

**United States Department of Labor
Employees' Compensation Appeals Board**

MARIE H. REYNOLDS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Everett, WA, Employer**

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**Docket No. 03-568
Issued: March 22, 2004**

Appearances:
John E. Goodwin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 13, 2003 appellant filed an appeal from a July 8, 2002 decision of an Office of Workers' Compensation Programs' hearing representative which affirmed the termination of her wage-loss compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's wage-loss compensation benefits.

FACTUAL HISTORY

On January 15, 1999 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim alleging that she experienced pain in her right elbow on that date after she struck it on a metal container. Appellant was treated that day by Dr. Robin Beck, an employing establishment physician, who diagnosed a contusion of the right elbow and she returned to work with no

restrictions.¹ Appellant stopped work on April 20, 1999 due to right elbow pain and came under treatment by Dr. Richard A.H. Jimenez, a Board-certified internist, who diagnosed a right lateral epicondylitis and prescribed work limitations regarding the use of the right hand.² Appellant did not return to work.

The Office accepted that appellant sustained a right lateral epicondylitis and paid appropriate compensation. Appellant underwent a period of physical therapy and injections and came under treatment by Dr. Thomas J. Degan, a Board-certified orthopedic surgeon, who recommended surgery which was performed on April 6, 2000 consisting of an arthroscopic lateral release of the right elbow.

On August 30, 2000 Dr. Degan approved a work-conditioning program to assist appellant in her return to work.³ However, on October 6, 2000 he noted that appellant had complaints with her right wrist and shoulder. Dr. Degan diagnosed an impingement syndrome with acromioclavicular degenerative joint disease and stated that appellant was unable to return to mail handling work.

On December 19, 2000 the Office referred appellant, together with a statement of accepted facts and the case record, to Dr. Allan R. Wilson, a Board-certified orthopedic surgeon, for a second opinion medical evaluation.⁴ In a January 8, 2001 report, Dr. Wilson reviewed appellant's history of injury and medical treatment. He noted that her symptoms consisted of lateral elbow pain extending into the forearm and that she did not report any improvement despite treatment. Dr. Wilson noted that appellant's past medical history included chronic right shoulder pain beginning in 1994. The physician reported his findings on examination of the right upper extremity. He indicated that appellant experienced some tenderness over the lateral aspect of the right clavicle and over the volar surface of the wrist. Phalen's and Tinel's tests were reported as negative. Dr. Wilson diagnosed appellant's status as postarthroscopic lateral retinacular release for treatment of her epicondylitis condition. He noted probable functional pain behavior manifested by general discomfort in the entire right upper extremity localized to bony prominences. Dr. Wilson related appellant's epicondylitis condition to the accepted January 15, 1999 injury, but stated that appellant's functional pain behaviors were not employment related. He indicated that she could not return to her regular duty as a letter carrier but was capable of limited-duty work. Dr. Wilson reviewed the modified general clerk position description and opined that she could perform the duties of the position, working 8 to 10 hours a day with lifting restricted on the right extremity not to exceed 20 pounds. He noted she had the capacity to answer a call door, retrieve vacation held mail, answer telephones, write up notes, use

¹ X-rays obtained of appellant's right elbow were negative for any fracture.

² The record indicates that limited duty was not available to appellant based on her physical limitations and she filed CA-7 claims for compensation commencing April 20, 1999. On June 11, 1999 appellant filed a recurrence of disability claim commencing April 20, 1999.

³ The record reflects that the employing establishment developed a job offer based on restrictions recommended by Dr. Degan.

⁴ The Office enclosed a modified general clerk position, which noted restrictions of the right upper extremity including lifting of 10 to 20 pounds.

a copy machine and help work nixie mail. Dr. Wilson completed a work capacity evaluation setting forth appellant's limitations on lifting.

On January 25, 2001 the Office contacted the employing establishment to determine whether the modified general clerk position was still available to appellant as written. By letter dated January 25, 2001, the Office advised appellant that the position was still available and found suitable to her work capacities based on the report of Dr. Wilson. Appellant was advised of the penalty provisions of section 8106(c)(2) and that she had 30 days in which to accept the position or provide reasons for refusing it. On February 9, 2001 appellant's attorney notified the Office that she had undergone surgery for arthroscopic subacromial decompression and a distal clavicle resection on January 11, 2001. On February 14, 2001 the Office advised counsel that in light of the January 11, 2001 right shoulder surgery, the position was no longer considered suitable.

