

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THELMA C. STEVENSON and U.S. POSTAL SERVICE,  
POST OFFICE, Arlington, TX

*Docket No. 99-2344; Submitted on the Record;  
Issued March 29, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
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 July 6, 1999.

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.

On July 24, 1990 appellant, then a 43-year-old city carrier, filed a claim for traumatic injury alleging that on July 23, 1990 she injured her back and left shoulder in an employment related motor vehicle accident. The Office accepted appellant's claim for back strain and left shoulder contusion. Appellant returned to modified duty, four hours a day, on January 27, 1992. In a letter dated June 3, 1999, the Office proposed to terminate appellant's compensation benefits. After reviewing additional medical evidence submitted by appellant, by decision dated July 6, 1999, the Office terminated appellant's compensation and medical benefits effective July 6, 1999. The instant appeal follows.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.<sup>1</sup> 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.<sup>2</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>3</sup> To

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<sup>1</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>2</sup> *Id.*

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

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.<sup>4</sup>

In this case, in his earliest reports beginning at the time of the employment injury in July 1990, appellant's treating physician, Dr. Kenneth L. Katzen, an osteopath, stated that he was treating appellant for contusions of the left shoulder and chest, as well as for cervical, thoracic and lumbar strain. In a report dated August 28, 1991, submitted in response to an Office request for a current report, Dr. Katzen stated that prior to appellant's employment-related automobile accident, appellant had been diagnosed as having chronic thoracic and cervical myositis with degenerative disc disease. The physician explained that these conditions seemed to be "markedly exacerbated following the accident" and that subsequently appellant developed what he believed to be fibromyalgia. Dr. Katzen further stated that appellant was being treated conservatively with trigger point injections and physical therapy. After appellant returned to part-time light duty, Dr. Katzen continued to submit periodic reports through January 1999, as requested by the Office. In a few narrative reports and on his Form CA-17 and OWCP-5 reports, Dr. Katzen indicated that appellant was being treated for chronic cervical thoracic and lumbar myositis, degenerative disc disease and probable fibromyalgia, that she was capable of working four hours a day, within certain physical restrictions and that her condition was expected to be permanent. Dr. Katzen also submitted additional reports consisting of short answers written on Office letters of inquiry. On these reports, when asked whether there were any objective findings on examination of the conditions accepted as work related, Dr. Katzen replied "MRI [magnetic resonance imaging] report, see previous." However, neither the MRI report nor Dr. Katzen's interpretations of this test are contained in the record. In response to the Office's request for the physician's opinion, with medical reasons, as to whether appellant's current condition was due to the work injury, Dr. Katzen responded "Yes, symptoms and exam[ination] unchanged." Dr. Katzen also indicated that appellant's condition would prevent her from returning to her former job as a letter carrier, that she was capable of performing office work and that he expected her condition to be permanent.

On February 25, 1999 the Office referred appellant, together with a statement of accepted facts, the medical opinions of record and a list of issues to be addressed, to Dr. Juan J. Capello, a Board-certified orthopedic surgeon, for a second opinion examination. In his report dated March 22, 1999, Dr. Capello documented his findings on physical examination, noted that a myelogram, computerized tomography and MRI done in 1990 were all unremarkable and diagnosed lumbar pain syndrome, chronic with Waddell's signs, bilateral shoulder pain and cervical pain syndrome, chronic with Waddell's signs. In response to the Office's question as to whether there was any objective evidence that any of appellant's accepted conditions were active and causing disability to appellant, Dr. Capello responded that in his evaluation, "there was no objective evidence that there was any active condition causing disability to the patient." He stated that despite the fact that appellant actually screamed with pain during his examination, shutting her eyes, blowing air through her cheeks and withdrawing from touch and further demonstrated limited range of motion in her neck and shoulder, there were no palpable muscle spasms and no muscle atrophy and her range of motion appeared to be self-limited. Dr. Capello explained that while appellant's history was being taken she was able to move her neck quite

