U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM VELEZ and U.S. POSTAL SERVICE,
MORGAN GENERAL MAIL FACILITY, New York, N.Y.

Docket No. 96-1938; Submitted on the Record;
Issued June 9, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective October 25, 1994.

On April 11, 1982 appellant, then a 29-year-old part-time flexible service clerk, was pushing a skid when he developed pain in his left arm and neck which he stated showed a pinched nerve on the left side of his neck. The Office accepted appellant's claim for subluxations of C1-5 and C7-T2 and cervical radiculopathy. In an October 21, 1994 decision, the Office terminated appellant's compensation effective October 25, 1994 on the grounds that the weight of the medical evidence established that appellant's disability resulting from the employment injury ceased by that time. In merit decisions dated December 8, 1994 and March 5, 1996, the Office denied appellant's requests for modification of the October 21, 1994 decision.

The Board finds that the Office properly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.[1]

The Office initially accepted appellant's claim based on the reports of Dr. Harvey Rossel, a chiropractor, who diagnosed various types of subluxations affecting C1-5 and C7-T2. It also relied on an August 23, 1982 report by Dr. Michael Mark, a Board-certified neurologist, who stated that an EMG (electromyogram) showed cervical radiculopathy diffusely but primarily in the C7-8 distribution.

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[1] *Jason C. Armstrong*, 40 ECAB 907 (1989)

In a March 15, 1994 letter, the Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Mark A. Beckner, a Board-certified orthopedic surgeon, for an examination and his opinion on the extent of disability remaining from appellant's employment injury. In a March 28, 1994 report, Dr. Beckner stated that on palpation of the neck revealed no areas of triggering or muscular spasm. He commented that appellant had no muscle atrophy throughout the paraspinal muscles of the neck, in the shoulder girdle muscles or down into either arm. Dr. Beckner reported on the range of motion of appellant's neck and indicated that there appeared to be some voluntary resistance to further rotation. He stated that palpation along the spinous processes did not reveal any abnormality in spacing or alignment. Dr. Beckner noted that neurologic examination of the arms revealed normal strength and normal sensation. He reported that x-rays showed some loss of cervical lordosis which appeared to be secondary to a slight forward flexing of the head. Dr. Beckner commented that extension of the head restored normal lordosis and normal alignment to the spine. He stated that there was no x-ray evidence of a subluxation or abnormal mechanics of the cervical spine. Dr. Beckner concluded that appellant had chronic neck pain without evidence of radiculopathy or conclusive evidence of disc herniation by either previous diagnostic studies nor clinical examination. He stated that appellant was fully capable of returning to work. Dr. Beckner indicated there was nothing on either clinical examination, diagnostic studies, medical records or his x-rays which would provide any objective reason for why appellant had continued complaints of pain or needed to be off work for 12 years. He indicated that appellant could return to work without restrictions. Dr. Beckner concluded that appellant had no residuals from his employment injury and that his subjective complaints were not in line with his clinical findings. He stated that appellant had no test which would indicate that he had a herniated disc and there was no need to get any further studies as he had no radicular symptoms which would suggest need for further evaluation in terms of possible disc herniation. Dr. Beckner stated that there were no objective findings which would indicated that appellant was unable to perform full-time work. His detailed, well-reasoned report show that appellant had no objective evidence of the conditions which the Office had previously accepted. Dr. Beckner's report establishes that appellant's employment-related conditions had ceased. His report provided sufficient evidence of the Office's decision to terminate appellant's compensation.

Appellant submitted numerous reports from Dr. Irving Liebman, a Board-certified orthopedic surgeon, who stated that appellant had a C6-7 herniated disc and stated that appellant had tenderness to palpation throughout the left cervical paravertebral area and left trapezius muscle. The Office, however, never accepted that appellant had a herniated cervical disc. In an April 21, 1983 report to Dr. Liebman, Dr. Norman E. Chase, a Board-certified radiologist, indicated that a computerized tomography (CT) scan of the cervical spine showed no evidence of a herniated disc, no significant osteophytes, and no anomalies, erosions nor destruction. Dr. Chase noted that one x-ray cut on the CT scan at the C6-7 level showed a possible soft tissue density in the region of the left neural foramen which could represent a partial volume since there was a slight asymmetry in the cuts and the density was seen only on a single cut. He noted that no density was seen in the x-ray cut at the exact level of the disc. Dr. Chase commented that it was conceivable that the finding could represent a disc protrusion or herniation but added that the findings were not sufficient to make this diagnosis. He concluded that the region at the one x-ray cut was slightly suspicious but more likely than not represented partial volume rather than a disc herniation. Therefore, the only objective evidence of record on point failed to support

Dr. Liebman's diagnosis of a herniated cervical disc. Dr. Liebman provided no rationale in support of his diagnosis of a herniated cervical disc other than reports of subjective findings of pain and numbness. His reports have insufficient probative value to cause a conflict with Dr. Beckner's reports.

The decision of the Office of Workers' Compensation Programs dated March 5, 1996 is hereby affirmed.

Dated, Washington, D.C.
June 9, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member