

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY S. WINCEK and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, Calif.

*Docket No. 97-1004; Submitted on the Record;
Issued November 18, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has any continuing disability or medical residuals causally related to her accepted employment injury on or after July 5, 1995.

The Board has duly reviewed the case on appeal and finds that appellant had no continuing disability or medical residuals causally related to her accepted employment injury on or after July 5, 1995.

In this case, appellant filed a claim on April 1, 1991 alleging that she injured her back in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for thoracic and lumbar strains and subluxation. On September 9, 1994 the Office provided appellant with notice of the proposed termination and by decision dated July 5, 1995, the Office terminated appellant's compensation benefits.¹ Appellant requested an oral hearing and by decision dated October 28 and finalized October 30, 1996, the hearing representative affirmed the Office's decision.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² 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.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To

¹ Appellant filed an additional claim for occupational disease on October 17, 1994. As the Office has not issued a final decision regarding this claim, the Board will not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

Appellant's attending physician, Dr. Andrew L. Kulik, an osteopath, completed a report on July 13, 1991 and released appellant to return to regular duty on June 25, 1991. Dr. Kulik continued to provide appellant with physical therapy through February 14, 1992. In a report dated March 30, 1992, Dr. Kulik stated that appellant's recovery had been slower than anticipated due to the ongoing demands of her job. He recommended treatment through July 1, 1992. The Office referred appellant for a second opinion evaluation with Dr. Philip Dickinson, a Board-certified family practitioner, on April 14, 1993. In a report dated May 25, 1993, Dr. Dickinson provided a history of injury, physical examination and review of medical tests. He found appellant's examination was normal, her condition permanent and stationary and no need for specific treatment. In a report dated October 29, 1994, Dr. Kulik found appellant had muscle spasm on physical examination and provided several other findings which he felt were not addressed in Dr. Dickinson's report. Section 8123(a) of the Federal Employees' Compensation Act,⁶ provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

The Office referred appellant for an impartial medical evaluation with Dr. George J. Murphy, a Board-certified orthopedic surgeon, on December 20, 1994. In a report dated January 16, 1995, Dr. Murphy provided histories of injury and medical treatment. He performed a physical examination and found that appellant continued to suffer residuals from her accepted employment injury, but that she did not present objective findings and that work restrictions were prophylactic in nature. Dr. Murphy concluded that appellant did not require ongoing medical treatment.

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁷ In this case, Dr. Murphy's report is sufficiently well rationalized to constitute the weight of the medical evidence. He provided detailed findings and explanations in support of his conclusion that appellant did not require further work restrictions or medical treatment as a result of her accepted employment injury.

Appellant submitted additional testimony and reports from Dr. Kulik at the oral hearing. As Dr. Kulik was on one side of the conflict that Dr. Murphy resolved, the additional evidence from Dr. Kulik is insufficient to overcome the weight accorded Dr. Murphy's report as the impartial medical specialist or to create a new conflict with it.⁸

⁵ *Id.*

⁶ 5 U.S.C. §§ 8101-8193, 8123(a).

⁷ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

⁸ *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

The decision of the Office of Workers' Compensation Programs dated October 30, 1996 is hereby affirmed.

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

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member