbs examined appellant on August 2, 2000 for complaints of neck and back pain and numbness of the right hand. After conducting a physical examination and a review of

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

appellant's medical records, Dr. Gibbs stated that he believed appellant could return to work as a mail carrier, although he may be somewhat limited in his ability to turn his neck.

As noted, appellant returned to work in a light-duty capacity on August 26, 2000. He was scheduled to work three days for a total of eight hours per week.⁶ Appellant continued to work in this capacity through December 29, 2000.

In a December 6, 2000 duty status report, Dr. Gibbs reported that appellant was able to work eight hours per day and that there was no neurological impairment that would prevent appellant from resuming his work. He surmised that appellant "may be limited by his subjective complaints of pain." Dr. Park's December 11, 2000 office notes indicated that "[appellant was] back to work without restriction."

In the instant case, the Office properly terminated appellant's wage-loss compensation effective March 2, 2001. Dr. Gibbs released appellant to resume his regular duties as of December 6, 2000 and appellant did not provide any medical evidence that would justify his work stoppage on December 30, 2000.

On reconsideration appellant submitted additional medical evidence from Dr. Kini, a Board-certified neurologist. The evidence consists of September and October 2001 prescription pad referrals for cervical traction, physical therapy and work hardening. Dr. Kini noted on November 15, 2001 that appellant could resume light-duty work with no lifting greater than 35 pounds. On February 21, 2002 Dr. Kini wrote that appellant had been under his care for myofascial neck pain secondary to injury related to the job. He noted stated that appellant was better but could not work because his job required lifting up to 75 pounds.

Dr. Kini has not provided a rationalized medical opinion attributing appellant's current cervical pain to the March 10, 1999 employment injury. Although he indicated that appellant's cervical condition was job related, Dr. Kini did not specifically mention appellant's March 10, 1999 motor vehicle accident or otherwise reference any particular employment injury. Accordingly, the Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation.

⁶ Prior to his March 10, 1999 employment injury, appellant, as a part-time rural carrier, was scheduled to work eight hours each Saturday. However, appellant averaged approximately 17 hours of work per week during the year prior to his injury.

The dated October 18, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 5, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member