

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THERESA COPPA and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Long Beach, CA

*Docket No. 98-636; Submitted on the Record;
Issued September 10, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 2, 1996.

The Office accepted that appellant sustained a lumbosacral strain on October 25, 1994 as alleged. Appellant received continuation of pay from November 11 to December 21, 1994, after which, the Office began paying her compensation for temporary total disability. Such compensation continued until February 2, 1996. By decision of that date, the Office terminated appellant's compensation on the basis that she had no continuing disability or residuals as a result of her October 25, 1994 employment injury.

By letter dated May 14, 1996, appellant requested reconsideration. By decision dated June 19, 1996, the Office found that the February 2, 1996 decision was based on a correct assessment of the medical evidence, but did not provide appellant with a pretermination notice regarding her medical benefits. The Office provided such a notice on June 19, 1996 and by decision dated July 23, 1996, found that the weight of the medical evidence established that appellant had "no ongoing objective medical condition or residual causally related to her October 25, 1994 work injury." By letter dated August 5, 1996, appellant requested review of the written record. By decision dated December 12, 1996, an Office hearing representative found that the Office met its burden of proof to terminate appellant's compensation effective February 2, 1996.

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

The Board finds that the Office did not meet its burden of proof, as there is an unresolved conflict of medical opinion in this case.

Appellant's attending physician, Dr. Allan I. Larner, has consistently maintained since March 16, 1995 that appellant is totally disabled due to her employment-related lumbosacral condition. In a report dated April 26, 1995, Dr. Larner stated, "The back pain is based on a mechanical disorder that occurred during her work status and it is felt that this should be adjudicated as a Workers' Compensation injury and her need for being off work is valid." In a report dated August 5, 1996, Dr. Jacob E. Tauber, another attending physician for appellant, stated:

"In actuality, it [appellant's spinal stenosis] has been symptomatic and her condition has suffered a permanent impairment as a result of her work. The degree of the patient's pain varies with the activities that she attempts to carry out. However, at the present time even with essentially no activity, she is significantly symptomatic.... It should be noted that a significant lumbosacral strain superimposed upon spinal stenosis will cause residual symptoms, this is indisputable.

"In my opinion and with a degree of medical certainty, I can state the patient has been disabled as a result of her work-related lumbosacral strain from the time that she left work and that she remains disabled as a result through present."

The physician to whom the Office referred appellant for a second opinion, Dr. James T. London, concluded in a November 28, 1995 report:

"In my opinion, the patient's subjective complaints are greater than would be expected for the pathologic findings on physical examination and on the MRI [magnetic resonance imaging] scan of February 4, 1995. In my opinion, her subjective symptoms are excessive. At the time of today's examination, I am unable to find any objective orthopedic pathologic finding on physical examination that would explain her subjective complaints. The MRI scan findings, in my opinion, would not cause a level of symptomatology or alleged functional and vocational impairment that she is currently noting.

"In my opinion, she can perform her usual and customary work. In my opinion, the injury of October 25 1994 was a lumbar strain from which she recovered with no residuals. No additional medical treatment is indicated. No work restrictions are indicated. In my opinion, a two-week period of temporary total disability after the October 25, 1994 onset of pain was reasonable."

¹ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

The opinions of appellant's attending physicians conflicts with that of the Office's referral physician on the questions of whether appellant continues to be disabled and whether she continues to have any condition causally related to her October 25, 1994 employment injury. In light of this conflict of medical opinion, the Office has not met its burden of proof to terminate appellant's compensation.²

The decision of the Office of Workers' Compensation Programs dated December 12, 1996 is reversed.³

Dated, Washington, D.C.
September 10, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

² *Gail D. Painton*, 41 ECAB 492 (1990) (The Board found that the Office improperly terminated compensation where there was a conflict of medical opinion.)

³ The Board notes that the Office did not provide appellant with a notice of proposed termination of compensation for disability, as required by Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6 (July 1993). However, in light of the disposition of this case on the present appeal, this error is rendered harmless.