

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARK J. TUCKER and U.S. POSTAL SERVICE,
POST OFFICE, Portsmouth, NH

*Docket No. 98-656; Submitted on the Record;
Issued March 2, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation and medical benefits effective February 27, 1996.

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

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.¹

On June 7, 1994 appellant, then a 36-year-old mailhandler, filed a claim for occupational disease alleging that he sustained a neck condition due to the repetitive lifting required in his job. On August 24, 1994 the Office accepted that appellant sustained an employment-related cervical subluxation and cervical radiculopathy for which he received appropriate compensation. Appellant stopped work on May 12, 1994 and returned to limited duty, four hours a day on July 15, 1994. He subsequently increased his limited-duty hours to eight hours a day. In July 1995, appellant again stopped work in order to undergo an anterior C5-6 discectomy and fusion. The surgery, performed on July 24, 1995, was authorized by the Office. Following the surgery, appellant returned to a limited-duty administrative position, six hours a day, on December 21, 1995. The position duties included answering the phone, taking messages, filing, writing and performing minor mail sorting duties. The position carried a 30-pound lifting restriction, in accordance with the restrictions placed on appellant by his surgeon, Dr. Lee L. Thibodeau. Appellant gradually increased his hours to eight per day approximately three weeks after he returned to work, also as approved by his surgeon. He continued to work eight hours a day, but continued to receive physical therapy.

¹ See Patricia A. Keller, 45 ECAB 278 (1993).

In a report dated January 2, 1996, Dr. Thibodeau noted that appellant had expressed a desire to return to his more physically challenging work as a mailhandler, which required lifting of mail sacks occasionally weighing up to 70 pounds. He stated that a future return to heavy lifting was possible, given appellant's excellent surgical result and that appellant could work on increasing his physical capabilities through his physical therapy sessions. Dr. Thibodeau did approve, however, a position casing mail. Appellant completed 14 sessions of physical therapy, ending on February 1, 1996. Subsequently, in a report dated February 5, 1996, Dr. Karl E. Sanzenbacher, a Board-certified neurologist and appellant's treating physician, stated he agreed that appellant was capable of lifting trays of letters and sorting mail, but felt that appellant could not immediately return to his former position as a mailhandler. He recommended that appellant first be enrolled in a work hardening program under physical therapy and/or occupational medical supervision. Dr. Sanzenbacher indicated on an accompanying work capacity evaluation form that appellant could work 8 hours a day, but was restricted to regularly lifting 10 pounds and occasionally lifting 15 to 20 pounds. Appellant underwent a work hardening evaluation on February 27, 1996, at occupational rehabilitation services. The physical therapist reported that appellant demonstrated a physical demands strength rating of "very heavy," as indicated by his ability to perform a one repetition maximum lift of 133 pounds from floor to knuckle height. The therapist noted that the description of the duties of a mailhandler equated to a "heavy" rating and stated that appellant's physical demand strength rating was consistent with the job tasks of a mailhandler, according to the dictionary of occupational titles and appellant's description of the duties. The therapist further noted, however, that appellant continued to have "some spinal stabilizer muscle weakness which would improve with a weight training program." The therapist recommended that appellant continue with his stretching program and weight training using machines at a health club, which would allow him to safely strengthen his spinal stabilizer muscles without compromising the cervical area.

By letter dated March 29, 1996, the Office asked Dr. Sanzenbacher to review the results of the work hardening evaluation and comment on whether he agreed appellant could return to full duty as a mailhandler. He did not respond.

By letter dated May 22, 1996, the Office informed appellant that it proposed to terminate his compensation, effective February 27, 1996.

Subsequent to the Office's notice, appellant contacted the Office and advised them that Dr. Sanzenbacher had closed his medical office in April 1996 due to legal problems and requested authorization to see another physician. In response to his request, the Office authorized an examination by Dr. Karen P. Lauze, a Board-certified neurologist. In her report dated June 5, 1996, Dr. Lauze after examining appellant and reviewing his medical history, stated that appellant had an old right C5-6 radiculopathy, due to a herniated nucleus pulposus and that his status was post cervical laminectomy with continued symptoms with head flexion and extension. She stated that she planned to schedule electromyography (EMG) for appellant in order to rule out any continued active denervation and that depending on the results of the EMG, appellant might require a magnetic resonance imaging scan to rule out structural lesions. Dr. Lauze concluded that if testing revealed no structural lesions or active denervation, then she would recommend a full course of physical therapy with neck stabilizer muscle strengthening prior to appellant's returning to full duty.

By letter dated June 18, 1996, appellant, through his attorney, objected to the Office's proposed termination of benefits, asserting that appellant had not been cleared for full duty, that he suffered from continuing residuals and required additional medical care and physical therapy.

In a letter dated June 26, 1996, the Office forwarded the February 27, 1997 work hardening evaluation to Dr. Lauze and asked her to comment on whether appellant could return to his regular full duty as a mailhandler and to provide objective findings which support her recommendations. She did not respond.

