

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUGENE C. FIERRO and U.S. POSTAL SERVICE,
LOS ANGELES BULK MAIL CENTER, Bell, CA

*Docket No. 99-1113; Submitted on the Record;
Issued December 1, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the basis that he no longer suffered from residuals of his accepted April 7, 1988 employment injury.

The Board has reviewed the case record and finds that the Office properly terminated compensation on the basis that he no longer suffered from residuals of his accepted April 7, 1988 employment injury.

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 ceased or that it was not longer related to the employment.¹

In the present case, the Office accepted that appellant sustained a right wrist strain on April 7, 1988, which was later expanded to include de Quervains disease of the right wrist. Appellant suffered a recurrence of disability on January 9, 1990, which the Office accepted.² He stopped work on December 7, 1991 as the employing establishment no longer had a position available within appellant's restrictions and was on the automatic rolls for temporary disability. On February 24, 1998 the Office issued a notice of proposed termination of benefits. The Office issued a decision dated March 30, 1998, which terminated all benefits effective April 26, 1998

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

² The Office initially denied appellant's recurrence claim in a September 12, 1990 decision. The Board issued a decision dismissing appellant's appeal based on the Director's motion. (Docket No. 91-1073, issued July 30, 1991) In a decision dated September 4, 1991, the Office vacated the September 12, 1990 decision and accepted that appellant's de Quervains' disease was due to his April 7, 1988 employment injury. On November 8, 1991 appellant filed a claim for a schedule award. On November 8, 1991 he filed a claim for a loss of compensation for the period November 7 through 22, 1991.

on the basis that appellant no longer suffered from residuals of his accepted employment injury. In a decision dated January 7, 1999, the Office hearing representative affirmed the termination of benefits.

With respect to continuing disability, the Office referred appellant to Dr. Paul Tsou, Board-certified in orthopedic surgery, for a second opinion. In a report dated September 10, 1997, Dr. Tsou, based upon a review of the medical records, statement of accepted facts and physical examination, diagnosed mildly symptomatic bilateral de Quervain's syndrome; right trigger deformity of the long finger, right shoulder adhesive capsulitis and left fifth finger flexion contracture. As to whether appellant had any residuals of his accepted employment injury, Dr. Tsou opined "that this gentleman has extensive problems with his hands, fingers and wrists based on stenosing tenosynovitis or de Quervain's disease, which is currently being aggravated by his nonwork activities, *i.e.*, the patient has been very active in golf. He has not performed his activities since November 7, 1991. This would be sufficient to cause his current complaints." Lastly, Dr. Tsou indicated that appellant could return to work with restrictions. In a supplemental report dated October 31, 1997, Dr. Tsou, in response to the Office's request for clarification, opined that any residuals from appellant's accepted employment injury had ceased and that appellant "had no work-related condition at that time and his work-related condition would have ceased much earlier than the golf tournament." Dr. Tsou also indicated that appellant's current symptoms were related to daily activities in his life or his golfing activities since appellant has not worked in six years and continues to have symptoms of stenosing tenosynovitis.

The report of Dr. Charn-Jiuan Huang, Board-certified in physical medicine and rehabilitation, is insufficient to cause a conflict with Dr. Tsou's opinion that appellant's current disability is unrelated to his accepted employment injury. Dr. Huang opined that appellant was permanently disabled and that his symptoms began with his April 7, 1988 employment injury. Dr. Huang noted that appellant had "chronic pain in the right upper extremities with decreased range of motion of the shoulder, wrist, thumb and fingers" in his right side and that his right "wrist is hypersensitive" with impairment in the use of his right upper extremity. The probative value of this report is diminished as Dr. Huang does not relate appellant's current disability to his accepted employment injury. Furthermore, Dr. Huang did not provide any medical rationale or accompanying explanation of the relationship of appellant's current disability to his accepted employment injury. She refers to appellant's April 7, 1988 employment injury as the date his symptoms began, but offers no additional explanation or rationale as to why appellant's current disability is due to his accepted employment injury. Since Dr. Huang does not explain the medical basis for her opinion on causal relationship, her reports are of diminished value.³

The Board finds that Dr. Tsou's opinion that appellant's current symptoms were unrelated to his April 7, 1988 work injury constitutes the weight of the medical evidence in this case. He has provided a rationalized opinion on the issue presented, including an explanation for his opinion regarding whether appellant continued to have any residual disability from his accepted right wrist sprain and de Quervain's disease of the right wrist. The Board accordingly

³ See *William C. Thomas*, 45 ECAB 591 (1994).

finds that the Office met its burden of proof in terminating appellant's compensation effective April 26, 1998 based on the evidence from Dr. Tsou.

Once the Office has met its burden to terminate compensation, the burden of proof shifts to appellant to establish any continuing entitlement to compensation.⁴ Following the termination decision, appellant submitted a February 26, 1998 report from Dr. Lillian Li. In her report, Dr. Li diagnosed a history of right de Quervain's which had improved based on a negative Finkelstein test. She further opined that "any temporary aggravation from work to his de Quervain's has since resolved and returned to baseline." Dr. Li indicated that appellant's "previous history of lifting, bowling prior to 1988, along with his recent golf hobby contributed significantly to his wrist and shoulder problem along with his underlying degenerative changes." The issue in this case is whether appellant continues to have residuals from his accepted employment injury after April 7, 1988. On this issue, Dr. Li opined that appellant's employment-related condition had resolved and implicated nonemployment-related activities such as appellant's golf activities and degenerative changes for his continued symptoms. As appellant has not submitted any medical evidence supporting that he continues to have residuals from his accepted employment injury, he is not entitled to compensation after April 26, 1998.

The decisions of the Office of Workers' Compensation Programs dated January 7, 1999 and April 26, 1998 are affirmed.

Dated, Washington, D.C.
December 1, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁴ *George Servetas*, 43 ECAB 424, 430 (1992).