

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARCIA M. WILHITE and U.S. POSTAL SERVICE,  
POST OFFICE, San Diego, Calif.

*Docket No. 96-2465; Submitted on the Record;  
Issued November 23, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on April 29, 1996.

In the present case, the Office accepted that appellant, a postal distribution clerk, slipped on December 16, 1987 sustaining sprain of the left ankle with secondary reflex sympathetic dystrophy and psychological factors affecting physical condition. The record indicates that appellant has received payment of total disability compensation benefits since 1988. In a decision dated September 8, 1994, the Board affirmed a decision of the Office dated February 9, 1993 which found that appellant's accepted psychiatric condition had ceased by February 1, 1990. By decision dated April 29, 1996, the Office terminated all compensation benefits on the grounds that appellant had no continuing employment injury-related condition.

The Board has duly reviewed the case record and finds that the Office met its burden of proof in this case.

The record reflects that as the Office had not received a medical report regarding appellant's orthopedic status in some time, on September 18, 1995 the Office referred appellant to Dr. John M.H. Allen, a Board-certified orthopedic surgeon, for a second opinion medical evaluation. Dr. Allen was requested by the Office to address whether appellant still had objective findings of left ankle strain and reflex sympathetic dystrophy, and if so, why such conditions had not resolved.

In a report dated January 5, 1996, Dr. Allen noted a detailed history of appellant's left ankle employment injury on December 16, 1987 as well as other nonemployment injuries appellant had sustained since the age of six. He noted appellant's pain complaints regarding both ankles and a subtle sensory disturbance of the left lower limb. Dr. Allen stated that although appellant had pain on palpation of the anterolateral ankle joint line bilaterally, it was not more marked on one side than the other and was not diagnostic of a fibulotalar impingement

syndrome, and there was no indication for treatment by injection or surgery. He also noted that it was possible that the sensory disturbance in the stocking distribution below the left knee was a sign of symptoms magnification; however, it was also possible that it could be residual sensory disturbance following reflex sympathetic dystrophy. He stated that whatever the cause, the sensory disturbance was subtle and did not interfere with protective sensation and there was no indication for invasive treatment. Dr. Allen concluded that appellant had reached maximum medical improvement of her ankle injury and that there were no current objective signs of ankle strain or reflex sympathetic dystrophy. While Dr. Allen concluded that appellant could return to work with the restriction of no overhead lifting, he placed this restriction on appellant's work activities due to a nonemployment upper extremity injury.

The Office bears the burden of proof to terminate payment 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 disabling condition has ceased or that it is no longer related to the employment.<sup>1</sup>

In evaluating the probative value of a medical report, the Board has held that in assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality and that factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>2</sup> The Board has carefully reviewed Dr. Allen's opinion and notes that it has reliability, probative value and convincing quality with respect to its conclusion regarding the relevant issue in the present case. Dr. Allen extensively reviewed the evidence of record, provided a complete and accurate factual and medical history and reached conclusions which comported with the relevant history as well as his own findings on examination.

Dr. Allen explained that appellant no longer had objective findings of left ankle strain and had reached maximum medical improvement regarding this condition some time ago. He noted appellant's subtle sensory disturbance of the left lower extremity, but explained that the subtleties of the findings indicated that this could be due to either symptom magnification or to reflex sympathetic dystrophy, but that in either event this disturbance caused no limitations and required no further medical treatment. The Board concludes that Dr. Allen's report is of probative value and constitutes the weight of the medical evidence in this case. As appellant did not submit any medical evidence to the record to substantiate that she still had residuals of the left ankle strain or reflex sympathetic dystrophy, the Office properly terminated appellant's compensation benefits.

Finally, the Board notes that on appeal appellant's representative alleges that he was not provided a copy of Dr. Allen's report with the notice of proposed termination of compensation and that the Office improperly terminated appellant's compensation benefits before he could

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<sup>1</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>2</sup> *See Gary R. Sieber*, 46 ECAB 215 (1994).

respond with appropriate medical evidence to the notice of proposed termination of compensation.

In this regard, the Office's procedural requirements are as follows:

*"7. How to Issue Pre-Termination and Pre-Reduction Notices.*

*"(2) Letter to Claimant.* This letter, which is prepared for the signature of the SRCE, serves to:

- (a) Notify the claimant of the proposed action;
- (b) Advise the basis for that action by furnishing a copy of the notice of proposed decision and a copy of the evidence on which the determination is based; and
- (c) Give the claimant the opportunity to submit evidence or argument relevant to the proposed action within 30 days from the date of the letter.

*"8. Responses to Pre-Termination and Pre-Reduction Notices.*

*"(a) No Reply.* If the claimant does not respond within 30 days, the CE [claims examiner] should prepare the notice of decision. The decision should include a statement that the proposed notice was sent and that the claimant did not respond within the 30 days allowed.

*(b) Interim Reply.* A claimant may state that he or she intends to submit additional evidence but cannot do so within the 30-day period. The CE should advise the claimant that the OWCP will issue a decision at the end of the 30-day period and that the claimant may submit the evidence later, in support of a request for reconsideration of the final decision. If the evidence reaches the file before the decision is released, either within or beyond the 30-day period, the CE must consider and act upon it accordingly.<sup>3</sup>

In the present case, the Office issued its notice of proposed termination of compensation to appellant on March 25, 1996. The Office also sent a copy of this notice of proposed termination to appellant's representative. The Office issued the final decision terminating appellant's compensation benefits on April 29, 1996. On April 29, 1996 the Office also received a letter from appellant's representative dated April 24, 1996, which requested an extension of 30 days prior to finalization of the termination determination. This letter was placed in appellant's file on April 30, 1996. Appellant's representative stated that he had only received the notice of proposed termination and had not received a copy of Dr. Allen's medical report, the statement of accepted facts, or the questions presented to Dr. Allen by the Office, and that he could not advise appellant without this information. Appellant's representative indicated that he would fax a copy of this letter to the District Office, however, the record does not indicate that the Office received

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.7 (March 1997).

such fax. Appellant's representative telephoned the Office on May 2, 1996 requesting a copy of Dr. Allen's report. A copy of the report was mailed to appellant's representative on May 7, 1996.

The Office's procedures provide that a notice of proposed termination of compensation will be finalized within 30 days and that even if the claimant advises the Office that he or she intends to submit additional evidence after the 30-day period, the 30-day period will be adhered to and any evidence submitted thereafter should be submitted as a request for reconsideration. In this case the representative's request for Dr. Allen's report and his request for an extension of 30 days was filed in the record on April 30, 1996, more than 30 days after the March 25, 1996 notice of proposed termination of compensation. The Office therefore properly issued its decision on April 29, 1996. While appellant's representative stated that he had not received a copy of Dr. Allen's report and supplemental materials at the time he received the notice of proposed termination of compensation, he did not indicate that appellant had not received such. As appellant and his representative were advised that the medical evidence of record did not support payment of continuing benefits for the accepted condition, appellant was properly apprised of the need for additional medical evidence regarding this issue. While the Office should have sent appellant's representative a copy of Dr. Allen's report with the notice of proposed termination of compensation, the Office's failure to do so does not constitute reversible error.

The decision of the Office of Workers' Compensation Programs dated April 29, 1996 is hereby affirmed.

Dated, Washington, D.C.  
November 23, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member