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<sup>4</sup> *Id.*

easily, shaking her head to indicate “yes” and “no” without apparent distress, but that when he began to examine her, her neck became quite stiff, although, again, muscle spasms were not palpable.<sup>5</sup> Dr. Capello further responded “no” to the Office’s questions as to whether appellant’s current disability was due to her accepted left shoulder contusion or back strain. Dr. Capello also stated that he saw “very little signs of fibromyalgia” but that if appellant continued to self-limit her range of motion, as she did during his examination, it would lead to myofascial syndrome or fibromyofascial syndrome. When asked whether appellant’s disability was due to her degenerative disc disease, Dr. Capello responded, “I do not think so because of the MRI that I saw showed very little dessication changes or degenerative changes. This MRI was done in 1990.” In response to whether appellant could perform her date-of-injury job, Dr. Capello responded “No, the reason for this is because her blood pressure is out of control.” The physician explained that complete functional capacity testing could not be performed because of appellant’s blood pressure and that, therefore, while he felt appellant could continue to perform her light-duty job, four hours a day, he could not currently determine what her capacity would be once her blood pressure was controlled.

In response to the Office’s notice of proposed termination, appellant submitted a June 30, 1999 narrative report from Dr. Katzen. In his report, Dr. Katzen stated:

“I have been treating [appellant] for cervical dis[c] disease and fibromyalgia following her injury on July 23, 1990. I have also enclosed literature on fibromyalgia from the Arthritis Foundation for your review. In particular, review page 7 emphasizing that this condition may begin after an injury. Recently she has had more problems and is being referred back to a rheumatologist for further treatment. She has not been able to perform full duty for nine years and her condition has in fact deteriorated. It is my opinion that her current restrictions stay in place indefinitely. I have attached a copy of the latest duty status report filled out on June 22, 1999. If you need any further information, please feel free to contact me or my staff.”

The Board finds that the weight of the medical opinion evidence rests with Dr. Capello’s well-rationalized narrative report. Dr. Capello provided a history of injury, appellant’s medical history, including reviewing the results of recent electromyography, as well as performing a physical examination. He noted that there were no objective signs of either appellant’s accepted shoulder contusion or her accepted back strain and indicated that appellant’s current condition

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<sup>5</sup> Dr. Capello further stated that appellant was able to complete at least eight minutes of pegboard assembly tests from the waist, with flexion and abduction at least 90 degrees, without demonstrating any of the pain gestures noted during range of motion testing. She was also able to do about 20 minutes of assembly work tasks at waist to shoulder height, and to write for 45 minutes independently, without significant difficulty. The physician also noted that during the inclinometer testing of appellant’s cervical spine ranges of motion she demonstrated 8 degrees of flexion, 12 degrees of extension and 30 degrees of right rotation with 22 degrees of left rotation. However, appellant was able to “pull on her button down light jacket, carry her purse initially on her shoulder and then in her right hand and walk more than 100 feet from the back of the room in the clinic to her vehicle. She was able to open the car door, drive herself to the clinic and pull out of her parking space without significant difficulty.” Dr. Capello added that he “would find it hard to believe that a patient with 8 degrees of flexion and 12 degrees of extension with only about 30 to 20 degrees of rotation would be able to drive a vehicle without significant difficulty.”

was the result of self-limiting behavior. While Dr. Capello found appellant currently unable to perform more than her four hour a day light-duty job, he specifically stated that this was due to her uncontrolled high blood pressure, which is not a condition accepted by the Office as employment related. Furthermore, although Dr. Katzen stated that he had been treating appellant for fibromyalgia since 1990 and enclosed literature indicating that fibromyalgia “may begin after an injury,” he did not provide any objective findings to support his diagnosis of fibromyalgia and his opinion is not sufficiently explained or rationalized to create a conflict with that of Dr. Capello. As Dr. Capello stated that appellant had no objective signs of her accepted conditions and further stated that her current disability was not due to either of her accepted conditions, the Office met its burden of proof to terminate appellant’s compensation benefits.

The decision of the Office of Workers’ Compensation Programs dated July 6, 1999 is hereby affirmed.

Dated, Washington, D.C.  
March 29, 2000

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member