

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARLAINA JEFFRIES and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, N.M.

*Docket No. 96-113; Submitted on the Record;
Issued April 27, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits effective August 1, 1995; and (2) whether appellant has met her burden of proof in establishing that she has any additional medical conditions causally related to or aggravated by her accepted employment injury.

On December 3, 1992 the Office accepted appellant's claim for right lateral epicondylitis and left medial epicondylitis related to her employment duties as a flat sorter machine operator. Appellant was off work for intermittent periods until October 7, 1993 when she returned to limited-duty work, for four hours a day, as a modified clerk responding to telephone calls. On November 23, 1994 based on appellant's continuous employment for more than one year, the Office issued a decision finding that this position represented appellant's wage-earning capacity, and began paying appropriate compensation to reflect her loss in wage-earning capacity.¹ Subsequently, appellant stopped work from November 29, 1994 through January 3, 1995, and filed a claim for compensation for total disability for this period. Appellant returned to her light-duty position on January 4, 1995, but stopped work again on March 22, 1995. Appellant filed a claim for a recurrence of total disability as of March 22, 1995, alleging that she could not perform her job without a desk and chair of the proper height and type, as recommended by her physician.²

In addition to her accepted bilateral epicondylitis, appellant had been receiving treatment for myofascial pain syndrome and depression.

¹ On appeal to the Board appellant did not express any dissatisfaction with this decision, but rather specifically sought to appeal the Office's August 1, 1995 decision.

² Appellant's physician had recommended that appellant be provided with a lower desk, and an adjustable chair with arms.

In a decision dated August 1, 1995, the Office terminated appellant's entitlement to continuing disability compensation and medical benefits on the grounds that the weight of the medical evidence, represented by the well-reasoned report of Dr. Emmett Altman, the Office second opinion physician, established that there was no connection between appellant's current condition and the accepted employment-related conditions.³

The Board has duly reviewed the case on appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits effective August 1, 1995.

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.⁴ 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.⁵ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁷

In a report dated February 22, 1994, Dr. Teresa Balcomb, a Board-certified orthopedic surgeon and appellant's attending physician, stated that appellant had reached maximum medical improvement and that as long as she continued to work in the telephone center for four hours a day and within her restrictions, she should remain asymptomatic. Dr. Balcomb stated that these restrictions could be permanent, and that she would reevaluate appellant in six months.

By letter dated December 12, 1994, the employing establishment asked Dr. Balcomb to evaluate appellant's suitability for a proposed position as a scale monitor, given her accepted employment-related conditions of right lateral epicondylitis and left medial epicondylitis. The employing establishment further indicated that it hoped to return appellant to full-time duty.

In a December 22, 1994 response, Dr. Balcomb stated that based on her treatment of appellant over the past two years, it was her opinion that appellant's problems were more global than just the epicondylitis accepted by the Office. She explained that, as reflected in her numerous reports and treatment notes, she believed appellant was suffering more from a cumulative trauma problem involving, in addition to epicondylitis, multiple trigger points, myofascial pain and depression.⁸ Dr. Balcomb concluded that while appellant could perform the

³ On June 28, 1995 the Office issued a notice of proposed termination.

⁴ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁵ *Id.*

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ *Id.*

⁸ Dr. Balcomb and Dr. David Bernstein, an orthopedic surgeon and appellant's treating physician until December 1993, frequently characterized appellant's combination of epicondylitis and myofascial pain as "overuse syndrome" or "cumulative trauma" disorder.

duties of a scale monitor, she could only do so for four hours a day.⁹ Dr. Balcomb stated that she would reevaluate appellant as her tolerance built up and that hopefully appellant's hours could be increased.

On February 16, 1995 the Office arranged for appellant to be seen by Dr. Emmett Altman, a Board-certified orthopedic surgeon, for the purpose of obtaining a second opinion evaluation. The Office provided the physician with a statement of accepted facts, the medical evidence of record, and a list of issues to be resolved.

In his report dated March 6, 1995, Dr. Altman provided his findings on physical examination and indicated that he had reviewed the medical records provided. In response to the Offices inquiries, Dr. Altman stated:

“There are no objective findings of a right lateral epicondylitis or a left medial epicondylitis. These areas are completely asymptomatic, with stress, pressure and massage. She did not complain of any discomfort.

There may well have been in the past a work-related disability, however, there are no signs of this now. I believe she should continue at the light type of work she is doing as of January as a scale monitor.

I do not see any reason for any future medical or orthopedic treatment. The findings at this time are completely within normal limits. It may well be that her original job was too arduous and she is coping with this lighter type work.”

In an enclosed work capacity evaluation of the same date, Dr. Altman indicated that appellant had reached maximum medical improvement as of the date of his report, that she could not perform repetitive motions of the wrist or elbow, that she had “overuse syndrome” due to her employment, and that she could work four hours a day.

Based on Dr. Altman's reports, the Office terminated appellant's compensation and medical benefits effective August 1, 1995.

