U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY A. HOWARD and U.S. POSTAL SERVICE,
POST OFFICE, Woburn, Mass.

Docket No. 96-2506; Submitted on the Record;
Issued December 8, 1998

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 compensation effective August 31, 1994.

The case has been before the Board on a prior appeal. In a decision dated May 19, 1994, the Board found that the Office had improperly terminated appellant's compensation on August 30, 1990.[1] The Board found that the Office had failed to follow applicable procedures for terminating compensation under 5 U.S.C. § 8106(c)(2). The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

In a decision dated November 16, 1994, the Office terminated appellant's compensation effective August 31, 1994, on the grounds that the weight of the medical evidence established that her employment-related disability had ceased. Appellant requested a hearing, which was held on May 13, 1996. By decision dated July 18, 1996, the hearing representative affirmed the termination of compensation effective August 31, 1994.

The Board has reviewed the record and finds that the Office met its burden of proof in terminating compensation as of August 31, 1994.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[2]

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[1] 45 ECAB 646. The Board notes that appellant had been receiving compensation for wage loss of four hours per day as of August 1, 1990.

[2] *Patricia A. Keller*, 45 ECAB 278 (1993).

As the prior Board decision indicated, appellant was working a light-duty job at four hours per day when she stopped working on August 30, 1990. Since an Office hearing representative had found, in a November 27, 1991 decision, that appellant was entitled to four hours per day of compensation as of August 1, 1990, it is the Office's burden of proof to terminate compensation for wage loss of four hours per day.[3] In the November 16, 1994 decision, however, the Office terminated compensation as of August 31, 1994 based on the weight of the medical evidence as represented by Dr. Gardner F. Fay, a Board-certified orthopedic surgeon.

In a report dated August 31, 1994, Dr. Fay provided a history and results on examination. Dr. Fay diagnosed a recurrent cervical sprain. He noted that appellant had been working in private employment full time for a year to a year and a half, and he opined that her subjective complaints "appear to be due to body habitus rather than the original injury. In my opinion, [appellant] has reached an end result and based upon today's examination, she would be capable of returning to work as a mail carrier." Dr. Fay also stated that there was no objective necessity for further treatment.

The Board finds that Dr. Fay represents the weight of the evidence in this case. He provided a reasoned opinion, based on a complete background,[4] that appellant's employment-related condition had resolved.

The medical evidence submitted by appellant consists of a work restriction evaluation dated September 15, 1994 from Dr. Anne Jennings, an internist. The probative value of this report is diminished in the absence of any narrative report discussing the relevant issues.[5] Moreover, Dr. Jennings indicated in the form report that appellant could work 8 hours with a 20-pound lifting restriction, which appears to be within the light-duty job that appellant had been working up to August 30, 1990.

Accordingly, the Board finds that the medical evidence establishes that appellant was not entitled to compensation after August 31, 1994. The Office therefore met its burden of proof in terminating compensation in this case.

[3] It would be appellant's burden of proof to establish that any additional entitlement to compensation for wage loss beyond the four hours per day.

[4] Appellant argues that the statement of accepted facts provided to Dr. Fay was incomplete, but the Board finds that it contained a description of appellant's employment injuries and provided an accurate summation of the relevant facts.

[5] *See Keith Hanselman*, 42 ECAB 680, 687 (1991).

The decision of the Office of Workers' Compensation Programs dated July 18, 1996 is affirmed.

Dated, Washington, D.C.
December 8, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member