

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANKIE YOUNGUE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION, Detroit, Mich.

*Docket No. 96-475; Submitted on the Record;
Issued March 9, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

The Board has duly reviewed the case record and concludes that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

In the present case, the Office accepted that appellant sustained employment-related stenosing tenosynovitis of the right thumb for which she underwent surgery. By letter dated August 18, 1995, the Office informed appellant that it proposed to terminate her compensation based on the opinion of Dr. Jeffrey M. Hall, a Board-certified general and hand surgeon who provided a second-opinion evaluation for the Office. Again relying on the opinion of Dr. Hall, by decision dated September 18, 1995, the Office terminated appellant's benefits, effective that day, on the grounds that the medical evidence indicated that she no longer had an employment-related disability.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.¹

In this case, following referral by the Office, Dr. Hall provided a report dated May 24, 1995 in which he noted findings on examination and advised that appellant's objective findings did not match her subjective complaints. He diagnosed carpometacarpal degenerative joint disease of the right thumb, postoperative fusion in the metacarpophalangeal joint of the right thumb, postoperative tenovagintomy and tenosynovectomy of the right thumb and found no evidence of reflex sympathetic dystrophy. Dr. Hall advised that appellant would benefit from

¹ See Patricia A. Keller, 45 ECAB 278 (1993).

treatment for her arthritic condition and noted that, secondary to the “possibility of symptom magnification,” attempting to return her to full duty would be “quite difficult.” He stated that, secondary to her arthritic condition, she required minimal use of the right hand. Following an Office request that he provide a supplementary report regarding the cause of appellant’s disability, in a July 5, 1995 report, Dr. Hall stated that appellant’s disability was due to arthritis/degenerative joint disease, noting that degenerative joint disease at the base of the thumb at the carpometacarpal joint is very common in the elderly and concluded:

“It is my opinion that [appellant] does not suffer any disabling residual from the stenosing tenosynovitis of the right thumb, fusion [of] the metacarpal phalangeal joint of the right thumb, tenosynovectomy of the right thumb and tenovaginitis of the right thumb. I do believe that there may be evidence of symptom magnification with [appellant].”

Dr. Hall, however, also provided a work capacity evaluation dated July 5, 1995 in which he indicated that appellant could work 8 hours per day with a lifting restriction of 10 pounds with her right hand. He stated that fine motor movements were restricted secondary to the employment injury and again noted that arthritis of the right thumb was not employment related.

The Board finds that the narrative opinion provided by Dr. Hall on July 5, 1995 in which he advised that appellant’s disabling condition was not employment related is not consistent with the work capacity evaluation submitted by him that same day in which he advised that appellant’s fine motor movements were restricted secondary to the employment injury. The Office therefore did not meet its burden of proof to terminate appellant’s benefits.²

² The Board notes that on July 26, 1995 the Office informed appellant that it proposed to reduce her compensation based on the May 24, 1995 report from Dr. Hall. In an undated letter, received by the Office on August 28, 1995, appellant disagreed with the proposed termination. Following receipt of Dr. Hall’s July 5, 1995 report, the Office issued the August 18, 1995 proposed termination notice, thus rendering the July 26, 1995 notice moot.

The decision of the Office of Workers' Compensation Programs dated September 18, 1995 is hereby reversed.

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

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member