

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TEDDY G. DOBLER and U.S. POSTAL SERVICE,
POST OFFICE, Spokane, WA

*Docket No. 99-311; Submitted on the Record;
Issued November 18, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant's accepted condition of cervical strain resolved by December 7, 1994; and (2) whether the Office properly terminated appellant's medical benefits.

On May 9, 1994 appellant, then a 40-year-old letter carrier, filed a claim for a cervical condition. In an accompanying statement, appellant indicated that on May 5, 1994 he had pain in his neck when he awoke which became worse as he worked, with numbness extending into his right arm. He described the repetitive motions involved in his job, including casing mail and carrying a mailbag on his shoulder. He stopped working on May 9, 1994, returned subsequently to light-duty work and returned to his regular duties on July 19, 1994. Appellant indicated, however, that he had a return of back and neck pain and numbness in the right arm which led to a return to light duty one week later. The employing establishment subsequently terminated appellant's employment because it no longer had light-duty positions available. In a February 7, 1995 letter, the Office informed appellant that it had accepted his claim for a cervical strain which resolved by December 7, 1994. In an October 5, 1995 decision, the Office terminated appellant's medical benefits effective that date on the grounds that the weight of the medical evidence established that the residuals of the employment injury had ceased by that time. Appellant requested a hearing before an Office hearing representative. In a February 24, 1997 decision, an Office hearing representative found that there existed a conflict in the medical evidence and remanded the case for referral of appellant to an appropriate impartial specialist. In a December 4, 1997 letter decision, the Office found that appellant had recovered from the employment injury and therefore was no longer disabled and no longer entitled to compensation or medical benefits. Appellant again requested a hearing before an Office hearing representative. In a July 2, 1998 decision, a second Office hearing representative affirmed the Office's December 4, 1997 decision and found he was not entitled to compensation after December 7, 1994.

The Board finds that the Office properly found that appellant was not entitled to further compensation or medical benefits.

Once the Office accepts a claim it has the burden of justifying modification or termination of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.¹ The fact that the Office accepted appellant's claim for a specified period of disability does not shift the burden of proof to appellant. The burden is on the Office with respect to the period subsequent to the date when compensation is terminated or modified.²

In a July 25, 1994 report, Dr. Jeffery A. Trail, a Board-certified family practitioner, stated that appellant probably had a herniated cervical disc which was undoubtedly related to his employment. In an August 16, 1994 report, Dr. Xavier J. Zielinski, a Board-certified radiologist, reported that a magnetic resonance imaging (MRI) scan showed mild spinal stenosis, C4-5 and C5-6 with right lateral recess stenosis at the C4-5.

The Office referred appellant to Dr. Harvey J. DeWitt, a Board-certified orthopedic surgeon, and Dr. William R. Bozarth, a neurologist, for an examination and second opinion. In a December 7, 1994 report, Dr. DeWitt and Dr. Bozarth diagnosed cervical strain and sprain without a specific injury and degenerative cervical spine disease, which they stated preexisted the May 5, 1994 employment and was not affected by it. The physicians ruled out a radicular symptomatology of the unrelated right C6 radicular impairment, related to incident of May 5, 1994 on a more probable than not basis. They stated that appellant's cervical radiculopathy and degenerative cervical spine disease were due to the natural occurrences of aging, unrelated to his employment. They concluded that appellant was not disabled from his regular employment. In a December 30, 1994 addendum, Dr. DeWitt and Dr. Bozarth reported that an electromyogram (EMG) and nerve conduction study of appellant's right arm were within normal limits. They indicated that x-rays showed mild posterior hypertrophic changes with no severe osteophytic projection into the neural foramina. The physicians concluded that appellant could return to work without restrictions. Based on the report of these physicians, the Office found that any employment-related condition had ceased by December 7, 1994 and subsequently terminated his medical benefits.

In a February 13, 1995 report, Dr. Trail indicated that he had reviewed the report of Dr. DeWitt and Dr. Bozarth. He stated that he disagreed with their opinion on the cause of appellant's condition. Dr. Trail related appellant's condition to the repetitive motion of his neck in performing his job. In a March 30, 1995 report, Dr. Trail stated that appellant had preexisting cervical arthritis with some stenosis. He indicated that this condition had been exacerbated by his employment. He restated his opinion in subsequent reports. In an April 10, 1996 report, Dr. George W. Bagby, a Board-certified orthopedic surgeon, diagnosed degenerative changes of

¹ *Edwin Lester*, 34 ECAB 1807 (1983).

