

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBRA M. HOLLAWAY and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Boston, Mass.

*Docket No. 97-2027; Submitted on the Record;  
Issued July 1, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective June 11, 1996 on the grounds that she had no continuing residuals of her accepted employment injuries.

On March 4, 1991 appellant, then a 36-year-old clerk, filed a notice of traumatic injury and claim, indicating that she sustained injury to her right shoulder and back while lifting mail.<sup>1</sup> The Office accepted appellant's claim for cervical and low back sprains. In a decision dated February 5, 1993, the Office determined that appellant had wage-earning capacity of \$504.60 effective April 18, 1991. On March 4, 1993 appellant filed a recurrence of disability claim beginning that date. On October 5, 1994 the Office accepted appellant's claim for recurrence of disability. Appellant returned to work on October 7, 1993 and worked four hours a day.

In a letter dated April 2, 1996, the Office notified appellant that it proposed termination of her compensation. By decision dated June 11, 1996, the Office terminated appellant's compensation effective that date on the grounds that she had no continuing residuals of her accepted employment injuries. In a decision dated February 27, 1997 and finalized March 4, 1997, an Office hearing representative affirmed the June 11, 1996 decision of the Office.

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<sup>1</sup> Appellant had two prior work-related injuries in October 1988 and November 1989. The Office accepted the former claim for lumbar strain and the latter claim for lumbar and cervical strains and contusion of the left hip.

The Board has duly reviewed the entire case record on appeal and finds that the Office improperly terminated appellant's compensation effective June 11, 1996.<sup>2</sup>

Under the Federal Employees' Compensation Act,<sup>3</sup> once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.<sup>4</sup> After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.<sup>5</sup>

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.<sup>6</sup> Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after June 11, 1996, and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

In the present case, the Office relied on the report of Dr. James G. Manson, an Office referral physician and Board-certified orthopedic surgeon, in determining that appellant no longer had any residuals of her accepted employment-related injuries. Dr. Manson provided a history of injury in which he noted that appellant had sustained work-related injuries on October 9, 1988, November 17, 1989 and March 4, 1991. He diagnosed strain/sprain of the lumbar spine, strain/sprain of the cervical spine, right shoulder rotator cuff tendinitis and chronic pain syndrome. Dr. Manson indicated that appellant's lumbosacral and cervical sprains were related to the October 1988, November 1989 and March 1991 injuries and essentially resolved by March 1992. He then stated that:

"The clinical diagnoses of supraspinatus tendonitis of her right shoulder is directly related to the injuries of [October 9, 1988], [November 17, 1989], [March 4, 1991].... The other two diagnoses that are not clearly work related, namely the right supraspinatus tendonitis of her right shoulder and chronic pain syndrome, do significantly interfere with [appellant's] work capacity."

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<sup>2</sup> The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on June 2, 1997, the only decisions before the Board are the Office's June 11, 1996 and March 4, 1997 decisions; see 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *William Kandel*, 43 ECAB 1011 (1992).

<sup>5</sup> *Carl D. Johnson*, 46 ECAB 804 (1995).

<sup>6</sup> *Dawn Sweazey*, 44 ECAB 824 (1993).

<sup>7</sup> *Mary Lou Barragy*, 46 ECAB 781 (1995).

Dr. Manson concluded that appellant's overall work capabilities were such as she was then performing, *viz.*, six hours a day of light clerical work, but added that appellant's directly work-related diagnoses of cervical and lumbar strain/sprain had resolved March 1992.

In reaching his conclusions, Dr. Manson did not appear to be aware that appellant sustained a recurrence of disability in March 1993 which was temporarily totally disabling and that this recurrence had been accepted by the Office. A review of the statement of accepted facts reveals that while the claims examiner noted that appellant became totally disabled on March 4, 1993 and did not return to work until October 4, 1993, she did not report that this temporary total disability was in relation to an accepted recurrence of disability. Therefore, Dr. Manson's report is based on an incomplete factual history as he did not discuss whether appellant had any residuals of her employment injuries after March 4, 1993 when she sustained a recurrence. The claims examiner is responsible for ensuring that the statement of accepted facts is correct, complete, unequivocal and specific. When a second opinion specialist renders a medical opinion based on an incomplete or inaccurate statement of accepted facts, the probative value of the opinion is seriously diminished or negated altogether.<sup>8</sup> In addition, Dr. Manson's report is internally inconsistent as within the same paragraph he initially indicated that appellant's right shoulder tendinitis was causally related to her employment injuries and that this diagnosed condition limited her physical capacity for work and then reported that the condition was not clearly work related. Consequently, it is not clear whether or not appellant's right shoulder condition is a residual of her accepted employment injuries and Dr. Manson has not provided an adequate discussion or rationale in relation to this condition. As Dr. Manson's report is therefore not rationalized, it is not sufficient to discharge the Office's burden of proof in terminating appellant's compensation effective June 11, 1996.

The decisions of the Office of Workers' Compensation Programs dated March 4, 1997 and June 11, 1996 are hereby reversed.

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

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member

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<sup>8</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *see also James A. Wyrich*, 31 ECAB 1805 (1980).