U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA J. DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, Saginaw, Mich.

Docket No. 96-667; Submitted on the Record;
Issued January 16, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's authorization for medical treatment on November 3, 1995.[1]

On November 12, 1993 appellant, then a 48-year-old city letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that she injured her back while she was loading plastic tubs and boxes. The Office accepted the claim for low back strain and paid compensation for temporary total disability and appellant was off work from November 16, 1993 through July 7, 1995. Appellant returned to restricted work on August 28, 1995.

In a report dated August 24, 1995, Dr. J.W. Chatfield, appellant's attending physician, noted on examination, that appellant "shows the L4-S1 reflexes to be intact" and that there was no radicular symptomatology on examination. Dr. Chatfield indicated that he was unable to find a reason for appellant's continued complaints of pain. Regarding appellant's return to work, Dr. Chatfield stated:

> "I did establish some restrictions that I wished her to be under when she returned to work. I do think that Gloria can return to work on August 28, 1995 with the restrictions and I think it would be appropriate for her to return to work four hours a day the first week, six hours a day for the second week, and then eight hours a day for the third week."

In a report dated September 14, 1995, Dr. Waheed Akbar, a Board-certified orthopedic surgeon, noted that the August 23, 1995 x-rays "of the lumbar spine with bending views, lateral

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[1] Appellant submitted new evidence to the Board. The Board cannot consider new evidence on appeal; however, appellant can submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R § 10.138(b); *see* 20 C.F.R. § 501.2(c).

and extension/flexion views were reported as normal and satisfactory." Dr. Akbar noted that appellant complained of hip pain and low back pain. Dr. Akbar opined that appellant's symptoms are "from the L4-L5 area of surgery and instability." Dr. Akbar noted that the magnetic resonance imaging test was normal.

In a report dated October 9, 1995, Dr. Chatfield stated:

> "[I]f she were to have symptoms, one might consider x-raying the right sacroiliac joint and repeating the bone scan. As of today, her pain appears to be located in and around the right sacroiliac joint."

On examination, Dr. Chatfield noted that there was "no wasting or atrophy" and that "the L4, L5, S1 reflexes are intact and equal bilaterally." Dr. Chatfield noted that the bone scan showed no abnormalities, no radicular symptomatology and that "no changes in reflexes would tend to point toward no neurologic problem." In conclusion, Dr. Chatfield stated that he was "unable to find any pathology today to warrant her symptomatology."

In a letter dated October 26, 1995, the Office asked Dr. Chatfield why appellant could not return to unrestricted duty based upon his October 9, 1995 report.

In a report of a telephone call with Dr. Chatfield on November 2, 1995, the Office noted that the physician stated he considered appellant's restrictions to be a preventative measure. Dr. Chatfield indicated in the telephone conversation that he would not respond to the Office's October 26, 1995 letter in writing.

By decision dated November 3, 1995, the Office determined that appellant was not entitled to further medical benefits. The Office found Dr. Chatfield's opinion that appellant would never be able to return to unrestricted work to be speculative. The Office also found that Dr. Chatfield did not provide any supporting rationale for appellant's work restriction. The Office thus found that the record was devoid of any objective evidence supporting that appellant still suffers from residuals of her accepted employment injuries of lumbosacral sprain and herniated disc.

The Board finds that the Office properly terminated the employee's authorization for medical treatment on November 3, 1995.

The Office, to terminate authorization for medical treatment, has the burden of establishing that the employee no longer has residuals of the employment-related condition that

requires further medical treatment.[2] The Office has met its burden of terminating appellant's medical benefits.

In the instant case, the probative evidence of record indicates that appellant has no residuals of her employment injury. Her treating physician, Dr. Chatfield, indicated that the objective testing showed no abnormalities and there was no wasting or atrophy on physical examination. Dr. Chatfield also stated that he could not find any pathology to warrant appellant's symptoms. Moreover, in a telephone conversation in response to the Office's letter, Dr. Chatfield indicated that the work restrictions were preventive in nature. The record is devoid of any evidence indicating that appellant could not return to work without restrictions or suffers from any residuals of her employment-related injury. As the weight of the medical evidence establishes that appellant's employment-related residuals ceased no later than November 3, 1995, the Office properly terminated appellant's compensation effective that date.[3]

[2] *Warren L. Divers*, 47 ECAB ___ (Docket No. 95-2883, issued May 8,1995); *Frank J. Mela, Jr.*, 41 ECAB 115 (1989).

[3] The Board notes that as the Office paid appellant compensation on the short-term rolls, it should have issued a pretermination notice in this case. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6 (July 1993). Nevertheless, the Board finds that there were meaningful post-deprivation processes whereby the government was able to redress this procedural error. Following the Office's termination of her compensation without prior notice on November 3, 1995, appellant had the opportunity to respond to the Office's decision by requesting a hearing or submitting new evidence of continuing disability along with a written request for reconsideration. In addition, the Board has now reviewed the Office's termination of appellant's compensation pursuant to this appeal; *see Lan Thi Do*, 46 ECAB __ (Docket No. 93-864, issued December 27, 1994) (finding that claimant's opportunity for a hearing together with a review by the Board, constituted meaningful post-deprivation processes whereby the government was able to address the Office's failure to provide pretermination notice after it occurred); *Raditch v. United States*, 929 F.2d 478 (1991) (stating that a violation of procedural due process rights, such as the termination of compensation without pretermination notice, "requires only a procedural correction, not the reinstatement of a substantive right to which the claimant may not be entitled on the merits").

The decision of the Office of Workers' Compensation Programs dated November 3, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 16, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member