² *See George J. Hoffman*, 41 ECAB 135 (1989); *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

the cervical spine with evidence of C6 nerve root encroachment and objective evidence of atrophy, weakness and asymmetrical reflexes. He concluded that appellant's condition did not stem from a single incident but from appellant's long-term work as a letter carrier. The first Office hearing representative found that these reports caused a conflict in the medical evidence and remanded the case for referral of appellant to an appropriate impartial medical specialist for an examination.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Warren J. Adams, a Board-certified orthopedic surgeon, to resolve the conflict in the medical evidence. In a June 17, 1997 report, Dr. Adams stated that appellant's current condition was neck pain by history, right arm paresthesias, numbness of the right thumb, long and index fingers and degenerative changes on x-ray. He concluded that these conditions were not related to the condition of appellant's employment. He noted that appellant's symptoms began without a specific incident and were not causally related to his employment on a chronic basis. Dr. Adams stated that there were no studies that identified progressive cervical degenerative changes to appellant's work activities and that he did not concur that appellant had a job related injury to his neck. He stated that appellant had no work-related condition in his neck and right arm. Dr. Adams concluded that appellant was not disabled from his employment. In a supplemental October 31, 1997 report, Dr. Adams stated that the report of Dr. DeWitt and Dr. Bozarth showed no objective abnormalities. He stated appellant had subjective complaints with no objective findings on examination or on the MRI scan or EMG that would allow for a specific diagnosis. Dr. Adams indicated appellant had no objective findings of nerve root problems. He indicated that appellant's degenerative changes of the cervical spine were age related and not related to his employment.

In situations when there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.³ In this case, Dr. Adams gave a well-reasoned report indicating that appellant had no employment-related conditions remaining and supported his conclusion with medical rationale. His report, therefore, is entitled to special weight and the circumstances of this case represents the weight of the medical evidence in establishing that appellant no longer had any condition causally related to his employment. This report was sufficient for the Office to meet its burden of proof. In pointing out that appellant had no objective findings at the time of his examination by Dr. Bozarth and Dr. DeWitt, Dr. Adams established that any work-related condition had ceased by that time. This conclusion supports the Office's decision to find that appellant's employment-related condition ceased by December 7, 1994.

The Board finds, however, that the April 29, 1998 report of Dr. Judith Heusner, a Board-certified specialist in occupational medicine, creates a new conflict in the medical evidence. She noted that cervical and thoracic MRI scans of August 16, 1994 showed spinal stenosis in the cervical spine at C4-5 and C5-6 with right lateral recess stenosis, mild disc bulging with associated osteophyte spurring which decreased the diameter of the spinal canal and mild

³ *James P. Roberts*, 31 ECAB 1010 (1980)

effacement of the cord at the right lateral recess at the C4-5 level. Dr. Heusner diagnosed degenerative disease of the cervical spine, aggravated and accelerated by over 10 years of repetitive flexion and extension of the neck while performing the duties of a letter carrier. She noted that, at the time of the 1994 MRI scan, appellant's thoracic regions of the spine was normal. Dr. Heusner concluded, therefore, that appellant had no predisposition or genetic factor responsible for accelerated degenerative disease in the spine. She further concluded that the degenerative changes to the cervical spine are secondary to repetitive use, noting that appellant, in his job, cased his route and delivered 2,500 to 4,000 pieces of mail a day. Dr. Heusner stated that appellant had no cervical trauma or other activities which may have contributed to the degenerative process. She indicated that the degenerative cervical spine disease was accelerated and precipitated by his repetitive neck motion. Dr. Heusner commented that since appellant continued to have symptoms as well as objective evidence of the spine pathology, his condition was permanently aggravated by his duties as a letter carrier. She stated that with the objective evidence of degenerative disc disease in appellant's cervical spine and the sparring of the thoracic spine, his history of 13 years of letter carrying was the proximate cause of the degenerative disease. Dr. Heusner indicated that appellant could not return to any work requiring repetitive neck flexion and extension. She, therefore, presented objective medical evidence and rationale in support of her conclusion that appellant's repetitive neck motion was causally related to his cervical degenerative disc disease. The Board finds that Dr. Heusner's report directly contradicts Dr. Adams' conclusion that the degenerative changes in appellant's cervical spine were age related and therefore not causally related to his federal employment activities. The case will, therefore be remanded for referral of appellant to an appropriate impartial medical specialist on whether appellant's cervical condition was caused or aggravated by the repetitive motion in his job as a letter carrier. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs, dated July 2, 1998, is hereby affirmed insofar as it finds that the Office properly found that appellant's accepted employment-related condition of cervical strain had resolved by December 7, 1994 and terminated his medical benefits effective October 5, 1995. The decision is set aside insofar as it does not find a new conflict in the medical evidence. The case is remanded as set forth in this decision to resolve that conflict in the medical evidence.

Dated, Washington, D.C.
November 18, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member