

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN MATTY, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Southeastern, PA

*Docket No. 98-180; Submitted on the Record;
Issued December 7, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits on the basis that appellant no longer suffered from residuals of his accepted employment injury.

On September 7, 1988 appellant, then a 42-year-old clerk/carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) stating that he broke the bone in his left foot on September 6, 1988 when an anchoring pin came down on his left foot. Appellant's case was accepted for fracture of the second metatarsal in the left foot and subsequently for reflex sympathetic dystrophy of the left foot. Appellant returned to light-duty work on September 7, 1988.

On January 30, 1990 appellant filed a claim for a recurrence of disability. Appellant has been on temporary total disability since December 27, 1991. The Office accepted the claim and authorized surgery on his foot. Appellant returned to a limited-duty job working two hours per day on June 19, 1995.

In a report dated June 14, 1995, Dr. Lewis S. Sharps, a second opinion Board-certified orthopedic surgeon, based upon a review of the medical records and physical examination, opined that appellant's reflex sympathetic dystrophy had completely resolved. Dr. Sharps also opined that appellant was capable of returning to a sedentary position with restrictions.

In a letter dated May 6, 1996, the Office referred appellant to Dr. Robert A. Ruggerio,¹ together with a statement of accepted facts and the medical record, to resolve the conflict in the medical opinion evidence between Dr. John J. Nevulis, appellant's attending Board-certified orthopedic surgeon, and Dr. Sharps, a Board-certified orthopedic surgeon.

¹ A Board-certified orthopedic surgeon.

In a June 6, 1996 report, Dr. Ruggerio, based upon a statement of accepted facts, physical examination, history of the employment injury and review of the medical records, opined that appellant had “sustained a minimally displaced fracture of the 2nd metatarsal that is now completely healed without evidence of previous injury. I find no stigmata of reflex sympathetic dystrophy or disuse atrophy.” He also opined that there was “no orthopedic basis for his current complaints other than a scar on the plantar surface of his foot.” Lastly, Dr. Ruggerio recommended an aquatic ambulation program and noted that appellant was currently working two hours per day which he indicated should be expanded gradually.

In a letter dated July 10, 1996, Dr. Nevulis reviewed Dr. Ruggerio’s report and disagreed with his opinion that appellant does not have reflex sympathetic dystrophy.

Dr. Nevulis noted in treatment notes dated June 25 to July 16, 1996 that appellant continued to have pain in his foot and still had reflex sympathetic dystrophy in his foot.

On September 11, 1996 the Office issued a proposed notice of termination based upon Dr. Ruggerio’s opinion.

By decision dated October 31, 1996, the Office terminated appellant’s compensation benefits on the basis that the medical evidence of record established that appellant did not have a continuing injury-related disability nor any residual disability as a result of his employment injury.

Appellant requested a hearing before an Office representative which was held on May 21, 1997. At the hearing, appellant was represented by counsel, allowed to testify and submitted evidence.

By decision dated June 26, 1997, the Office hearing representative affirmed the decision on the grounds that appellant no longer had any residual disability related to the work injury and that his fracture had healed. The hearing representative accorded determinative weight to the report of Dr. Ruggiero, the impartial medical examiner chosen to resolve the conflict in the medical opinion evidence.

The Board finds the Office met its burden of proof in terminating appellant’s compensation benefits.

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 To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an

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

³ *Id.*

employment-related condition which requires further medical treatment.⁴ The Office has met its burden in this case.

In the present case, the Office based its decision to terminate appellant's compensation on the June 4, 1996 medical report of Dr. Ruggerio, the impartial medical specialist and Board-certified orthopedic surgeon, who rejected any causal relationship between factors of appellant's employment and his claimed current condition, and found that he no longer suffered from the previously accepted condition of reflex sympathetic dystrophy. The Office relied on Dr. Ruggerio's opinion in its October 31, 1996 decision, finding that all residuals of the previously accepted condition, reflex sympathetic dystrophy, had ceased and that there were no residuals from the accepted employment injury of September 6, 1988.

In a June 26, 1997 decision, the Office hearing representative affirmed the Office's October 31, 1996 decision finding that the weight of the evidence rested with Dr. Ruggerio, the impartial medical examiner.

Regarding appellant's contention that the Office improperly determined that the opinions of Dr. Sharps and Dr. Nevulis were of equal weight, the Board rejects this argument. The Office properly found a conflict as Dr. Sharps was selected by the Office and Dr. Nevulis was appellant's attending physician and their opinions as to appellant's continuing disability were in conflict. Appellant also argued that as Dr. Ruggerio's opinion did not address appellant's continuing pain symptoms, that his opinion was insufficient to terminate benefits. The Office properly determined that the issue Dr. Ruggerio was to consider was whether appellant had any continuing disability related to his accepted employment injury. Therefore, the Board finds that the opinion of the impartial medical examiner, Dr. Ruggerio, negating a causal relationship between appellant's claimed condition and his September 6, 1988 employment injury, was sufficiently well reasoned and based upon a proper factual background, and that it is entitled to special weight.⁵

⁴ *Id.*

⁵ *Gary R. Seiber*, 46 ECAB 215 (1994).

The decision of the Office of Workers' Compensation Programs dated June 26, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 7, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member