

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLOTTE WARREN and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, Tex.

*Docket No. 97-1081; Submitted on the Record;
Issued January 15, 1999*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective February 4, 1996.

In the present case, the Office accepted that appellant sustained a left shoulder strain and adhesive capsulitis of the left shoulder in the performance of duty on November 18, 1991 while lifting some parcels. The record indicates that appellant had been performing a light-duty position at the time of injury. Appellant stopped working and began receiving compensation for temporary total disability. In a letter dated December 29, 1995, the Office advised appellant that it proposed to terminate her compensation based on the weight of the medical evidence. By decision dated January 22, 1996, the Office terminated appellant's compensation for wage loss effective February 4, 1996.

In a decision dated December 19, 1996, an Office hearing representative affirmed the termination decision.

The Board has reviewed the record and finds that the Office met its burden of proof in terminating appellant's compensation for wage loss effective February 4, 1996.

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 a disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹

In this case, the Office referred appellant, along with a statement of accepted facts and medical records, to Dr. Jack A. Kern, an orthopedic surgeon. In a report dated October 17, 1995, Dr. Kern provided a history and results on examination. Dr. Kern opined that "there are no

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

objective findings of a current left shoulder strain and adhesive capsulitis. There may be minor findings that are objective regarding [acromioclavicular] AC joint arthritis.” He further stated that “it is reasonable that her on-the-job injury caused left shoulder pain but it is my opinion at this date some four years post injury that there are no objective findings significant enough to declare that this left shoulder has disabled her for her normal work and there is no evidence objectively that this left shoulder requires surgical care or significant treatment at this point.” Dr. Kern recommended that appellant should return at four hours per day in a light-duty job for two months, “simply to get herself going into the work place,” noting that appellant would require psychological counseling and that her condition involved a functional overlay.

The Board finds that Dr. Kern provided a reasoned opinion, based on a complete background, that appellant’s accepted orthopedic conditions did not continue to disable her for work. On the other hand, appellant’s attending physicians did not provide a reasoned opinion that appellant continued to be disabled for her date-of-injury position as a result of her accepted left shoulder injuries. In a report dated December 29, 1995, Dr. R. Sanford Kiser, a psychiatrist, diagnosed “chronic pain syndrome consisting of increasing and widespread pain symptoms with the focus in her left shoulder, with severe impairment in her ability to function in affairs of daily living.” He also stated that appellant had developed depression, which was causing multiple symptoms. The Board notes that neither a chronic pain syndrome nor depression has been accepted as causally related to the November 18, 1991 injury. Appellant has the burden to establish these conditions as employment related,² and Dr. Kiser does not provide a reasoned opinion on this issue. In a separate report also dated December 29, 1995, Dr. Kiser indicated that appellant had a generalized fibromyalgia-type pain distribution, with particular concentration in the left shoulder, left leg, left lumbar area and left hip. He also noted that appellant had carpal tunnel syndrome. Dr. Kiser does not discuss the accepted conditions of left shoulder strain or adhesive capsulitis. Although appellant submitted evidence regarding a low back condition,³ there is no probative evidence establishing causal relationship between a lumbar condition and the November 18, 1991 injury.

The weight of the medical evidence, with respect to the accepted employment injuries, rests with Dr. Kern, who opined that appellant did not have a continuing disability causally related to the November 18, 1991 left shoulder injuries. Accordingly, the Board finds that the Office met its burden of proof in terminating compensation for wage loss in this case.

² Appellant has the burden to establish that a specific condition for which compensation is claimed is causally related to the employment injury. *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ The record indicates that appellant underwent lumbar surgery in April and August, 1995. By decision dated September 8, 1995, the Office determined that appellant had not established a lumbar condition causally related to her employment.

The decisions of the Office of Workers' Compensation Programs dated December 19 and January 22, 1996 are affirmed.

Dated, Washington, D.C.
January 15, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member