On April 17, 2001 the Office requested Dr. Degan to submit additional medical evidence with regard to appellant's right shoulder surgery and an opinion on whether she had sufficiently recovered to complete the duties of the modified job offer. Dr. Degan was requested to submit a report identifying any duties appellant was not capable of performing and to complete a work restriction evaluation regarding her disability for work. The Office noted that the right shoulder condition had not been accepted as employment related. The physician's office returned treatment notes addressing appellant's discomfort on motion, especially internal rotation. A May 9, 2001 entry indicated that appellant was given a note to return to work and a prescription for physical therapy. A June 13, 2001 entry indicated that appellant had not heard from the Office, that her condition was fixed and stable and that the physician felt she could return to work when last seen and the claim closed. A June 13, 2001 report from Dr. Degan to the Office addressed his clinic notes regarding her recent visits and stated, "At this time her condition is fixed and stable and I think she can return to work without restriction."

By letter dated July 27, 2001, the Office proposed to terminate appellant's wage-loss and medical benefits, noting that the June 13, 2001 report of Dr. Degan established that she had no continuing disability due to the accepted employment-related condition. Appellant was advised to submit additional medical evidence within 30 days if she disagreed with the proposed termination. She did not respond.⁵

By decision dated August 28, 2001, the Office terminated appellant's compensation benefits for wage loss. The decision noted that medical treatment was authorized for residuals of the accepted right lateral epicondylitis condition.

In a letter received on September 5, 2001, appellant requested an oral hearing before an Office hearing representative which was held on March 29, 2002. She submitted an August 31, 2001 prescription note from Dr. Degan which indicated that appellant was not able to lift over 20 pounds secondary to the January 15, 1999 injury.

In a July 8, 2002 decision, the Office hearing representative affirmed the August 28, 2001 termination decision.

⁵ Appellant submitted CA-7 claims for compensation after July 28, 2001.

LEGAL PRECEDENT

Once the Office has made a determination that a claimant is totally disabled as a result of an employment injury and pays compensation benefits, it has the burden of justifying a subsequent reduction of benefits.⁶ 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.⁷ The question of whether a particular injury causes an employee disability for employment is a medical question that must be resolved by competent medical evidence.⁸ In this regard, the report of the attending physician who has treated the injury and has first-hand knowledge of the condition is entitled to weight.⁹

ANALYSIS

Appellant's claim for injury on January 15, 1999 was accepted by the Office for a right lateral epicondylitis for which she underwent surgical release by Dr. Degan on April 6, 2000. The medical evidence of record establishes that the attending physician also started treating appellant for an impingement syndrome and degenerative disease of the acromioclavicular region, for which surgery of the right shoulder was performed on January 11, 2001. As noted by the Office, the right shoulder condition has not been accepted as employment related to the accepted injury of January 15, 1999.

Following the most recent surgery, the Office requested that Dr. Degan provide a medical opinion as to appellant's disability for work and any work limitations. The records forwarded to the Office reveal that as of May 9, 2001 the physician advised that appellant could return to work. On examination on June 13, 2001, Dr. Degan advised that appellant's condition was stable and fixed and reiterated that she could return to work. In a narrative of that date, Dr. Degan advised the Office that appellant could return to work "without restriction." Based on this medical opinion from appellant's attending physician, the Office properly terminated her wage-loss benefits. The Office notified appellant that her compensation would be terminated based on Dr. Degan's medical reports and she was allowed 30 days to submit additional evidence. She did not respond to the July 27, 2001 notice.

After termination or modification of compensation benefits clearly warranted on the basis of the medical evidence, the burden of proof for reinstating compensation benefits shifts to the claimant.¹⁰ Appellant contends that she remained disabled due to residuals of the January 15, 1999 injury and submitted a prescription notation of Dr. Degan which noted a 20-pound lifting limitation. However, this note is insufficient to establish that any continuing disability for work

⁶ See *Manuel Gill*, 52 ECAB 282 (2001).

⁷ See *Lawrence D. Price*, 47 ECAB 120 (1995); *Patricia A. Keller*, 45 ECAB 278 (1993).

⁸ See *Donald E. Ewals*, 51 ECAB 428 (2000).

⁹ See *Dorothy D. Kroening*, 12 ECAB 16 (1960).

¹⁰ See *Franklin D. Haislah*, 52 ECAB 457 (2001).

is due to residuals of the accepted epicondylitis condition as opposed to the residuals of the nonemployment-related right shoulder condition. The brief notation is partially illegible but indicated it was written secondary to the January 15, 1999 injury. In this regard, there is no report or other narrative opinion from Dr. Degan which addresses his findings in terms of his medical treatment of appellant. The note provides no rationalized opinion on the causal relationship of appellant's disability or explains the nature of any disability in terms of the accepted medical condition as opposed to the nonaccepted right shoulder condition. For this reason, the Board finds that the prescription notation is not a sufficient basis on which to reinstate appellant's wage-loss compensation.

CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss compensation. Appellant has not established a basis for reinstatement of such benefits.

ORDER

IT IS HEREBY ORDERED THAT the July 8, 2002 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 22, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member