

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TWYLA V. COFFMAN and DEPARTMENT OF VETERANS AFFAIRS,
VETERAN ADMINISTRATION MEDICAL CENTER, Clarksburg, WV

*Docket No. 98-1606; Submitted on the Record;
Issued December 16, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits effective April 3, 1998.

On January 30, 1995 appellant, then a 28-year-old program clerk, filed a claim for compensation alleging that she became aware on July 1, 1994 that the pain in her shoulders, neck and upper back and numbness of both her hands were caused by factors of her federal employment.

In an attending physician's report dated January 31, 1995, Dr. Louis F. Ortenzio, Board-certified in family practice, stated that appellant had thoracic strain and sprain, caused by her employment. In an attached medical report dated February 2, 1995, Dr. Ortenzio stated that appellant had fibrositis, diffused thoracic spasm and tender muscle masses throughout the thoracic region. He noted that appellant was undergoing physical therapy for her condition and that if she could "be made more comfortable or have less strain on her neck, shoulders and back while typing, it would probably limit the severity and/or help this condition heal."

The Office, on March 17, 1995 accepted appellant's claim for thoracic strain and authorized physical therapy until June 17, 1995.

In a medical report dated July 24, 1995, Dr. Ortenzio stated that appellant could return to full duty without restrictions.

In a medical report dated August 22, 1995, Dr. Ortenzio stated that appellant had a history of fibrositis which was worsened by her work-related injury. He noted that appellant was "on lighter type of duty," and was receiving physical therapy. Dr. Ortenzio added that appellant's prognosis was excellent and that she "will need continued treatment."

In a medical report dated March 10, 1997, Dr. Ortenzio stated that appellant was "substantially disabled" as a result of her thoracic strain in 1994, but that she had "benefited

substantially from massage therapy.” He, therefore, requested authorization for neuromuscular therapy once a week as well as periodic office visits.

In a memorandum to the file based on a January 27, 1997 telephone call, the Office stated that appellant called to advise the Office that she had not been receiving treatment due to her pregnancy which ended in August 1996¹ but that her treating physician wanted to start treatment again. The Office noted that it would reopen appellant’s claim for payment of medical expenses but that it would require an updated medical report and prescription for therapy.

On April 15, 1997 the Office authorized massage therapy for up to 90 days. It further noted that if therapy extended beyond 90 days, an updated medical report would be required for authorization.

On July 3, 1997 the Office asked Dr. Ortenzio to submit an updated medical report for massage therapy beyond August 8, 1997.

In a medical report dated August 14, 1997, Dr. Ortenzio stated that appellant developed post-traumatic fibromyalgia and that she would need continuing physical therapy for this condition. He noted that therapy “provides substantial relief of symptoms, increases her mobility and flexibility and allows her to continue working. It is my belief that she will need this therapy on a continuing basis.”

On September 23, 1997 the Office referred appellant, a statement of accepted facts, a list of specific questions and her medical record to Dr. Peter K. Thrush, Board-certified in orthopedic surgery, for a second opinion.

In a medical report dated October 16, 1997, Dr. Thrush stated that he had examined appellant on that date, demonstrated a familiarity with the history of appellant’s work-related injury and reported findings. He noted that appellant had not had any diagnostic tests performed, including x-rays, a magnetic resonance imaging scan, a computerized axial tomography scan or an electromyogram. Dr. Thrush noted appellant’s complaints of aching right shoulder and neck, intermittent numbness and tingling of the fourth and fifth fingers of her right hand and mild low back pain. Upon examination he noted normal range of motion in both shoulders, elbow, wrists, hands and cervical spine, noting some pain on extreme range of motion of the cervical spine. Dr. Thrush noted that appellant had a positive Tinel’s sign at the right elbow over the ulnar nerve. He reviewed an x-ray taken that date and noted a mild narrowing at C7-T1, “otherwise her cervical spine lateral film was within normal limits.” Dr. Thrush noted that appellant had suspected early degenerative disc disease of the cervical spine and mild neuropathy at the elbow. He stated that appellant had reached maximum medical improvement in July 1994 and recommended no additional treatment. Dr. Thrush added that although he did not think that physical therapy was specifically indicated she could attend therapy on an as needed basis, but that “once a week was probably not necessary.” Dr. Thrush added that appellant’s diagnosis of post-traumatic fibromyalgia was not appropriate and that she had recovered from her accepted

¹ The Office memorandum stated that appellant had a miscarriage in September 1995, and later gave birth in August 1996.

injury of thoracic strain. He stated that he “would not recommend additional physical therapy” and that he “would place no specific restrictions on her activities.”

On February 9, 1998 the Office proposed termination of appellant’s medical benefits on the grounds that the medical evidence established that she no longer had residuals of her work-related injury. The Office noted that appellant had 30 days from the date of the notice to submit evidence if she disagreed with the proposed decision.

In a medical report dated March 11, 1998, Dr. Ortenzio stated that appellant continues to “require and benefit from treatment. I am quite familiar with post-traumatic fibromyalgia and feel that she continues to suffer substantially and benefits substantially from prescribed treatment. This treatment includes physical therapy, massage therapy, potential for chiropractic treatment, multiple medications and exercise programs. I would request that she continue to be allowed to use these benefits as available.”

In a decision dated April 3, 1998, the Office terminated appellant’s medical benefits on the grounds that the medical evidence established that appellant no longer had residuals of her work-related injury.

The Board finds that the Office met its burden in terminating appellant’s compensation effective August 19, 1995.

Once the Office accepts a claim, it has the burden of proving that the disability 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 federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.³ Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.⁴ To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.⁵

In this case, Dr. Thrush, a Board-certified orthopedic surgeon, provided a well-reasoned opinion stating that based on his physical examination and review of a September 23, 1997 x-ray appellant no longer had residuals of her thoracic strain. Dr. Thrush performed range of motion evaluations on appellant’s shoulders, elbows, wrists, hands and cervical spine, noting only some pain of the cervical spine and early degenerative disc disease as revealed by x-ray. Dr. Ortenzio, on the other hand, stated that appellant had developed post-traumatic fibromyalgia and that she

² *Frederick Justiniano*, 45 ECAB 491 (1994).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Judith A. Peot*, 46 ECAB 1036 (1995).

would benefit from therapy for this condition. However, Dr. Ortenzio's rationale in support of his request for additional therapy was based on a condition that the Office had not accepted as work related. Indeed, Dr. Ortenzio stated on July 25, 1995 that appellant could return to full duty without restrictions. He failed to explain how appellant's post-traumatic fibromyalgia was related as a consequential injury to her thoracic strain and strain, and thus his request for authorization for additional therapy was not based on an accepted injury and, therefore, is of diminished probative value. Dr. Thrush, Board-certified in orthopedic surgery, evaluated appellant's condition based on her accepted condition, thoracic strain, relied on a diagnostic test (appellant's October 16, 1997 cervical spine x-ray) and determined that appellant no longer had residuals of her work-related injury. The weight of the evidence, therefore, lies within the well-rationalized opinion of Dr. Thrush indicating that appellant's employment-related injury had resolved.

The decision of the Office of Workers' Compensation Programs dated April 3, 1998 is affirmed.

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

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member