

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE E. CARTER-CLARK and U.S. POSTAL SERVICE,
GENERAL MAIL CENTER, Los Angeles, Calif.

*Docket No. 97-1503; Submitted on the Record;
Issued March 25, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) 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; and (2) whether appellant established her entitlement to wage-loss compensation from March 2, 1996 onward.

The Board has carefully reviewed the record evidence and finds that the Office 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's 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 assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

In this case, appellant's notice of traumatic injury, filed on July 7, 1995, was accepted for contusions of the head and right shoulder as well as impingement syndrome after a mail container lid fell on appellant's head and right shoulder and forearm on July 3, 1995. Following light-duty assignments and decompression surgery, appellant returned to a modified mail handler's position on December 22, 1995.

On April 8, 1996 appellant filed a notice of occupational disease, which the Office accepted for rotator cuff tendinitis of the left shoulder resulting from overuse. Subsequently, the Office referred appellant to Dr. Stuart H. Baumgard, a Board-certified orthopedic surgeon, for a second opinion evaluation. Based on his August 22, 1996 report, the Office issued a notice of proposed termination of compensation on September 19, 1996.

In response, appellant submitted an October 3, 1996 report from Dr. Richard N. Feldman, a psychiatrist, who disagreed with Dr. Baumgard's conclusions. On October 25, 1996 the Office terminated appellant's compensation, effective immediately, on the grounds that the medical evidence established that appellant had no continuing disability resulting from the accepted work injuries. The Office also denied wage-loss compensation claimed from March 2, 1996 onward.

Appellant requested reconsideration, which was denied on February 3, 1997 on the grounds that appellant's request was insufficient to warrant review of its prior decision.

The Board finds that the medical evidence is sufficient to meet the Office's burden of proof in terminating appellant's compensation and demonstrates that she is not entitled to wage-loss benefits after March 2, 1996.

Dr. Baumgard examined appellant on July 29, 1996 and recorded a detailed history of appellant's work injury and subsequent treatment, including physical therapy, surgery and cortisone injections, as told in her own words. He stated that appellant's principal complaint was right-sided neck and shoulder pain, with lesser pain in her left shoulder. Upon examination of both shoulders, Dr. Baumgard found no visible soft tissue or bony abnormality or atrophy and full flexion, abduction, internal and external rotation and adduction. He noted diffuse tenderness in the posterior deltoid area and a short, well-healed transverse incision at the distal end of the clavicle and acromion of the right shoulder.

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

⁶ *Connie Johns*, 44 ECAB 560, 570 (1993).

Reviewing x-rays of the cervical spine and both shoulders, Dr. Baumgard found normal alignment and preservation of the intervertebral disc spaces as well as normal bone density and trabeculation with no intraarticular loose bodies or calcification. He then reviewed separately each medical document in the record, noting the initial diagnoses of contusions of the head and right shoulder and forearm, the normal results of an August 2, 1995 electromyogram, the August 18, 1995 magnetic resonance imaging (MRI) scan showing tendinitis and risk of impingement syndrome, the May 1, 1996 MRI scan which showed a small disc protrusion at C5-6 and the August 17, 1996 MRI scan, of the right shoulder showing tendinitis.

Dr. Baumgard concluded that, in light of a "completely negative" physical examination, appellant had no clinically objective residuals of either a right or left shoulder condition related to the July 3, 1995 work injury. Further, her complaints of cervical pain were not corroborated by any objective findings, based on his examination and the July 3, 1995 notations by Dr. Mark Newman, a practitioner in internal and occupational medicine who initially examined appellant and the July 20, 1995 notes by Dr. Feldman that appellant had full range of motion of her cervical spine.

Dr. Baumgard stated that appellant's C5-6 protrusion represented a normal finding in women her age absent any symptoms. He added that appellant showed no evidence of disability, that she had no physical limitations resulting from the injury, that she needed no orthopedic care regarding her neck and shoulders, that she should have been able to return to work within 7 to 10 days after the July 3, 1995 incident and that she was capable of performing the full and complete duties of her job.

Finally, commenting on the acromioplasty done by Dr. Feldman in November 1995, Dr. Baumgard stated that Dr. Feldman had "misread" the August 18, 1995 MRI scan, which showed only tendinitis and had excised the distal end of appellant's clavicle. However, the procedure did not affect appellant adversely and the operation was not work related.

In an October 3, 1996 report, Dr. Feldman disagreed with Dr. Baumgard's comments on the shoulder operation and suggested further testing -- a cervical discogram -- to demonstrate appellant's radiculopathy resulting from the C5-6 protrusion. However, Dr. Feldman did not discuss whether appellant had any disability resulting from her cervical condition; nor did he opine that any of appellant's current complaints were causally related to either the July 3, 1995 traumatic injury or the February 5, 1996 left shoulder claim.

In fact, Dr. Feldman stated on February 15, 1996 that although appellant continued to complain of discomfort in her right shoulder following surgery, "she is capable of returning to a more rigorous activity level allowing her to lift upwards of 10 pounds and limit overhead activities." On March 7, 1996 he stated that appellant was "doing well" but was not quite ready to return to full-work duties and suggested two more weeks of modified work.

On May 2, 1996 Dr. Feldman diagnosed cervical radiculopathy based on the C5-6 disc protrusion but stated that appellant could continue to perform her modified work-related activities. On June 27, 1996 he indicated that appellant remained symptomatic and should have a discectomy and fusion but was "capable of performing modified-work duties in the meantime." While Dr. Feldman opined on May 23, 1996 that appellant's right arm radiculopathy resulted

from the July 3, 1995 work injury, he provided no medical rationale for this conclusion and the condition of radiculopathy was not accepted by the Office as work related. Therefore, the Board finds that Dr. Feldman's reports are insufficient to detract from the probative weight of Dr. Baumgard's conclusion that appellant has no continuing disability from the accepted work injury.

Regarding appellant's left shoulder condition, Dr. Paul J. Papanek, Jr., Board-certified in family practice, initially diagnosed rotator cuff tendinitis on March 6, 1996, noting that appellant had left shoulder pain since early February. In an April 11, 1996 report, he found worsening tendinitis in the left shoulder related, in part, to the July 3, 1995 injury because the right shoulder injury had caused increased use of her left arm and shoulder. Dr. Papanek returned appellant to work on April 15, 1996 with restrictions against repetitive pushing/pulling and overhead lifting, and a 10-pound weight limit. Finally, Dr. Joseph P. Faustgen, an orthopedic surgeon to whom Dr. Papanek had referred appellant, reviewed appellant's August 12, 1996 MRI scan and concluded that it showed no evidence of a shoulder impingement.

While Dr. Feldman noted appellant's continuing complaints of pain in her left shoulder, he stated that her discomfort was not clinically significant and needed no treatment or restricted activities. He added that appellant had no residuals of the accepted work injury in either shoulder, based on the "full range of pain-free motion of both shoulders, with no tenderness, no atrophy, no impingement signs and both shoulders are normally stable." Based on his report, the Board finds that appellant had no work-related disability and is not entitled to wage-loss compensation from March 2, 1996 onward.⁷

⁷ The Board notes that appellant filed a claim for a schedule award on January 17, 1997, which has not been adjudicated by the Office.

The February 3, 1997 and October 25, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.

March 25, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member