

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL A. WITTMAN and U.S. POSTAL SERVICE,
POST OFFICE, Eagan, MN

*Docket No. 98-1950 and 00-251; Submitted on the Record;
Issued December 9, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits; and (2) whether the Branch of Hearings and Review properly denied appellant's request for an oral hearing.¹

The Board has duly reviewed the case on appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

Appellant, a letter carrier, filed a claim alleging that on January 28, 1995 he injured his neck, shoulder and back when he fell in the performance of duty. The Office accepted appellant's claim for contusion thoracic and lumbar spines as well as cervical strain, low back strain, right lateral chest and left shoulder strain.² Appellant performed a series of light-duty positions intermittently from February 2, 1995 working up to eight hours a day. The Office by decision dated April 2, 1996 found that appellant had no continuing work-related disability or residuals causally related to his employment injury. Appellant requested a review on April 22, 1996. By decision dated August 13, 1996, the Branch of Hearings and Review affirmed the Office's finding that appellant was not entitled to compensation benefits effective March 10, 1995 and thereafter. The hearing representative found that the Office did not meet its burden of proof to terminate medical benefits and remanded the case for additional development of the medical evidence. The Office issued a decision on December 19, 1996 finding that appellant had no continuing disability or medical residuals. Appellant requested a review on November 8, 1996. By decision dated October 3, 1997, the Branch of Hearings and Review vacated the

¹ Due to the disposition of the termination issue, it is not necessary for the Board to consider the denial of oral hearing as this consideration would not benefit appellant.

² Appellant has several other claims with the Office including a January 30, 1986 back injury accepted for lumbar disc displacement and lumbar disc excision L5-S1. Appellant sustained a left knee strain on August 17, 1991 and left shoulder tendinitis, ulnar nerve neuritis, left shoulder arthroscopy and ulnar nerve decompression due to a December 1, 1991 employment injury.

Office's December 19, 1996 decision and remanded the case for consolidation of appellant's back and shoulder case files as well as further development of the medical evidence to determine whether appellant has any continuing residuals in his back causally related to his January 28, 1995 employment injury and his January 1986 employment injury.³

By decision dated February 19, 1998, the Office found that appellant had no medical condition or disability causally related to the employment injuries on January 30, 1986, December 1, 1991 and January 28, 1995. However, the Office mailed this decision to an improper address. Appellant requested an oral hearing on April 29, 1998 and stated that he had not received the termination of his compensation benefits but had heard that his claim was denied at the employing establishment. By decision dated May 20, 1998, the Branch of Hearings and Review denied appellant's request for an oral hearing as untimely. Appellant filed an appeal with the Board on June 4, 1998.⁴ The Office reissued its February 19, 1998 decision on June 12, 1998 to appellant's proper address. Appellant then filed a second application for review with the Board on August 1, 1998 and appealed the Office's June 12, 1998 decision.⁵

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.⁶ 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.⁷ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁸ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which would require further medical treatment.⁹

In this case, appellant's attending physicians submitted reports indicating that appellant continued to experience residuals of his January 28, 1995 employment injury and that he could not return to full duty. The Office referred appellant for a second opinion evaluation with Dr. Robert H.N. Fielden, a Board-certified orthopedic surgeon. On January 12, 1996 he noted appellant's history of injury and medical history. Dr. Fielden performed a physical examination

³ The record on appeal to the Board does not contain the case records regarding any employment injuries other than the January 28, 1995 employment injury.

⁴ At the time of this appeal, docket number 1998-1950, the Board's jurisdiction was limited to the February 19, 1998 decision of the Office and the May 20, 1998 decision of the Branch.

⁵ As appellant filed a second appeal request after the Office reissued the February 19, 1998 decision on June 12, 1998 to appellant's correct address, the Board will not declare this decision moot but consider it in docket number 2000-251. *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993).

⁶ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁷ *Id.*

⁸ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁹ *Id.*

and diagnosed soft tissue strain to neck and upper back from the fall, significant functional exaggeration of all symptoms without any corroborative physical findings and depression and chronic pain. He stated, "Physically there is nothing to find of an organic nature that would prevent this man from performing all the duties of a letter carrier and in fact, he did so for a while after the injury, with only symptoms and no objective findings being the reason for his being taken off work."

The hearing representative on August 13, 1996 properly noted that Dr. Fielden did not address appellant's medical residuals from the accepted employment injury and that, therefore, the Office improperly denied these benefits. The Office requested a supplemental report from Dr. Fielden on September 25, 1996. On December 17, 1996 Dr. Fielden stated that appellant had fully recovered from the January 1995 employment injury. He did not address any specific findings in support of his conclusion. As the hearing representative noted on October 3, 1997, this report is not sufficient to establish that appellant has no continuing medical residuals as a result of his January 28, 1995 employment injury or other accepted injuries.

In a report dated December 22, 1997, Dr. Fielden noted appellant's January 28, 1995 employment injury and reviewed the medical records. He noted that the Office requested whether appellant had any residual physical evidence of injury from January 30, 1986 which was accepted as a disc herniation and resulted in surgery. Dr. Fielden stated that appellant had no neurological deficit, but demonstrated persistent limitation of extension of his back. He concluded that this was consistent with a long-standing disc degeneration. Dr. Fielden then addressed appellant's left shoulder condition previously accepted by the Office and noted that appellant had similar findings on the right shoulder. He indicated that the right shoulder condition was not related to the January 28, 1995 employment injury. Dr. Fielden stated that appellant's knee condition was not related to the January 28, 1995 employment injury. He concluded:

"The lower back problem had stabilized, the shoulder has been treated and does not appear to be work related and the knee may have been work related but in a different context of wear-and-tear over time.... None of the disabilities except the residual limitations from a lower back problem would be ongoing and this would be only some mild restrictions and awkward lifting and long periods of sitting or standing. No further medical treatment is required for any of these problems."

This report is not sufficient to meet the Office's burden of proof in establishing that appellant has no medical residuals or disability causally related to his accepted back conditions of January 1995 and January 1986. It is not clear that Dr. Fielden's report is based on an accurate history of injury as the Office failed to combine the case records as directed by the hearing representative on October 3, 1997 and Dr. Fielden did not have access to the records regarding appellant's January 1986 back injury and treatment. Furthermore, Dr. Fielden indicates that appellant will have physical restrictions as a result of his employment injury including awkward lifting and does not address the specific physical requirements of appellant's date-of-injury position and explain how appellant can function within those restrictions. For

these reasons, the Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated June 12, 1998 is hereby reversed.

Dated, Washington, D.C.
December 9, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member