⁹ There is some question in the record as to what duties appellant is actually assigned to perform. In a report dated January 20, 1995, Dr. Balcomb noted that although appellant had returned to work on January 4, 1995, prepared to assume her new duties as a scale monitor, upon her arrival the employing establishment instead assigned her to “nixies” to repair damaged mail. Dr. Balcomb noted that this position was also within appellant's physical limitations and that appellant was satisfied with the work. In a report dated February 16, 1995, Dr. Balcomb noted that appellant was still not performing the duties of a scale monitor and that because in order to do the “nixies” she was supposed to have a special desk and chair, which had not been provided, she was not really performing “nixies” duties either. Appellant stopped work on March 22, 1995, claiming that she was unable to perform her duties as the requested desk and chair had not been provided. In a letter to the Office dated April 7, 1995, the employing establishment acknowledged that appellant's physician had requested that appellant be provided with a desk 26” tall and a chair with adjustable armrests. The employing establishment contested this request on the grounds that the duties of a scale monitor do not require sitting at a desk, and that the issue of the desk was not raised when the Office approved the scale monitor job offer as suitable work.

Although Dr. Altman noted that appellant had no objective findings of right or left epicondylitis, he specifically stated that she had employment-related overuse syndrome, that she was not to perform repetitive movements of the wrists or elbows and that she could work no more than four hours per day. In his narrative report, Dr. Altman explained that it may well be that appellant's former job was too arduous for her and that she was coping well with the lighter work. As Dr. Altman did not opine that appellant was capable of working eight hours per day and specifically stated that this was due to her employment-related overuse syndrome, his report was not sufficient to meet the Office's burden of proof in establishing that appellant had no continuing disability or medical residuals after August 1, 1995.

The Board further finds that this case is not in posture for decision on the issue of whether appellant has met her burden of proof in establishing that she has any additional medical conditions causally related to or aggravated by her accepted employment injury.

The record contains numerous medical reports diagnosing, in addition to epicondylitis, myofascial pain syndrome and reactive depression. While the Office did not specifically address these conditions in its final decision dated August 1, 1995, in its notice of proposed termination, the Office noted that while Drs. Bernstein and Balcomb diagnosed myofascial pain syndrome, neither physician provided any objective findings or medical reasoning to support this diagnosis. In addition, neither physician explained whether and how this condition was medically related to the repetitive motions performed by appellant prior to July 1992, which led to her accepted epicondylitis. Accordingly, the Office found the medical evidence of record insufficient to establish myofascial pain syndrome as an additional condition causally related to factors of appellant's employment.

Similarly, with respect to appellant's diagnosed depression, the Office noted in its notice of proposed termination that while Dr. Ben J. Klein, appellant's clinical psychologist, diagnosed appellant's condition as a prolonged depressive reaction to her chronic bilateral upper extremity pain as a direct result of trying to cope with and adjust to nearly constant musculoskeletal aches and pains, as the Office had found that appellant's pain syndrome was not causally related to her accepted employment injury, any depression secondary to that pain could not be considered employment related.

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁰ Once the Office selects a physician to render an opinion on causal relationship, it has the obligation to secure clarification of that specialist's opinion and have a proper evaluation made.¹¹

In their letter to Dr. Altman seeking his opinion, the Office specifically asked Dr. Altman to comment on whether appellant continued to suffer from employment-related epicondylitis, but

¹⁰ *Joseph A. Pietro*, 46 ECAB 831 (1993); *Elaine K. Kreymborg*, 41 ECAB 256 (1989); *Robert F. Hart*, 36 ECAB 186 (1984).

¹¹ *Joseph Anthony Picca*, 36 ECAB 318 (1984).

did not ask the physician to comment on whether the additional claimed condition of myofascial pain syndrome, which became appellant's primary medical complaint and led to the onset of reactive depression, was causally related to or aggravated by appellant's employment or her accepted employment injury.

Consequently, the case must be remanded for further medical development. On remand the Office should prepare an updated statement of accepted facts¹² and refer this and appellant, together with the complete medical record, to Dr. Altman for a rationalized medical report in which he clarifies whether appellant had any additional employment-related condition or disability and, if so, the extent and duration of any such condition or disability. In addition, the Office should seek clarification as to the nature of appellant's actual employment duties and as to whether appellant has any employment-related medical condition which would reasonably necessitate that appellant be provided with a chair and desk of special height in order to perform these duties. After such further development as it may deem necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated August 1, 1995 is hereby reversed and the case is remanded to the Office for further action consistent with this decision.

Dated, Washington, D.C.
April 27, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

¹² The Board notes that the Office continued developing the factual evidence after it drafted its November 12, 1992 statement of accepted facts. The Office, in updating the statement of accepted facts, should review this and all relevant factual evidence so as to provide any reviewing medical specialist with a complete and accurate statement regarding appellant's work duties after her original injury until the time of the claimed recurrence of disability, as well as any other facts relevant to her claim; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809 (June 1995).