

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN J. RUTH and U.S. POSTAL SERVICE,
POST OFFICE, Newcastle, OK

*Docket No. 99-283; Submitted on the Record;
Issued October 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's compensation and medical benefits effective March 28, 1998.

On October 21, 1996 appellant, then a 44-year-old postmaster, filed a claim for an acute episode of multiple sclerosis. She stated that her physician had informed her that acute episodes of multiple sclerosis could be triggered or aggravated by exhaustion or stress. She related that she had been suffering from severe exhaustion and stress for several weeks due to a heavy work load combined with understaffing in her office due to the extended illness of another employee. The Office accepted appellant's claim for aggravation of multiple sclerosis. Appellant returned to work part time on November 3, 1996 and to full-time work on December 26, 1996. She used sick leave or annual leave intermittently thereafter. On March 28, 1998 appellant stopped work and filed a claim for compensation for the period beginning that day. In a July 24, 1998 decision, the Office denied appellant's compensation and medical benefits effective March 28, 1998 on the grounds that the work-related temporary aggravation of her multiple sclerosis had ceased. The Office authorized buy back of leave up to March 25, 1998.

The Board finds that the Office properly denied appellant's compensation and medical benefits effective March 28, 1998.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.¹

In a January 3, 1997 report, Dr. Paul D. Rothwell, a Board-certified family practitioner, indicated that appellant had multiple sclerosis while she was hospitalized from October 19

¹ Jason C. Armstrong, 40 ECAB 907 (1989).

through 22, 1996. Dr. Rothwell noted that appellant's work load had increased prior to the onset of her illness and staff support had diminished. He concluded that the acute episode of appellant's multiple sclerosis had been precipitated by excess fatigue and exhaustion related to appellant's long work hours and similar factors.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Marcelo J. Puiggari, a Board-certified neurologist, for an examination and second opinion. In an October 20, 1997 report, Dr. Puiggari stated that on a simple neurologic examination appellant had no obvious signs of neurological deficit. He concurred with the diagnosis of multiple sclerosis based on the medical evidence and agreed that appellant had a period of exacerbation beginning in October 1996 that probably ended when she resumed her regular hours of employment in January 1997. Dr. Puiggari commented that the cause of the exacerbation was unknown since the cause of multiple sclerosis was unknown. He indicated that it was possible that a period of excessive stress or prolonged physical work might precipitate an aggravation. Dr. Puiggari stated, however, that he would consider appellant's current symptoms of tiredness, fatigue and intermittent numbness to be manifestations of her underlying multiple sclerosis.

In an October 21, 1997 report, Dr. Rothwell stated that appellant had never recovered from the October 1996 exacerbation of her multiple sclerosis to her prior state or baseline condition. He indicated that appellant still suffered from intermittent numbness, chronic fatigue, chronic leg cramps and blurring of vision. Dr. Rothwell concluded that all these symptoms, except the blurring of vision, were related to the October 1996 exacerbation. He stated that the exacerbation was ongoing due to the persistence of symptomatology. Dr. Rothwell commented that the continuing symptomatology indicated that at least part of appellant's impairment was residual to the exacerbation as opposed to a natural progression of the underlying disease had the exacerbation not occurred. In a March 12, 1998 report, he stated that appellant had been working four days a week but was currently unable to fulfill the duties of her position due to the deterioration of her condition. Dr. Rothwell, therefore, recommended that appellant take an extended period of leave to interrupt the cycle of symptoms.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Donald Landstrom for examination and resolution of the conflict in the medical evidence between Drs. Rothwell and Puiggari. In a May 15, 1998 report, Dr. Landstrom, a Board-certified neurologist, indicated that the diagnosis of multiple sclerosis was reasonably secure. He stated that the etiology of multiple sclerosis was unknown. Dr. Landstrom indicated that he was unaware of any evidence that work caused multiple sclerosis and commented that there was no convincing evidence that the appearance of symptoms of her multiple sclerosis in October 1996 was related to her work as a postmaster. He reported that appellant's neurologic examination showed no objective evidence of current neurologic deficit. Dr. Landstrom stated that appellant's multiple sclerosis returned to the baseline of pathology to be expected for normal progression of the disease shortly after her hospitalization in October 1996. He indicated that he did not feel there was any objective evidence to establish that appellant's multiple sclerosis was currently being aggravated by any work that she had done. Dr. Landstrom further indicated that he did not feel there had been any permanent aggravation of appellant's multiple sclerosis by her work in the past since no objective deficits were seen upon neurologic examination. He concluded that appellant would be capable of performing her duties as a postmaster with the

provision that fatigue can be an accompaniment of multiple sclerosis, so she should be allowed periods of rest if needed.

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.² In this case, Dr. Landstrom presented an accurate history of appellant's condition and provided considerable rationale in support of his opinion that any employment-related exacerbation of appellant's condition had ceased at some point shortly after her hospitalization in October 1996. Under the circumstances of this case Dr. Landstrom's report constitutes the weight of the medical evidence. His report shows that appellant had an employment-related aggravation of an underlying condition. Appellant is entitled to compensation for any period of disability due to an employment aggravation of an underlying condition. However, she is not entitled to compensation for any period of disability which is solely to the underlying, nonemployment-related condition.³ Dr. Landstrom indicated that appellant's current condition was due to the natural progression of her multiple sclerosis and not to any effect of her employment. The Office, therefore, had sufficient evidence to terminate appellant's compensation and medical benefits effective March 28, 1998 and to deny any claims for compensation after that period.

The decision of the Office of Workers' Compensation Programs, dated July 24, 1998, is hereby affirmed.

Dated, Washington, D.C.
October 19, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

² *James P. Roberts*, 31 ECAB 1010 (1980).

³ *James L. Hearn*, 29 ECAB 278 (1978).