As the Office was unable to obtain additional information from either Drs. Sanzenbacher or Lauze, the Office referred appellant, together with a statement of accepted facts, the relevant evidence of record and a list of questions to answer, to Dr. Brian S. Mercer, a Board-certified neurologist, for a second opinion examination and evaluation.

Subsequently, appellant submitted medical reports and treatment notes from Dr. Bruce R. Myers, a Board-certified physiatrist and requested that the Office authorize him to be his treating physician. The Office declined to authorize Dr. Myers to be appellant's treating physician pending the outcome of the second opinion evaluation by Dr. Mercer. Medical reports from Dr. Myers indicated that appellant had been enrolled in an additional five to six week course of physical therapy.

In his report dated October 2, 1996, Dr. Mercer reviewed the medical evidence of record and listing his findings on physical examination. He diagnosed right C5-6 disc herniation and status post C5 discectomy and fusion.² In Dr. Mercer's discussion of appellant's condition, he stated:

"The initial conservative treatment rendered and subsequent surgical treatment were reasonable and appropriate. [Appellant] has had excellent results from the surgical treatment with no residual neurologic abnormalities. He does have mild residual decreased cervical range of motion. Since more than a year has passed since his cervical surgery, it is judged that [appellant] has reached a medical end result. The only ongoing treatment would be a self-directed exercise program for his neck, as he is currently performing.

"It is judged that [appellant] has permanent partial disability because of his surgically treated C5-6 disc herniation with a discectomy and fusion and mild residual decreased range of motion. Because of his condition, he should not lift weights greater than 30 pounds on a regular basis and 50 pounds rarely. Repetitive or sustained neck flexion/extension and rotational movements should be avoided."

By decision dated October 31, 1996, the Office terminated appellant's compensation for wage loss and medical benefits. Appellant requested an oral hearing before an Office

² Dr. Mercer further stated that he believed the diagnosed conditions were not employment related.

representative, which was held on June 25, 1997 and submitted additional medical evidence in support of his claim.

In a decision dated September 18, 1997, an Office hearing representative affirmed the Office's October 31, 1996 decision, finding that appellant failed to establish, through the submission of probative, reliable and substantial evidence that he suffered from residuals of his accepted injuries after February 27, 1996.

The Board finds that the weight of the medical evidence establishes that appellant had no employment-related disability on or after February 27, 1996. All of appellant's treating physicians, including Drs. Sanzenbacher, Lauze and Myers, as well as Dr. Mercer, agreed that appellant was capable of working eight hours a day in a limited-duty capacity. Indeed, appellant returned to work following surgery, on December 21, 1995 and has been successfully employed in various full-time limited-duty positions since that time. Therefore, the Office met its burden of proof to terminate his wage-loss compensation effective February 27, 1996.

The Board further finds, however, that the Office improperly terminated appellant's medical benefits for continuing residuals.

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁴

In this case, the Office terminated appellant's compensation for wage loss and medical benefits effective February 27, 1996. While the Office did establish that appellant was no longer disabled due to his accepted conditions as of that date, the Office did not establish that appellant no longer had residuals of any employment-related condition which would require further medical treatment after that date. The evidence indicates that, while appellant returned to work on December 21, 1995, he did so with restrictions to his activity and there is no evidence that appellant had returned to his preinjury baseline. Each of appellant's authorized treating physicians, Drs. Sanzenbacher, Thibodeau and Lauze, indicated that appellant was cleared only for limited-duty employment and was not yet released to his prior position as a mailhandler. In addition, the work hardening evaluation therapist stated, in her report dated February 27, 1996, that while appellant had the physical capacity to perform the heavy work required of his original job, he continued to have "some spinal stabilizer muscle weakness" which would improve with a weight training program. Subsequently, in her report dated June 5, 1996, Dr. Lauze stated that appellant required an EMG to rule out any active denervation, and recommended a full course of physical therapy with neck stabilizer muscle strengthening. Dr. Mercer also concluded that appellant continued to suffer from mild residual decreased cervical range of motion, was permanently partially disabled and capable of only limited duty. The Board notes, however, that at the time Dr. Mercer performed his examination on October 2, 1996 and concluded that

³ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁴ *Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

appellant had reached his medical end result, approximately six months had passed since the Office's February 27, 1996 effective termination of appellant's medical benefits, during which time appellant underwent additional medical testing by Dr. Lauze and approximately five to six weeks of intensive physical therapy as recommended by both Drs. Lauze and Myers. Furthermore, while Dr. Mercer did conclude that appellant required only a self-directed exercise program by way of continuing treatment, he did not address whether appellant had required any additional medical treatment or therapy after February 27, 1996, the date the Office effectively terminated medical benefits. Therefore, as the record contains no probative evidence establishing that appellant's accepted condition had totally resolved effective February 27, 1996, the Office did not meet its burden of proof in terminating appellant's medical benefits for residuals of his accepted conditions.

The decision of the Office of Workers' Compensation Programs dated September 18, 1997 and finalized September 19, 1997, is affirmed in part and reversed in part.

Dated, Washington, D.C.
March 2, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member