

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SILVIA ALVARENGA and U.S. POSTAL SERVICE,  
POST OFFICE, San Francisco, Calif.

*Docket No. 97-2591; Submitted on the Record;  
Issued May 20, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

The Board has duly reviewed the case on appeal and finds that the Office did not meet its burden of proof due to an unresolved conflict in medical opinion.

Appellant filed a claim on January 17, 1994 alleging that she injured her right arm throwing a box in the performance of duty. The Office accepted appellant's claim for right rotator cuff tendinitis on April 14, 1994. Appellant's temporary appointment as a transitional employee expired on September 11, 1994 and she filed a series of claims for compensation from September 12 to December 9, 1994. By decision dated July 10, 1996, the Office denied appellant's claim for compensation and found that the weight of the medical evidence established that she had no residuals causally related to her accepted employment injury. Appellant requested an oral hearing and by decision dated May 8 and finalized May 14, 1997, the hearing representative affirmed the Office's July 10, 1996 decision.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>3</sup> To

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<sup>1</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>2</sup> *Id.*

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>4</sup>

In support of her claim, appellant submitted a report dated June 8, 1994 from Dr. N. Colyvas, an orthopedic surgeon, who diagnosed right subcrominal bursitis and rotator cuff tear. She indicated that appellant was totally disabled to August 1, 1994. On August 8, 1994 Dr. Lisa U. Pascual, a physician Board-certified in physical medicine and rehabilitation, found that appellant was partially disabled and diagnosed myofascial pain type with history of shoulder impingement syndrome.

Appellant submitted a series of reports from Dr. Kurt Jensen, a Board-certified orthopedic surgeon of professorial rank, diagnosing right shoulder impingement syndrome. Dr. Jensen stated that appellant's injury was difficult to diagnose and was the result of repetitive overhead use throwing small packages. He performed surgery on November 7, 1995 and decreased bony osteophytes on the anterolateral acromion and reattached the anterior deltoid. Dr. Jensen stated that it was difficult to differentiate appellant's condition of right shoulder impingement syndrome from tendinitis without surgery.

The Office referred appellant for a second opinion evaluation with Dr. Earl V. Fogelberg, a Board-certified orthopedic surgeon, on May 5, 1994. In a report dated June 17, 1994, Dr. Fogelberg noted appellant's history of injury and medical history and diagnosed possible right shoulder problem. He stated that appellant's physical examination was characterized by theatrical audible responses and that all right shoulder motion was resisted by appellant. Dr. Fogelberg stated that he could not establish a diagnosis or render an opinion on disability due to appellant's obvious attempts to thwart any assessment of her problem. In a supplemental report dated August 18, 1994, Dr. Fogelberg stated that appellant's right arm was not atrophied and diagnosed unphysiological, inconsistent pain response obfuscating any possible underlying orthopedic diagnosis.

The Office then referred appellant for a second opinion evaluation with Dr. James A. Turner, a Board-certified orthopedic surgeon. In a report dated September 20, 1994, Dr. Turner noted appellant's history of injury, and performed a physical examination. He found that appellant had no truly pathologic condition and that she could return to full duty.

The Board finds that there is an unresolved conflict of the medical opinion evidence. Appellant's physician, Dr. Jensen, diagnosed right shoulder impingement syndrome and performed surgery. He provided an opinion that appellant's condition was due to her accepted employment injury and that the condition was difficult to diagnose. The Office referral physicians, Drs. Fogelberg and Turner, found that appellant was not disabled and did not have any orthopedic condition causally related to her accepted employment injury. As there is an unresolved conflict of medical evidence regarding whether appellant's current condition and disability is causally related to her accepted employment injury, the Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

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<sup>4</sup> *Id.*

The decision of the Office of Workers' Compensation Programs dated May 8, 1997 and finalized May 14, 1997 is hereby reversed.

Dated, Washington, D.C.  
May 20, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member