

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMILLA S. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, Pa.

*Docket No. 98-2510; Submitted on the Record;
Issued April 26, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits effective October 2, 1997; and (2) whether appellant has met her burden of proof in establishing that she is entitled to continuing compensation benefits on or after October 2, 1997.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective October 2, 1997.

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.¹ 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.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

In this case, appellant alleged that on December 22, 1996 she strained her left shoulder and developed left shoulder tendinitis as a result of factors of her federal employment. The Office accepted her claim for shoulder tendinitis, based on the December 23, 1996 diagnosis of Dr. Terrence Curley, an osteopath, from whom appellant sought medical treatment. Appellant

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

subsequently sought treatment from Dr. George Bonafino, an osteopath, who diagnosed cervical and thoracic strain and sprain as well as left shoulder sprain and strain. On a Form CA-20, attending physician's report, dated March 21, 1997, Dr. Bonafino reiterated his earlier diagnoses and indicated by check mark that these conditions were causally related to appellant's employment duties. Dr. Bonafino further indicated that appellant was totally disabled from January 21, 1997, the day he first examined her, to March 21, 1997. He further indicated that appellant had not been advised that she could return to work. Appellant also submitted similar form reports from Dr. Curley and Dr. Edward Trebelev, a general practitioner. In his report dated April 7, 1997, Dr. Curley diagnosed left shoulder sprain and tendinitis and indicated by check mark that this condition was related to appellant's employment. Dr. Curley did not indicate any dates of disability. In a report dated May 2, 1997, Dr. Trebelev diagnosed cervical, thoracic and lumbosacral strain and sprain causally related to appellant's federal employment, but also did not indicate any periods of disability related to these conditions. In a more complete narrative report dated April 15, 1997, Dr. Trebelev listed his diagnoses as persistent cervical strain and sprain involving the myoligamentous structures supporting the cervical spine and trapezius myofascitis with possible radiculopathy, persistent thoracic strain and sprain involving paravertebral musculature, persistent lumbosacral strain and sprain involving musculoligamentous structure supporting the lumbosacral spine and contusion of the left shoulder. Dr. Trebelev noted that appellant gave a history of having been injured at work, carrying heavy mail, and listed among his recommendations that appellant should not bend or perform heavy lifting, but did not otherwise discuss the cause or extent of appellant's condition. Appellant also submitted a narrative report dated June 30, 1997 from Dr. Bonafino, in which he explained his earlier diagnoses, stated that appellant's conditions were causally related to her employment duties, and indicated that appellant would be able to return to work in the very near future. The Office referred appellant, a statement of accepted facts and a list of specific questions to Dr. Leonard Klinghoffer, a Board-certified orthopedic surgeon, for a second opinion evaluation. In his report dated August 4, 1997, Dr. Klinghoffer reviewed the medical evidence of record and listed the results of his testing and physical examination. He stated appellant "may have sprained her left shoulder and perhaps even her neck as a result of carrying a heavy object in the course of her work in December 1996," but added that in light of the fact that more than seven months had elapsed and his physical examination did not reveal any physical abnormality, he had no explanation for any significant symptoms. He further stated:

"She does not have any neurologic findings, and there is no basis for the diagnosis of a cervical radiculitis. The only significant finding at the time of my examination was an x-ray finding of bilateral cervical ribs. That is a developmental condition that has nothing to do with trauma or with her work, and it could conceivably have contributed to some thoracic outlet compression causing upper extremity symptoms, however, the provocative tests that I performed did not reveal any evidence of any such condition now. I believe it is conceivable that she may have some awareness of her shoulder under certain circumstances, but I cannot find any physical basis for any disability at this time, and it is my opinion that she is not in need of any medical treatment."

On an accompanying form, OWCP-5, Dr. Klinghoffer indicated that appellant did not have any physical restrictions for work.

