

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY S. REAGON and U.S. POSTAL SERVICE,
POST OFFICE, Knoxville, Tenn.

*Docket No. 98-97; Submitted on the Record;
Issued July 16, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective November 6, 1996 on the grounds that he had no disability due to his August 28, 1995 employment injury after that date.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective November 6, 1996 on the grounds that he had no disability due to his August 28, 1995 employment injury after that date.

Under the Federal Employees' Compensation Act,¹ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.² However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.³ Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

³ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In the present case, the Office accepted that appellant sustained an employment-related right rotator cuff sprain on August 28, 1995. The Office authorized arthroscopic surgery, including debridement of bursa and right shoulder subacromial depression, which was performed on April 23, 1996 by Dr. Steven C. Weissfield, an attending Board-certified orthopedic surgeon. By decision dated November 6, 1996, the Office terminated appellant's compensation effective November 6, 1996 on the grounds that he no longer had disability due to his August 28, 1995 employment injury after that date. The Office based its termination on the opinion of Dr. William M. Hovis, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion. By decision dated July 29, 1997, the Office denied modification of its November 6, 1996 decision.

In a report dated September 16, 1996, Dr. Hovis determined that appellant no longer had residuals of his August 28, 1995 employment injury and indicated that appellant could return to regular duty. The Board has carefully reviewed the opinion of Dr. Hovis and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Hovis' opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Hovis provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁷ He provided medical rationale for his opinion by explaining that appellant did not exhibit any objective residuals of his August 28, 1995 injury upon examination or diagnostic testing. Dr. Hovis further noted that appellant's pain complaints on examination appeared out of proportion to any objective findings.⁸

The record also contains several reports, dated in mid 1996, in which Dr. Weissfield indicated that appellant continued to require work restrictions, including restrictions from engaging in repetitive motion with his right arm.⁹ These reports are of limited probative value on the relevant issue of the present case in that Dr. Weissfield did not adequately explain the basis for these restrictions or otherwise show that they were necessitated by residuals of the August 25, 1995 employment injury. In a report dated July 22, 1996, he stated that upon examination appellant did not exhibit right shoulder impingement; did not have tenderness, crepitation or catching of the right acromion joint; and did not have edema, erythema, induration, ecchymosis or heat in the right shoulder.¹⁰ In a report dated August 26, 1996, Dr. Weissfield stated that, although appellant reported some tenderness of his right acromion, his trapezius was not tight and impingement testing was negative. He did not explain why appellant needed work

⁷ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

⁸ He noted that appellant displayed complete lack of effort upon gripping with his right hand despite the lack of atrophy in his upper right extremity. On appeal appellant asserted that Dr. Hovis' characterization of his work history showed bias against him, but he did not adequately articulate this argument.

⁹ Appellant returned to light-duty work for the employing establishment in June 1996.

¹⁰ In a report dated May 23, 1996, Dr. Weissfield indicated that appellant's surgery wounds were well healed and that x-rays showed excellent compression in the right shoulder.

restrictions in light of the existence of such limited findings upon examination and diagnostic testing.¹¹

The decisions of the Office of Workers' Compensation Programs dated July 29, 1997 and November 6, 1996 are affirmed.

Dated, Washington, D.C.
July 16, 1999

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ In his August 26, 1996 report, Dr. Weissfield indicated that it could take 12 to 18 months to "see the final result" from a subacromial decompression, but he did not adequately explain why appellant's recovery from his surgery was insufficient to allow his return to regular work.