

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUBY PRICHARD and DEPARTMENT OF VETERANS AFFAIRS,
JOHN J. PERSING MEDICAL CENTER, Poplar Bluff, MO

*Docket No. 99-719; Submitted on the Record;
Issued December 13, 2000*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective November 12, 1998.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits.

This case has previously been before the Board on appeal. In its August 18, 1998 decision, the Board found that appellant had sustained a temporary aggravation of her cervical arthrosis ending in 1991 and no permanent shoulder injury due to her July 19, 1990 employment injury based on the report of Dr. Allen Adams, a Board-certified orthopedic surgeon, and impartial medical examiner.¹ The facts and circumstances of the prior decision are adopted herein by reference.

On August 21, 1998 appellant requested reconsideration of the Office's decision. The Office reissued a notice of proposed termination of compensation on October 9, 1998. The Office had previously proposed to terminate appellant's compensation benefits, in a letter dated March 8, 1996, but no action was taken pending appellant's appeal. By decision dated November 9, 1998, the Office reduced appellant's compensation benefits based on her actual earnings in a 30 hour a week position starting May 4, 1998. By decision dated November 12, 1998, the Office terminated appellant's compensation benefits. By decision dated November 16, 1998, the Office denied modification of the August 21, 1998 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.²

¹ Docket No. 96-1058.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

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.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To 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.⁵

In this case, appellant's attending physician, Dr. Matthew J. Riffle, a Board-certified internist, opined that appellant had sustained a rotator cuff tear and herniated cervical disc due to her July 19, 1990 employment injury. As noted in the Board's prior decision, the Office referred appellant for a second opinion evaluation which resulted in a conflict of medical evidence and a referral to Dr. Adams for an impartial examination to resolve the issue of whether appellant had any continuing employment-related condition due to her accepted employment injury.

In his December 12, 1995 report, Dr. Adams found that appellant had no objective symptoms in her wrist, that she had right shoulder tendinitis, which he opined was not causal related to her employment and that the aggravation of her cervical arthrosis ceased. Dr. Adams found full range of motion of the lumbar spine and reviewed diagnostic test results. He further found that there was "no objective basis ... that there has been no causal relationship from an objective standpoint, between the incident of July 19, 1990 and her present symptoms." Dr. Adams stated that he examined appellant's shoulder, neck and lumbar spine and that there was no objective basis for pursuing any further medical treatment at that time.

Following Dr. Adams' report, appellant submitted additional evidence consisting of a series of reports from Dr. Gordon W. Eller, a Board-certified orthopedic surgeon. He performed an arthroscopy on appellant's shoulder on August 8, 1996. Dr. Eller found no rotator cuff tear. He completed treatment notes regarding appellant's recovery from shoulder surgery and ongoing complaints of back pain. On December 19, 1996 he noted appellant's July 19, 1990 employment injury and stated that she still suffered from low back pain because of the injury. Dr. Eller recommended physical therapy.

Although Dr. Eller opined that appellant still experienced back pain as a result of this injury, he did not provide sufficient medical rationale explaining how appellant's 1990 employment injury resulted in continued disability for work and required further medical treatment.

The Board finds that the weight of the medical opinion evidence rests with the report from Dr. Adams, the impartial medical examiner, on the issue of continuing employment-related conditions. Dr. Adams found that appellant's shoulder condition was not related to her accepted employment injury, that the aggravation of her cervical arthrosis had ceased and that she had no objective signs of neck or low back conditions. Dr. Adams' report is entitled to special weight in

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

finding appellant has no continued employment-related conditions which could result in disability for work.⁶ The report of Dr. Eller is not well rationalized and not sufficient to create a conflict with Dr. Adams.

The November 12, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 13, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

⁶ Due to the disposition of this issue, it is not necessary for the Board to address the Office's November 16, 1998 decision, denying that appellant has an employment-related shoulder condition. The Board further notes that appellant did not request review of the November 9, 1998 wage-earning capacity decision.