

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHANDRA L. APPLEBERRY and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Dayton, Ohio

*Docket No. 97-1414; Submitted on the Record;
Issued January 19, 1999*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she had no continuing disability resulting from the accepted work injury.

The Board has carefully reviewed the case record and finds that the Office has met its burden of proof in terminating appellant's compensation.

Under the Federal Employees' Compensation Act,¹ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁴ The Office burden

¹ 5 U.S.C § 8101 *et seq.*

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁴ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In this case, appellant's notice of traumatic injury filed on June 21, 1994 was accepted for cervical, thoracic, lumbar and left shoulder strains after she was hit by a mail cart while bending over to retrieve letters from the bottom of a hamper.⁶ Appellant underwent physical therapy, received a series of epidural blocks and participated in a physical conditioning program, based on the report of the second opinion specialist, Dr. Ronald J. Moser, a Board-certified orthopedic surgeon.

On December 7, 1995 the Office issued a notice of proposed termination on the grounds that appellant no longer suffered from any residuals of her work-related injuries. On January 8, 1996 the Office terminated compensation effective February 19, 1996, relying on the report of Dr. Steven S. Wunder, Board-certified in physical medicine and rehabilitation. The Office noted that Dr. Richard M. Donnini, an osteopathic practitioner, provided no objective findings to support his conclusion that appellant had limited functional capability.

Appellant requested an oral hearing, which was held on July 29, 1996. The hearing representative affirmed the termination order on October 1, 1996. Appellant requested reconsideration and submitted an October 22, 1996 report from Dr. Donnini who disagreed with Dr. Wunder's conclusion that appellant was "faking her pain." On December 10, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision.

The Board finds that Dr. Wunder's report is sufficient to meet the Office's burden of proof in terminating compensation. On October 31, 1995 Dr. Wunder reported normal neurologic findings upon physical examination, with "obvious symptom magnification." Dr. Wunder found that appellant had positive Waddell pinch signs for symptom magnification, that her lumbar motion "could not be measured with any degree of validity," and that manual motor testing showed clinically unreliable responses. He related that appellant "really had superficial tenderness anywhere she was touched throughout the back area, including only gentle stroking of the skin," and added that she complained of pain even from wearing clothes.

Dr. Wunder stated that appellant's subjective complaints were unsupported by any objective signs or testing, noting that the results of several magnetic resonance imaging (MRI) scans were normal. Based upon his thorough review of appellant's treatment since June 1994 and medical reports from Drs. Moser, Donnini and Wunder concluded that appellant had no residuals of the 1994 injuries and that there was "no objective reason" why appellant could not return to her regular duties "if she wished to pursue them."

The Board finds that Dr. Donnini's October 22, 1996 letter is insufficient to detract from the probative weight of Dr. Wunder's opinion. Essentially, Dr. Donnini disagreed with Dr. Wunder's assessment that appellant had magnified her symptoms and stated that he had

⁵ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

⁶ Appellant did not return to work and was terminated on November 13, 1994.

found moderate to severe tenderness and nonvoluntary muscle spasms on repeated examinations, as did other physicians. Dr. Donnini diagnosed chronic soft tissue musculoskeletal pain, which might be aggravated to some degree by psychological factors and opined that appellant was not malingering.

As the hearing representative noted, objective findings that occurred in 1994 when appellant's work injury was active do not belie a lack of such findings in October 1995 when Dr. Wunder examined appellant. Further, the Office wrote to Dr. Donnini on July 19, 1995 asking that he provide appellant's objective physical findings upon examination. His response on July 25, 1995 contained no clinical findings but merely stated that appellant was approaching maximum medical improvement and was not "completely resolved with her pain and discomfort" following treatment.

In fact, Dr. Donnini stated in a January 4, 1996 report that no new or additional laboratory findings or tests had been completed since the July 18, 1994 psychological evaluation⁷ and the December 1994 MRI scan, which showed "no significant pathology." While appellant had limited functional capability and was not able to do heavy repetitive lifting, bending, stooping, or straining, Dr. Donnini added that no additional treatment was necessary and recommended that appellant enter into a job search program.

Therefore, the Board finds that the weight of the medical evidence rests with the opinion of Dr. Wunder, the second opinion specialist, who provided a rationalized medical explanation of why the accepted condition had resolved and appellant had no continuing disability from the strains she sustained on October 21, 1994 and is sufficient to meet the Office's burden of proof in terminating appellant's compensation.⁸

⁷ The evaluation completed by Dr. Tyrone Payne, a licensed clinical psychologist, concluded that the "biggest obstacle" to appellant's vocational rehabilitation might be her overcoming her negative attitudes toward occupations and employment.

⁸ See *Samuel Theriault*, 45 ECAB 586, 590 (1994) (finding that a physician's opinion was thorough, well rationalized and based on an accurate factual background and thus constituted the weight of the medical evidence that appellant's accepted injury had resolved).

The December 10 and October 1, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

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

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member