

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ESTHER L. ALI and U.S. POSTAL SERVICE,
SCHUYLKILL STATION, Philadelphia, PA

*Docket No. 03-1201; Submitted on the Record;
Issued September 29, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective July 2, 2001.

On September 30, 1999 appellant, then a 34-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained inflammation of her wrist and carpal tunnel syndrome as a result of the repetitive motion of casing and delivering mail over a 10-year period. On December 16, 1999 the Office accepted appellant's claim for left lateral epicondylitis and left wrist tendinitis. Appellant underwent a left lateral epicondylectomy and tennis elbow release by Dr. John Taras, a Board-certified orthopedic surgeon. On May 12, 2000 appellant returned to "limited-duty" work on August 14, 2000 and on November 6, 2000 accepted a rehabilitation job offer as a carrier with the employing establishment.

The record contains medical reports, commencing October 25, 1999, by Dr. Peter Honig, a Board-certified internist. In a September 13, 2000 report, Dr. Honig noted that appellant was still experiencing tenderness in the left forearm and left elbow. Dr. Honig listed his diagnosis as chronic epicondylitis and status post surgery.

Appellant also continued to be seen by her surgeon, Dr. Taras. In an October 9, 2000 report, he indicated that appellant was nontender over the lateral aspect of the elbow, that she had no pain with finger extension and that she had full range of motion. In a November 20, 2000 report, Dr. Taras noted:

"I believe the patient has recovered from her left lateral epicondylitis and maximum medical improvement has occurred. I note no restrictions of movement in terms of active motion. There is no loss of strength, no muscle atrophy, no sensory changes. The patient had mild discomfort related to the elbow in the normal postoperative course. Based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, [(A.M.A., *Guides*)] I see no permanent impairment in this case."

By letter dated March 15, 2001, the Office referred appellant to Dr. Steven Valentino, an osteopath, for a second opinion. In a report dated April 11, 2001, Dr. Valentino listed his impression as: “resolved left lateral epicondylitis, resolved left wrist tendinitis.” He further noted:

“Based on today’s evaluation, [appellant’s] impairment rating regarding her work injury according to the [f]ifth [e]dition of the A.M.A., *Guides to the Evaluation of Permanent Impairment* is zero. I am in agreement with Dr. Taras. She has recovered. There is no deficit and using the [A.M.A.,] *Guides*, there is no evidence of impairment.”

On May 3, 2001 the Office issued a notice of proposed termination of compensation, noting that the weight of medical evidence supported that the residuals of the work injury had ceased and that appellant had no disability causally related to the accepted conditions. By decision dated July 2, 2001, the Office terminated appellant’s wage loss and medical benefits effective that date.

On April 16, 2002 appellant requested reconsideration and submitted reports from Dr. Honig. In reports dated February 6 and 20, 2002, Dr. Honig listed his diagnosis as left elbow derangement, probable acute inflammatory status, epicondylitis and probable Schar tenderness. Dr. Honig noted that appellant’s pain had worsened since December 2001. He noted that appellant continued to have a great deal of tenderness in the lateral aspect of her left elbow along her incision area and more medial, along with edema and guarding. Dr. Honig also noted decreased range of motion within the elbow and flexion within the arm. Appellant also submitted a June 10, 2002 report from Dr. Taras who noted that appellant continued to complain of medial elbow pain, as well as numbness and tingling in the left hand. Dr. Taras recommended that appellant undergo an electromyogram.

By decision dated July 17, 2002, the Office denied modification of the July 2, 2001 decision.

By letter dated October 24, 2002, appellant again requested reconsideration and submitted a June 26, 2002 report from Dr. Honig, who noted that appellant had suffered with repetitive discomfort related to her occupation. He indicated that when she was examined on June 5, 2002 she had a warm, tender and swollen left elbow with decreased range of motion. Appellant also submitted a July 8, 2002 report by Dr. Taras wherein he indicated that appellant had new onset of left side shoulder pain and persistent elbow pain.

By decision dated January 23, 2003, the Office again denied modification of the decisions.

The Board finds that the Office properly terminated appellant’s benefits effective July 2, 2001.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ After it has been determined that a claimant had

¹ *Theodore Parker*, 50 ECAB 542, 547 (1999).

disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.² To terminate authorization for medical treatment, the Office has the burden of establishing that appellant no longer has residuals of the employment-related condition that requires further medical treatment.³

Dr. Honig, appellant's treating internist, noted that appellant was still experiencing tenderness in the left forearm and elbow as of the date of his September 13, 2000 report. However, in a November 20, 2000 report, Dr. Taras, appellant's surgeon, indicated that appellant had reached maximum medical improvement, with no restrictions of movement in terms of active motion, no loss of strength, no muscle atrophy and no sensory changes. The second opinion physician, Dr. Valentino, noted that he agreed with Dr. Taras in finding that appellant had recovered and that her condition was "resolved left lateral epicondylitis, resolved left wrist tendinitis." At the time the Office terminated appellant's benefits, the weight of medical opinion evidence from Drs. Taras and Valentino, established that appellant no longer had residuals related to her work-related conditions. Accordingly, the Office properly terminated benefits.

Subsequent to the Office's July 2, 2001 termination decision, the burden of proof in this case shifted to appellant, who thereafter submitted additional medical evidence with her reconsideration requests. Of the medical evidence submitted, the Board finds that it is not sufficient to outweigh or create a conflict with the Office referral physician, Dr. Valentino. Dr. Honig noted that appellant's pain had worsened since December 2001, implicating a possible recurrence of disability. Dr. Taras, in his July 8, 2002 report, noted a new onset of left shoulder pain. Neither physician provided rationalized medical evidence establishing that appellant had continuing disability at the time of the July 2, 2001 termination decision. If appellant believes that she has sustained a recurrence of disability or need for medical treatment, she may file a claim for recurrence (Form CA-2a).

² *Id.*

³ *Jose Hernandez*, 47 ECAB 288, 295 (1996).

The decisions of the Office of Workers' Compensation Programs dated January 23, 2003 and July 17, 2002 are hereby affirmed.

Dated, Washington, DC
September 29, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member