

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THERESA C. SHAHAN and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, Calif.

*Docket No. 98-786; Submitted on the Record;
Issued November 12, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective March 7, 1993 on the grounds that her employment-related disability ceased as of that date.

This is the second appeal before the Board on this issue. In the prior appeal, the Board affirmed the April 1, 1994 decision of the Office finding that the Office met its burden of proof to terminate benefits.¹ The facts and circumstances of the case are set out in the prior Board decision and are hereby adopted by reference.

By letter dated April 17, 1997, appellant, through her representative, requested reconsideration and in support submitted a February 21, 1997 report from Dr. Angelo Scavarda, who is Board-certified in physical medicine and rehabilitation. Dr. Scavarda noted that appellant claimed she was in constant pain, that both activity and inactivity were pain provoking, that her neck pain was very bad, that she became and remains depressed, and that she was diagnosed with a mild degree of lupus. Dr. Scavarda reviewed medical reports previously considered by the Office for other decisions and performed a physical examination. He diagnosed lumbosacral sprain/strain, chronic, degenerative arthritis and degenerative disc disease of the lumbar spine, chronic neck pain probably secondary to degenerative disc disease of the cervical spine, and depression likely secondary to chronic pain. Dr. Scavarda opined: "[Appellant's] current problems of chronic low back pain as a result of sprain/strain to her lumbosacral spine and lumbar disc bulge at ... L4-5 ... are as a result of her work injuries on two occasions in January of 1987, as well as repetitive trauma related to her work as post mistress." He further opined that appellant's "work duties which require repetitive bending, lifting, pushing, and pulling and twisting motions associated with her two injuries in January of 1987 resulted in her condition, decompensating and causing a chronic pain to ensue involving her lumbosacral spine."

¹ Docket No 94-1976 (issued September 10, 1996).

By decision dated May 12, 1997, the Office denied modification of the prior decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that the well-rationalized reports of Dr. Halden, a Board-certified orthopedic surgeon and Dr. Anderson, a Board-certified psychiatrist, in 1991, which were more contemporaneous to appellant's work injuries, still constituted the weight of the medical opinion evidence. The Office noted that Dr. Halden concluded that appellant's minimal physical findings were certainly not compatible with her complaints of constant severe unrelenting pain, and that Dr. Anderson concluded that her depressive syndrome had resolved. As these were both Board-certified specialists in their respective applicable fields of medicine their opinions carried greater weight than the opinion of a rehabilitation medicine specialist 10 years after the injuries. The Office also found that Dr. Scavarda's opinion was of diminished probative value as it was not rationalized and did not explain how or why the relatively minor soft tissue muscular injury and the adjustment disorder had expanded, even though appellant had stopped work, into extensive degenerative problems involving other tissue types and other bodily areas.

By letter dated September 9, 1997, appellant, through her representative, again requested reconsideration and in support she submitted an osteoarthritis fact sheet, a duplicate copy of a 1988 medical report previously considered by the Office, and three short medical notes from appellant's current treating physicians. A November 25, 1996 report from Dr. Shenoy stated that appellant's postmaster duties aggravated her low back pain, and that she developed osteoarthritis of the spine. In a January 8, 1997 note, Dr. Shenoy stated, "I feel this patient's back symptoms and condition are related to the chronic heavy nature of her job." A June 25, 1997 note from Dr. Scavarda reported his earlier diagnoses and speculated that the most likely reason appellant's injuries accelerated the process which continued to expand after she stopped work was not known.

By decision dated October 20, 1997, the Office denied modification of the prior decision finding that the evidence submitted was insufficient to warrant modification. The Office found that none of the reports submitted contained rationalized medical explanations of the pathophysiological processes involved in producing appellant's presently diagnosed conditions from her originally accepted employment injuries. The Office noted that Dr. Shenoy related appellant's problems not to her accepted employment injuries but to the chronic nature of her work duties. This does not support that she remains disabled due specifically to her accepted work injuries. The Office noted that Dr. Scavarda did not explain what process was involved in appellant's "expanding diagnoses," but instead noted that such a process was not known. It found that this report also did not support appellant's claim.

The Board finds that the Office met its burden of proof to terminated appellant's compensation effective March 7, 1993 based upon the weight of the medical evidence of record.

Once the Office accepts a claim, it has the burden of justifying 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

² *Harold S. McGough*, 36 ECAB 332 (1984); see Federal (FECA) Procedure Manual, Chapter 2.812.3 (March 1987).

without establishing that the disability has ceased or that it is no longer related to the employment.³ In this case, the Board found in its 1996 decision that the Office met its burden of proof.

Thereafter, the medical evidence appellant has submitted is conclusory and speculative and relates her current diagnoses to other factors of her employment not under consideration at this point. The osteoarthritis fact sheet is of general application and is not specifically applicable to this case, and the duplicate medical report was previously considered and therefore has no new probative value.⁴ None of the subsequently submitted medical evidence contains a thorough and well-rationalized medical explanation, including a description of the pathophysiologic process implicated, in causing appellant's relatively minor 1987 employment injuries to expand into osteodegenerative conditions which developed over time, were diagnosed as early as 1991, and were felt at that time to be preexistent of her employment injuries. Accordingly, none of this evidence is sufficient to create a conflict with the medical evidence of record which clearly supports that appellant's lumbosacral strain and adjustment disorder had resolved within six years of their occurrence.

Consequently, the decision of the Office of Workers' Compensation Programs dated October 20, 1997 is hereby affirmed.

Dated, Washington, D.C.
November 12, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

³ See *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *William C. Bush*, 40 ECAB 1064, 1075 (1989). (The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.)