

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KELLY JO PERRY and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Merrifield, VA

*Docket No. 98-1506; Oral Argument Held May 12, 1999;
Issued September 22, 1999*

Appearances: *Kelly Jo Perry, pro se; Sheldon G. Turley, Jr., Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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.

On August 14, 1995 appellant, then a 30-year-old mailhandler, filed a notice of traumatic injury, claiming that she hurt her back while loading trays of mail. The Office accepted the claim for a low back strain, based on the reports of Dr. Fredric L. Salter, a Board-certified orthopedic surgeon. Appellant returned to full duty on January 2, 1996.

On October 28, 1996 appellant filed a second notice of traumatic injury, claiming that she hurt her lower back and right thigh when she was hit by a full hamper of mail being transported at work. The Office accepted this claim for an acute lumbar strain and appellant stopped work.¹

On April 4, 1997 the Office issued a notice of proposed termination of disability, based on the second opinion evaluation of Dr. Louis E. Levitt, a Board-certified orthopedic surgeon. Appellant responded to the notice on April 21, 1997, stating that Dr. Levitt did not notice her pain and disputing several of his clinical findings.

On May 7, 1997 the Office terminated appellant's compensation on the grounds that the medical evidence established that she had no continuing disability resulting from the accepted back injuries. Appellant requested an oral hearing, which was held on November 24, 1997. On February 3, 1998 the hearing representative affirmed the termination of appellant's compensation.

¹ The Office doubled the case files under the number, A25-472944.

The Board finds that the Office met its burden of proof in terminating appellant's compensation on the grounds that she had no continuing disability resulting from the accepted work injuries.

Under the Federal Employees' Compensation Act,² once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.³ 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.⁴

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.⁵ The Office burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

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.⁷

In this case, the Office based its termination of disability benefits on the conclusions of Dr. Levitt, who stated on March 11, 1997 that, despite her complaints of pain, appellant's physical examination was "surprisingly normal." She exhibited behavior while being examined that suggested exaggeration of her symptoms. However, appellant had no active musculoskeletal disease related to either work trauma and had recovered fully.

Based on her normal examination and no measurable or detectable pathology, Dr. Levitt concluded that further rehabilitation, beyond home exercises, was not justified and that appellant could return to work immediately as a mailhandler. Inasmuch as Dr. Levitt provided a detailed history of appellant's injuries and medical treatment, thoroughly examined appellant, reviewed the objective testing and explained his conclusion that appellant's work injuries had resolved

² 5 U.S.C. §§ 8101-8193.

³ *William Kandel*, 43 ECAB 1011, 1020 (1992).

⁴ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁵ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

⁶ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

⁷ *Connie Johns*, 44 ECAB 560, 570 (1993).

with no permanent impairment, the Board finds that his opinion represents the weight of the medical opinion evidence.⁸

While Dr. Rida N. Azer, a Board-certified orthopedic surgeon and appellant's treating physician, stated in his April 16, 1997 report, that appellant's cervical and lumbar disc syndrome was caused by the 1996 work injury, that an electromyogram and nerve conduction studies on March 14, 1997 showed delayed sensory latency across the wrist,⁹ and that appellant did have objective findings of marked tenderness and limited range of motion, he provided no rationale for finding appellant to be totally disabled for work. Dr. Azer did not explain how appellant's accepted low back strains would cause or contribute to symptoms involving her wrist.

Further, Dr. Azer reported on January 8, 1997 that appellant's magnetic resonance imaging (MRI) scan was normal. In addition, he stated in several 1997 reports that, neurologically, appellant remained "in status quo" and discharged her from further treatment in October 1997, noting that she would try performing her regular duties at work.

Dr. Azer reported no clinical findings to support his conclusion that appellant remained totally disabled for work in April and May 1997 and in fact released appellant to limited duty in early May and to full duty in November. Therefore, the Board finds that his reports are insufficient to detract from the probative weight of Dr. Levitt's conclusion that appellant has no continuing disability from the accepted work injuries.

While appellant may experience pain and discomfort in performing her regular duties as a mailhandler, such symptoms are not indicative of disability for work.¹⁰ Appellant's belief that she still has not healed from the effects of the work injuries is similarly insufficient to establish any incapacity for work.¹¹

⁸ See *Cleopatra McDougal-Saddler*, 47 ECAB 480, 488 (1996) (finding that the reports of the Office referral physician established that appellant's degenerative pathology was not work related and were sufficient to meet the Office's burden of proof in terminating disability compensation).

⁹ Appellant's diagnosed carpal tunnel syndrome is not an accepted work-related condition.

¹⁰ See *John L. Clark*, 32 ECAB 1618, 1624 (1981) (finding that a medical opinion based on a claimant's complaint that he hurt too much to work, with no objective signs of disability being shown, was insufficient to establish a basis for compensation).

¹¹ See *Kathryn Haggerty*, 45 ECAB 383, 389 (1994) (finding that neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that his condition was caused by his employment is sufficient to establish a causal relationship).

The February 3, 1998 and May 7, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
September 22, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member