

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHRYN E. DeMARSH and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, Fla.

*Docket No. 96-1634; Submitted on the Record;
Issued March 18, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation beginning March 3, 1996.

The Board has duly reviewed the case record and concludes that the Office properly denied appellant's claim for compensation beginning March 3, 1996.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.² As part of this burden the claimant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.³

In the present case, the Office accepted appellant's claim for aggravation of chronic right shoulder strain and accordingly paid ongoing total disability benefits. At the time of appellant's July 29, 1995 employment injury, appellant was working 4 hours a day as a modified part-time mail handler and was receiving compensation for 20 hours a week for a prior work-related injury. Because appellant's work involved repetitive use of her hands, she stopped working on July 29, 1995 and has not worked since that date.

Appellant submitted medical reports to support her ongoing disability. In a disability note dated August 4, 1995, Dr. Perla Inacay, a Board-certified internist, stated that appellant

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Joseph T. Gulla*, 36 ECAB 516 (1985).

should not perform work involving repetitive movements. In a report dated August 17, 1995, Dr. Laurence Neufeld, a general practitioner and appellant's treating physician, stated that appellant was unable to work since July 29, 1995 due to aggravation of her previous injury associated with her repetitive use of her right arm and hand. He stated that her job should be modified to comply with the previous work restrictions he placed on appellant.

In a report dated November 28, 1995, Dr. John Fraser, a Board-certified orthopedic surgeon and a second opinion physician, considered appellant's history of injury, performed a physical examination, reviewed normal shoulder x-rays and reviewed a magnetic resonance imaging (MRI) scan dated November 22, 1995 which showed no evidence of a re-tear of the rotator cuff and mild degenerative changes in the acromioclavicular and glenohumeral joints. He concluded that he was unable to document any disability apart from some mild discomfort appellant might have had from her preexisting degenerative changes in the acromioclavicular and glenohumeral joints. Dr. Fraser stated that appellant could perform her duties at work without restriction and had reached maximum medical improvement with zero disability.

By decision dated January 18, 1996, the Office terminated appellant's benefits, stating that the weight of the medical evidence rested with Dr. Fraser and therefore appellant had no continuing disability as a result of the accepted injury. A procedural mix-up followed whereby the Office realized that it had erroneously issued appeal rights with its proposed notice of termination issued on December 18, 1995 and appellant had consequently requested an oral hearing before an Office hearing representative. In terminating benefits in its January 18, 1996 decision, the Office stated that appellant had not responded to the proposed notice of termination. Appellant contacted the Office on January 22, 1996 to explain the situation and was advised to withdraw her request for a hearing so that the Office could retrieve the case record from the branch hearing and review and issue a final decision. By letter dated January 22, 1996, appellant withdrew her request for an oral hearing to comply with the Office's instructions. Payment of appellant's benefits was reinstated.

Appellant submitted additional evidence including a medical report from Dr. Neufeld dated January 15, 1996. In his report, Dr. Neufeld stated that appellant had swelling on the right side of her neck and shoulder related to her recent right shoulder injury. He stated that a modified job description he received required use of appellant's right arm in order to break open loose mail. Dr. Neufeld opined that appellant reached maximum medical improvement and had recovered from the July 28, 1995 aggravation injury but that she still required the work restrictions he had previously placed on her and he awaited a new job description.

By decision dated February 27, 1996, the Office terminated benefits effective March 3, 1996, stating that the evidence showed that appellant had no continuing disability as a result of the July 28, 1995 accepted injury.

The Office was paying compensation based upon submission of Forms CA-8 following appellant's return to work, and as such, appellant maintained the burden of establishing entitlement to continuing disability which was related to the employment injury.⁴ In the instant case, appellant has presented insufficient medical evidence to meet her burden. In his reports dated August 17, 1995 and January 15, 1996, Dr. Neufeld reiterated that appellant was subject to

⁴ *Id.* at 882 (1992).

the same restrictions of no repetitive motion using her right arm due to her July 29, 1995 employment injury but provided no rationale as to how appellant's symptoms were causally related to the injury. Similarly, Dr. Inacay's August 4, 1995 disability note provided no rationale for appellant's ongoing disability. In his November 28, 1995 report, Dr. Fraser found no objective evidence of appellant's disability based on his physical examination and his review of the November 22, 1995 MRI scan and x-rays. Further, he indicated that any disability appellant had might be due to mild discomfort from her preexisting degenerative changes in the acromioclavicular and glenohumeral joints. Dr. Fraser's opinion is sufficiently rationalized to constitute the weight of the evidence and establishes that appellant no longer has a disability causally related to the July 29, 1995 employment injury. Inasmuch as appellant failed to present sufficient evidence to establish that her current disabling condition was causally related to the July 29, 1995 employment injury, the Office properly terminated benefits on March 3, 1996.

Accordingly, the decision of the Office of Workers' Compensation Programs dated February 27, 1996 is affirmed.⁵

Dated, Washington, D.C.
March 18, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁵ Although appellant subsequently requested an oral hearing on April 16, 1996 and the Office denied her hearing request by decision dated May 23, 1996, the Board does not have jurisdiction to review the May 23, 1996 decision as it was issued after appellant appealed to the Board on May 1, 1996; *see* 20 C.F.R. § 501.2.