

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEANNETTE A. PYLES and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Cleveland, Ohio

*Docket No. 97-1598; Submitted on the Record;
Issued March 9, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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 record 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 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 January 18, 1988, was accepted by the Office for myofascitis⁷ of the right arm and shoulder after appellant, a personnel assistant, slipped and fell on a wet floor while coming to work on January 8, 1988. Appellant returned to work but missed significant periods of time due to pain, and the Office subsequently accepted chronic myofascitis as work related.

Appellant stopped work in February 1990 and was terminated by the employing establishment on March 8, 1991 for being absent without official leave and unauthorized absence from her assigned duty. On October 21, 1991 the Office informed appellant that she would be paid compensation from February 1990 on the grounds that her attending physician, Dr. Larry H. Dashefsky, Board-certified in neurology, found her physically capable of part-time limited duty and the employing establishment had no light duty available.

The Office referred appellant to vocational rehabilitation and for a second opinion evaluation to Dr. Robert H. Anschuetz, a Board-certified orthopedic surgeon. On January 15, 1993 appellant successfully completed a six-week word processing course. Following an extended but fruitless job search, the Office again referred appellant to Dr. Anschuetz for evaluation.

On October 28, 1993 the Office issued a notice of proposed termination on the grounds that appellant had no continuing disability from her work-related injury. The Office noted that Dr. Anschuetz found appellant capable of working eight hours a day if she avoided repetitive tasks such as typing or filing. The Office added that during her computer training appellant exhibited little pain behavior and did not complain about any arm or shoulder discomfort.

On December 6, 1993 the Office terminated appellant's compensation, effective December 12, 1993, noting that, while she had disagreed with the Office's proposed action, she had provided no medical evidence showing that she was still disabled. Appellant requested an oral hearing, but the hearing representative reversed the termination of benefits on February 3,

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

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

⁷ Myofascitis is defined as inflammation of a muscle and its fascia. *DORLAND'S ILLUSTRATED Medical Dictionary*, (27th ed. 1988).

1995 and remanded the claim for the Office to determine whether appellant was capable of returning to her date-of-injury job.

On remand the Office requested opinions from Dr. Keith E. Byers, Board-certified in internal medicine, who initially treated appellant and Dr. Anschuetz. Based on their responses, the Office again terminated appellant's compensation, effective April 5, 1995. Appellant requested an oral hearing, which was held on March 11, 1996.

On May 3, 1996 the hearing representative affirmed the Office's termination order on the grounds that the medical evidence established that appellant had no continuing physical disability that would prevent her from performing the duties of her usual employment. Appellant requested reconsideration, which was denied on August 27, 1996 on the grounds that the evidence was insufficient to warrant modification of the May 3, 1996 decision.

The Board finds that the medical reports from Drs. Byers and Anschuetz are sufficient to establish that appellant is capable of performing the duties of her date-of-injury job and thus meet the Office's burden of proof in terminating appellant's compensation.

Dr. Byers, who treated appellant in 1988, first released her to work full time on November 25, 1991, the date of maximum medical improvement, with a lifting limit of 10 pounds and restrictions on simple grasping, fine manipulation, and above-the-shoulder reaching. On May 29, 1992 Dr. Byers completed a similar work restriction evaluation.

While he stated on February 27, 1990 that he suspected appellant would occasionally be unable to do her job due to flare-ups of shoulder pain, (medical spindle) and indicated in a May 31, 1991 report that she was disabled for the type of job requiring lifting, pulling or pushing with her right arm, he responded to the Office's March 1, 1995 letter unequivocally. Provided with a profile of appellant's duties as a personnel assistant and the fact that she completed a six-week training course that involved computer keyboarding without physical problems, Dr. Byers stated: "[Appellant] may return to work without restriction."

In his May 27, 1992 report, Dr. Anschuetz stated that appellant was not totally disabled but she should not be required to do repetitive tasks such as typing or filing with her right upper extremity. He suggested a work-hardening program and a gradual return to full-time work, starting with four hours a day. Dr. Anschuetz repeated this opinion in his September 29, 1993 report, stating that appellant should avoid repetitive hand movements of more than five minutes' duration and adding that it would be in her best interest to return to work as soon as possible.

In response to the Office's March 1, 1995 letter, Dr. Anschuetz stated that he had reviewed his previous examination of appellant and the duties of a personnel assistant, plus her successful toleration of the clerical training program. He opined that appellant was "fully capable" of carrying out the requirements of her job, noting that in 1993 he had indicated that she could progress to a regular work schedule as a personnel assistant. Dr. Anschuetz added that appellant might begin with four or six-hour workdays but should be able to return to work at this time.

Appellant argued on reconsideration that she was unable to work more than four hours a day and could not perform the repetitive typing required of her, but provided no factual evidence or medical opinion in support of her contentions. The position description involves the following duties: reviewing and screening registers of applicants, preparing and maintaining forms and records, answering inquiries and complaints, and assisting in the administration of personnel programs. Appellant's supervisor stated on April 25, 1992 that appellant was required to do minimal typing and filing, and answer the telephone on a continuing basis -- all heavy-duty typing was sent to the correspondence center and filing was done on a weekly basis. Thus, nothing in the record indicates that appellant's job required repetitive use of her right arm or physical activities outside the restrictions listed by Dr. Anschuetz.

In sum, while appellant may have experienced flare-ups of shoulder pain if she had returned to work, the medical evidence demonstrates that she had no continuing disability resulting from the 1988 accepted injury. Therefore, the Office properly terminated her compensation.

The August 27 and May 3, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
March 9, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member