

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH M. BUCCHINO and U.S. POSTAL SERVICE,
POST OFFICE, North Reading, Mass.

*Docket No. 96-1978; Submitted on the Record;
Issued May 19, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to establish that appellant was not entitled to compensation during the period September 24, 1993 to June 13, 1994 for disability related to his employment injury, lateral epicondylitis of his right elbow.

The Board has duly reviewed the case record in the present appeal and finds that the Office did not meet its burden of proof to establish that appellant was not entitled to compensation during the period September 24, 1993 to June 13, 1994 for disability related to his employment injury, lateral epicondylitis of his right elbow.

Under the Federal Employees' Compensation Act,¹ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.² However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.³ Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

³ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

In the present case, the Office accepted that appellant sustained lateral epicondylitis of his right elbow and paid compensation for periods of partial disability. Appellant stopped work for various periods beginning in early 1993; he worked light-duty work at the employing establishment during this period and worked part time beginning in April 1993.⁷ Appellant stopped work on July 28, 1993 and claimed that he sustained a recurrence of total disability during the period July 28, 1993 to June 13, 1994 due to his employment injury.⁸ In a letter dated July 19, 1994, the Office advised appellant that he would receive disability compensation for the period July 28, 1993 to September 23, 1994 because the medical evidence supported such employment-related disability; the Office indicated that the medical evidence did not support a finding that appellant had employment-related disability after September 23, 1994. By decision dated August 25, 1994, the Office denied appellant's claim on the grounds that appellant did not submit sufficient medical evidence to establish that he was entitled to disability compensation for the period September 24, 1993 to June 13, 1994 and, by decision dated and finalized June 5, 1995, an Office hearing representative affirmed the Office's August 25, 1994 decision.

By accepting that appellant sustained total disability for the period July 28, 1993 to September 23, 1994 due to his employment injury, lateral epicondylitis of his right elbow, the Office retained its burden of proof to establish that appellant was not entitled to disability compensation for the period September 24, 1993 to June 13, 1994. The Office based its determination regarding appellant's entitlement to compensation for the period September 24, 1993 to June 13, 1994 on the opinion of Dr. Deepak S. Tandon, a Board-certified neurologist, to whom the Office referred appellant. In his March 23, 1994 report, Dr. Tandon indicated that he examined appellant on that date and diagnosed fibromyalgia, unrelated to employment factors, and mild right lateral epicondylitis. Dr. Tandon did not provide a clear opinion that appellant ceased to have disability due to his employment injury by September 24, 1993. He noted that the degree of disability due to appellant's epicondylitis "seemed mild" but did not provide any further explanation. Dr. Tandon indicated that appellant could perform light-duty work with lifting restrictions, but he did not clearly indicate the condition causing this partial disability. Therefore, the opinion of Dr. Tandon does not provide an adequate basis to meet the Office's burden of proof in determining that appellant was not entitled to disability compensation for the period September 24, 1993 to June 13, 1994.

⁶ See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ It does not appear that the employing establishment offered appellant a formal light-duty position, but the record reveals that he worked under various work limitations, including lifting restrictions.

⁸ Appellant returned to light-duty work for the employing establishment on June 14, 1994.

The decision of the Office of Workers' Compensation Programs dated and finalized June 5, 1995 is reversed.

Dated, Washington, D.C.
May 19, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member