

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUI T. HUYNH and U.S. POSTAL SERVICE,
POST OFFICE, Lakewood, CA

*Docket No. 97-1509; Submitted on the Record;
Issued January 14, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of October 17, 1993.

On August 14, 1984 appellant, a 45-year-old mail clerk, injured her back while lifting sacks of mail. Appellant filed a claim for benefits on August 20, 1984, which the Office accepted for lumbar and cervical strain and lumbosacral radiculitis. The Office placed appellant on the periodic rolls as of January 1, 1988 and paid appellant temporary total disability compensation.

In order to determine whether appellant currently suffered from residuals of her accepted employment conditions, the Office referred appellant for a second opinion examination with Dr. Ronald D. Levin, Board-certified in physical medicine and rehabilitation. In a report dated May 13, 1993, Dr. Levin stated that appellant sustained a fairly mild soft tissue injury related to the August 14, 1984 work injury that warranted no specific work restrictions and opined that she should be able to perform her usual and customary occupation.

By decision dated October 15, 1993, the Office terminated appellant's compensation effective October 17, 1993. The Office found that the weight of the medical evidence, as represented by Dr. Levin's referral opinion, indicated that she had no continuing disability causally related to her August 14, 1984 work injury.

By letter dated October 26, 1993, appellant requested an oral hearing, which was held on June 27, 1994. In support of her request, appellant submitted the July 5, 1994 report of Dr. Bert W. Schweitz, Board-certified in physical medicine and rehabilitation and her treating physician. Dr. Schweitz opined that appellant had objective factors of impairment, including a positive straight leg raising test on the left, diminished and painful range of motion of the low back and positive magnetic resonance imaging scan of the lumbar spine. He diagnosed lumbar disc disease and advised that appellant had a permanent disability requiring a prophylactic work

restriction precluding her from heavy work. Dr. Schweitz concluded that, as a result of the disability sustained while working for the employing establishment, appellant was unable to return to her previous job as a postal worker, which involved lifting up to 70 pounds.

By decision dated September 15, 1994, an Office hearing representative vacated the prior termination decision, finding that Dr. Schweitz's opinion created a conflict in the medical evidence which required resolution by a referee medical examiner. The hearing representative remanded the case to the district office with instructions to have appellant examined by an impartial medical examiner, in order to determine whether a causal relationship existed between appellant's current condition and the employment injury.

The Office scheduled appellant for an impartial medical examination on December 14, 1994 with Dr. Denis I. Inaba, a Board-certified orthopedic surgeon, who opined in a report dated November 21, 1994 that appellant's continued disability was not supported by objective findings and was therefore not causally related to the August 14, 1994 employment injury.

By decision dated December 28, 1994, the Office found that Dr. Inaba's opinion represented the weight of the medical evidence and determined that her compensation was properly terminated on October 17, 1993.

By letter dated January 24, 1995, appellant requested a review of the written record.

By decision dated December 8, 1995, the Branch of Hearings and Review set aside the December 28, 1994 decision which relied on Dr. Inaba's opinion, finding that the selection of Dr. Inaba as an impartial medical examiner was improper in light of his professional relationship with a physician who had previously examined appellant. The case was remanded to the Office for referral to a second properly designated impartial medical examiner.

Appellant was scheduled for a referee examination on February 12, 1996 with Dr. Harold Katzman, a Board-certified orthopedic surgeon. In a report issued the date of the examination, Dr. Katzman stated that appellant had no objective factors of disability and no current objective findings related to the accepted injuries of cervical and lumbar strain and opined that she was able to return to work as a distribution clerk with the employing establishment. He stated that if appellant did experience a temporary aggravation of an underlying degenerative condition, it should have ceased by October 15, 1993, noting that her subjective complaints highly outweighed her objective findings. He opined that appellant was no longer disabled and did not require future medical care because she should have completely recovered from her August 14, 1984 employment injury and that she was able to work at the employing establishment without restrictions.

By decision dated March 21, 1996, the Office found that appellant did not suffer from any work-related condition or disability after October 17, 1993 and that she therefore was no longer entitled to compensation as of that date. The Office found that the weight of the medical evidence, as represented by Dr. Katzman's referee opinion, established that her employment-related disability had resolved, that she no longer had residuals from the August 14, 1984 work injury and that she could return to full-time work as of October 17, 1993 without restrictions.

By letter dated March 30, 1996, appellant requested an oral hearing, which was held on November 21, 1996. In support of her claim, appellant submitted reports dated November 1 and 8, 1994 from Dr. Fred F. Hafezi, a Board-certified orthopedic surgeon. In his November 1, 1994 report, Dr. Hafezi opined that appellant should be restricted from hyperextension, reaching overhead, repetitive squatting, prolonged or repetitive stooping, lifting or carrying over 10 pounds, heavy pulling and pushing and any back motions required in sorting mail at work. In his November 8, 1994 report, Dr. Hafezi reiterated appellant's restrictions and stated that appellant had a herniated disc which required a laminectomy. He concluded, based on the above findings, that appellant would have difficulty carrying on the physical demands of her job as a mail clerk and recommended a disability retirement. Appellant also submitted several reports which were either previously considered by the Office or issued prior to the occurrence of her employment injury.

By decision dated January 27, 1997, an Office hearing representative found that the evidence appellant submitted was not sufficient to warrant modification of the Office's March 21, 1996 decision denying compensation after October 17, 1993.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits as of October 17, 1993.

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.¹ 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.²

In the present case, the Office based its decision to terminate appellant's compensation on the February 12, 1996 impartial medical examination report from Dr. Katzman. In his referee medical report, Dr. Katzman rejected any causal relationship between factors of appellant's employment and her claimed current condition. Dr. Katzman reported that she had no restrictions from an orthopedic standpoint and found that appellant was fit to return to full duty. The Office relied on Dr. Katzman's opinion in its March 21, 1996 termination decision, finding that all residuals of the previously accepted condition had ceased and that appellant currently suffered from no condition or disability causally related to her August 14, 1984 accepted employment conditions. Although appellant subsequently submitted Dr. Hafezi's November 1 and 8, 1994 reports, these reports provide a diagnosis of herniated disc, which is not an employment-related condition. Dr. Hafezi did not provide a rationalized medical opinion causally relating his 1994 diagnosis to appellant's 1984 employment injury. Dr. Hafezi's reports do not constitute medical evidence sufficient to meet appellant's burden to demonstrate a causal relationship between factors of her federal employment and her current claimed condition or disability.

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

The Board finds that Dr. Katzman's referee opinion negating a causal relationship between appellant's claimed current condition and disability and her August 14, 1984 employment injury and that she no longer had any residuals from the employment injury that constitute the weight of the medical evidence of record.³

The decision of the Office of Workers' Compensation Programs dated January 27, 1997 is hereby affirmed.

Dated, Washington, D.C.
January 14, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

³ *Gary R. Seiber*, 46 ECAB 215 (1994).