

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MONA MAY and U.S. POSTAL SERVICE,
POST OFFICE, Canton, Ohio

*Docket No. 98-2567; Submitted on the Record;
Issued April 28, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective June 6, 1997.

In the present case, appellant, then a 74-year-old casual employee, filed a claim alleging that she sustained an injury in the performance of duty on November 20, 1996, when she tripped and fell. The Office accepted the claim for a fracture of the right patella.

In a letter dated May 5, 1997, the Office advised appellant that it proposed to terminate her compensation on the grounds that the medical evidence established that her employment-related condition had resolved. By decision dated June 6, 1997, the Office terminated appellant's compensation. This decision was affirmed by an Office hearing representative in a decision dated July 22, 1998.

The Board has reviewed the record and finds that the Office met its burden of proof in terminating appellant's compensation in this case.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹

In the present case, the Office accepted a right patella fracture in the performance of duty on November 20, 1996. The attending physician, Dr. Michael D. London, an orthopedic surgeon, stated in a February 17, 1997 treatment note that he had explained to appellant that "the fracture has healed and that her problem now is a rehabilitative problem." In a form report, CA-20a dated March 24, 1997, Dr. London diagnosed "minimally displaced right patellar fracture

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

3 1/2 months ago,” and he stated that appellant should be able to return to regular duty on May 1, 1997. In a report dated April 14, 1997, Dr. London indicated that on physical examination appellant had no swelling or ecchymosis about the knee, no tenderness to palpation over the patella, range of motion from 0 to 100 degrees without irritability and no evidence of ligamentous instability. In a CA-20a dated April 29, 1997, Dr. London indicated that appellant could return to regular work on May 1, 1997.

In a report dated May 6, 1997, Dr. London noted that appellant had participated in physical therapy and had undergone a functional capacity evaluation. He noted that the functional capacity evaluation had indicated appellant was capable of sedentary work only, but there were several discrepancies noted by the evaluator, such that the evaluator felt appellant was not providing maximal effort. Dr. London further stated:

“Presently, [appellant] believes that she could return to work at the [employing establishment] doing the same job she was doing prior to her injury. This would require more than sedentary work, which was felt to be feasible based on the functional capacity evaluation. However, I talked with [appellant] at length about this with Debbie Menegary, her case worker, present. Again, [appellant] did believe that she could return to work doing the same job that she had done prior to her injury and, thus, this was prescribed for her today. From my standpoint, she should continue increasing activities as she feels capable. My plan is to see her back in follow-up on a p.r.n. [as needed] basis.”

The reports from the attending physician, Dr. London, therefore indicate that appellant was released to return to regular duty prior to June 6, 1997, with no further scheduled treatment. No additional medical evidence was submitted indicating that appellant continued to have an employment-related condition. The Board accordingly finds that the Office met its burden of proof in terminating compensation for wage loss and medical benefits as of June 6, 1997.

The decision of the Office of Workers' Compensation Programs dated July 22, 1998 is affirmed.

Dated, Washington, D.C.
April 28, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member