

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE MACKELPRANG and U.S. POSTAL SERVICE,
POST OFFICE, Phoenix, AZ

*Docket No. 97-1385; Submitted on the Record;
Issued December 16, 1999*

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 effective August 20, 1995.

In the present case, appellant has three accepted employment injuries: a subscapular muscle strain in the left shoulder resulting from throwing sacks of mail on March 17, 1989; adjustment disorder with depressed and anxious features; and a ventral hernia. By letter dated May 25, 1995, the Office notified appellant that it proposed to terminate his compensation on the grounds that all of his employment injuries had resolved. By decision dated July 24, 1995, the Office terminated appellant's compensation for wage loss and medical benefits effective August 20, 1995. In a decision dated November 14, 1996, an Office hearing representative affirmed the termination.

The Board has reviewed the record and finds that, with respect to the left shoulder injury, the Office did not meet its burden of proof in terminating compensation.

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 The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To 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.²

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

² *Furman G. Peake*, 41 ECAB 361 (1990).

In determining that the left shoulder employment injury had resolved, the Office relied on a May 25, 1995 report from second opinion referral physicians Dr. Stephen Kaster, an orthopedic surgeon, and Dr. Eric Elbaum, a neurologist. In this report, Drs. Kaster and Elbaum opined there were no residuals of any damage to the long thoracic nerve of the left shoulder caused by the work injury of March 17, 1989. The Board finds, however, that there was conflicting evidence from appellant's attending physicians on this issue. In a report dated February 2, 1995, Dr. George Stavros, a family practitioner, opined that appellant had a permanent neurological damage to the long thoracic nerve roots secondary to his subscapular muscle sprain, based on his own examinations since March 1989 and previous orthopedic and neurologic examinations. In addition, there is a June 21, 1995 report from Dr. Keith Nachmanson, a neurologist, who opined that appellant suffered a stretch of the long thoracic nerve in the 1989 employment incident, and the residual winging of the left scapular was permanent and would restrict lifting and working above the head.

Accordingly, the Board finds that the record was in conflict on the issue of whether the left shoulder employment injury had resolved. Since it is the Office's burden of proof to terminate, the Board finds they did not meet their burden in this case.³

With respect to the accepted emotional condition, the Board finds that the weight of the evidence did establish that the condition had resolved.

The Office found that a conflict existed between an attending psychiatrist, Dr. John C. Woods, and a second opinion psychiatrist, Dr. Peter H. Van der Walde, as to whether appellant continued to have an employment-related emotional condition. To resolve the conflict, appellant was referred to Dr. John F. Mardock, a Board-certified psychiatrist, who, in a report dated September 12, 1994, provided a history and results on examination. He opined in pertinent part: "I do not believe that [appellant] continues to suffer from an anxiety disorder or clinical depression. I further do not believe that the accepted condition of adjustment reaction with mixed emotional features would disable him for work. As far as aggravation of underlying conditions are concerned, in my judgment, the current problems are a reflection of an underlying personality structure rather than aggravation of any psychological condition." Dr. Mardock noted that adjustment disorders are excluded as a diagnosis if they persist beyond six months, and he did not find that employment factors caused a post-traumatic stress disorder or major depression.

The Board finds that Dr. Mardock's complete report represents the weight of the medical evidence with respect to a continuing emotional condition. It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁴ Dr. Mardock provided a reasoned opinion that appellant did not continue to have an adjustment disorder or other employment-related

³ See *Warren L. Divers*, 47 ECAB 574 (1996).

⁴ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

emotional condition. Accordingly, the Board finds that the Office met its burden of proof with respect to the accepted emotional condition.

The Board further finds that the Office properly determined that a ventral hernia had ceased.

In a report dated September 8, 1992, an attending surgeon, Dr. Charles R. Wermuth, stated that appellant did not have a ventral hernia, but rather a diastasis recti. In a report dated May 12, 1994, a second opinion referral physician, Dr. Roger Siddoway, a gastroenterologist, provided a history and results on examination. Dr. Siddoway also found diastasis recti, with no evidence of ventral hernia. He further stated that a diastasis recti was probably a congenital nonfusion of the abdominal walls.

The Board therefore finds that the weight of the medical evidence does not establish a continuing employment-related ventral hernia in this case.

The decision of the Office of Workers' Compensation Programs dated November 14, 1996 is reversed with respect to the determination that the left shoulder condition had resolved; it is affirmed with respect to the emotional condition and the ventral hernia.

Dated, Washington, D.C.
December 16, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member