Based on the weight of the medical evidence of record, represented by the report of Dr. Klinghoffer, the Office expanded its acceptance of appellant's diagnosed conditions to include cervical and left shoulder sprains, but proposed to terminate appellant's compensation benefits on August 22, 1997. The Office allowed appellant 30 days to submit additional evidence or argument. Subsequent to the Office's notice of proposed termination, appellant submitted a return to work slip and a CA-20 form report from Dr. Bonafino. On the return to work slip, dated August 4, 1997, Dr. Bonafino noted that appellant could return to work on August 11, 1997. On his September 23, 1997 Form CA-20 report, based on his most recent August 4, 1997 examination, Dr. Bonafino stated that appellant remained disabled but had been discharged from his active care. He further indicated that appellant's disability for work was expected to continue for 90 days or longer. Finally, appellant submitted the results of a magnetic resonance imaging (MRI) test dated September 19, 1997, but this report does not discuss the issue of disability.

In a decision dated October 3, 1997, the Office terminated appellant's compensation benefits.

In this case, in a return to work slip dated August 4, 1997, appellant's attending physician, Dr. Bonafino, indicated that appellant could return to light work on August 11, 1997, but in his report dated September 23, 1997, based upon the same August 4, 1997 examination, Dr. Bonafino stated that appellant would be disabled for 90 days or longer. In both instances, Dr. Bonafino failed to give any explanation for his conclusions. The Office then properly referred appellant to Dr. Klinghoffer for a second opinion evaluation. Dr. Klinghoffer provided a detailed report, relying on the statement of accepted facts, as well as appellant's personal history and medical records. He concluded that appellant's diagnosed conditions no longer required medical treatment and that appellant was fully capable of returning to work and provided medical rationale for his conclusions. The medical evidence before the Office at the time of its October 3, 1997 decision establishes that appellant is no longer disabled due to her accepted employment-related conditions. Therefore, the Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective October 3, 1997.

The Board further finds that appellant has failed to establish any continuing disability or residuals after October 3, 1997 causally related to her accepted employment injury.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she has a disability causally related to her accepted employment injury.⁵ To establish a causal relationship between the condition, as well as any disability claimed, and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

⁵ *George Servetas*, 43 ECAB 424, 430 (1992).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

Following the Office's October 3, 1997 decision, appellant twice requested reconsideration and submitted additional evidence and argument. In a report dated September 29, 1997, Dr. Cato T. Laurencin, an orthopedic surgeon, stated that appellant's representative had brought him September 1997 MRI reports of appellant's left shoulder and cervical spine. He stated that it was difficult to review these test results without the context of a physical examination of the patient, but that the cervical spine study was essentially negative, with the exception of some straightening of the cervical spine, and that the shoulder study was also negative, with the possible exception of some changes of the supraspinatus tendon. Dr. Laurencin did not further comment on appellant's condition. In a narrative medical report dated August 25, 1997, Dr. John Ashby related his findings on physical examination and testing, and diagnosed C6 and C8 radiculitis on the left, worse than the right, and mild rotator cuff tendinitis on the left. With respect to the issue of disability, Dr. Ashby stated only that appellant was "not a good candidate to return to a job where she has to carry 35 [pounds] of weight on her left shoulder on a regular basis." In a February 3, 1998 addendum to his report, Dr. Ashby stated that the conditions diagnosed in his earlier report were causally related to appellant's employment duties. By merit decisions dated January 22 and March 20, 1998, the Office denied modification of its October 3, 1997 decision.

The Board finds that the additional reports by Drs. Ashby and Laurencin fail to provide the necessary medical rationale to support that appellant continues to experience disability or residuals due to her accepted employment injury. As appellant failed to submit the necessary medical evidence, she failed to meet her burden of proof.

⁶ *James Mack*, 43 ECAB 321 (1991).

The decisions of the Office of Workers' Compensation Programs dated March 20, January 22, 1998 and October 3, 1997, are hereby affirmed.

Dated, Washington, D.C.
April 26, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member