U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA N. DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, Tullahoma, Tenn.

Docket No. 97-1039; Submitted on the Record;
Issued January 19, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective March 20, 1996.

The Board has duly reviewed the case on appeal and finds that the Office did not meet its burden to terminate appellant's compensation benefits.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.[1]

In the present case, the Office accepted that appellant,[2] then 42-year-old rural carrier, sustained employment-related left carpal tunnel syndrome and bilateral trigger finger of the thumb and long finger for which she underwent surgery. She missed intermittent periods of work for which she received appropriate compensation and returned to limited duty for six hours per day on May 13, 1995. This claim was adjudicated under Office number 06-557025.

On September 21, 1995 the Office referred appellant, along with the medical record, a set of questions and a statement of accepted facts that included a job description for rural carrier, the position she had held at the date of injury, to Dr. Clyde P. Younger, a Board-certified orthopedic surgeon. In an October 20, 1995 report, Dr. Younger advised that appellant had a minor hand dysfunction but could return to the rural carrier position for eight hours a day.

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

[2] Appellant was formerly known as Sheila Fuller.

By letter dated November 13, 1995, the Office informed appellant that it proposed to terminate her compensation. On December 29, 1995 she accepted a limited-duty job offer.[3] Following an Office request, in a March 12, 1996 report, Dr. Younger reiterated his conclusion that appellant could return to her date-of-injury position as rural carrier. On March 12, 1996 appellant filed an occupational disease claim, stating that overuse of her hands and arms at work caused pain. She did not stop work. This claim was adjudicated by the Office under number 06-653265. By decision dated March 20, 1996, the Office terminated appellant's wage-loss compensation, effective that day, on the grounds that the weight of the medical evidence was demonstrated by the opinion of Dr. Younger who advised that she was capable of performing her date-of-injury job. Medical benefits were not terminated. By letter dated June 19, 1996, the Office informed appellant that claim 06-653265 was a duplicate claim and had been doubled into case number 06-557025.

The record, however, also contains medical reports from Dr. Richard E. Fishbein, appellant's treating Board-certified orthopedic surgeon, who began treating her in July 1992. Dr. Fishbein submitted office notes and reports in which he described his physical findings and was consistent in his opinion that appellant continued to have residuals from her employment injury that would limit her work ability. In a December 28, 1995 report, he advised that appellant could return to work eight hours a day with the following permanent restrictions: work one-half hour, rest one-half hour; case mail only with no heavy lifting.

When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a) of the Federal Employees' Compensation Act,[4] to resolve the conflict in the medical opinion. In this case, while Drs. Younger and Fishbein agreed that appellant could return to work for eight hours per day, they disagreed regarding the type work she could perform. The Board, therefore, finds that a conflict exists regarding this matter. Consequently, the Office did not meet its burden of proof in terminating appellant's compensation on March 20, 1996.[5] To resolve this conflict, the Office should have referred the case record, including all test results and a statement of accepted facts to a Board-certified specialist for resolution of the conflict.[6]

[3] The job offer indicated that she was to cancel letter mail, work box section mail, prepare second notices and case labels and face local mail for eight hours per day.

[4] 5 U.S.C. § 8123(a).

[5] *See Gail D. Painton*, 41 ECAB 492 (1990).

[6] The Board notes that appellant has not sustained any wage loss as a consequence of this decision as the record indicates that she continued to work in the limited-duty position. On November 18, 1996 appellant again accepted the limited-duty job offer. She has continued to receive compensation for intermittent wage loss. The record also contains a schedule award issued by the Office on January 11, 1996, awarding appellant an 8 percent impairment for partial loss of use of the right fingers and a 14 percent impairment for partial loss of use of the left fingers. Appellant has not appealed the schedule award.

The decision of the Office of Workers' Compensation Programs dated March 20, 1996 is hereby reversed.

Dated, Washington, D.C.
January 19, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member