

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY R. JAWORSKI and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 00-267; Submitted on the Record;
Issued May 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of January 21, 1999.

On October 15, 1983 appellant, a 54-year-old clerk, injured her right shoulder and right arm while lifting a sack of mail. Appellant filed a claim for benefits, which the Office accepted for right shoulder strain, brachial plexis palsy and biceps tendon strain.¹ Appellant was off work for two months, then returned to work in a part-time, limited-duty capacity on December 15, 1983. She was paid compensation for appropriate periods by the Office. Appellant retired from the employing establishment on September 1, 1991.

In a report dated June 19, 1997, Dr. Arthur Brickel, Board-certified in psychiatry and neurology, stated that appellant required physical therapy for her condition on a bi-weekly basis in order to provide for a reasonably significant retention of daily living activities. In a report dated December 22, 1997, Dr. Brickel stated that appellant still required physical therapy in order to perform daily living activities and to be able to support herself by working part time. He further stated that appellant continued to show spasm in the paraspinal area with reduced range of motion and reduced range of motion in the joint.

In order to clarify appellant's current condition, the Office scheduled a second opinion examination for appellant with Dr. Ralph Kovach, a Board-certified orthopedic surgeon, for September 28, 1998.

¹ The Form CA-1 is not contained in the instant case file.

In a report dated September 28, 1998, Dr. Kovach stated:

“This examination does not support the diagnosis of her still having an ongoing brachioplexus palsy. This has resolved. She shows no evidence of any inflamed biceps tendon. She shows no true findings of a right shoulder sprain. [Appellant] has severe discrepancies as noted above on the physical examination.... My examination does not indicate the need for any ongoing physical therapy. She herself admits to having only a minimal degree of pain. Reviewing the records, she has not improved her movement despite having therapy for a long time on a twice weekly basis. Electrical stimulation and the passive and stretching exercise, in my opinion, have made no difference and cannot be justified in continuation. In my opinion they are not beneficial. In my opinion, all of the periodic treatment by her physician is indicated, unless new findings arise. It is my opinion that further therapy will not be beneficial. It is also my opinion that only mild analgesics are indicated for her ongoing problems.”

On December 16, 1998 the Office issued a notice of proposed termination of compensation to appellant. In the memorandum accompanying the notice of proposed termination, the Office stated that Dr. Brickel, appellant’s attending physician, had not provided a report sufficient to support a causal relation between appellant’s accepted, employment-related conditions and her current condition and that his reports were outweighed by the September 28, 1998 report of Dr. Kovach, who submitted a thorough, probative medical opinion that appellant’s employment-related injuries of October 15, 1983 had resolved. The Office, therefore, found that Dr. Kovach’s opinion represented the weight of the medical evidence. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination. Appellant did not respond to this notice within 30 days.

By decision dated January 21, 1999, the Office terminated appellant’s compensation.

By letter dated February 15, 1999, appellant requested an oral hearing, which was held on July 19, 1999.

By decision dated August 25, 1999, an Office hearing representative affirmed the previous decision.

The Board finds that the Office met its burden of proof to terminate appellant’s compensation benefits as of January 21, 1999.

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.² 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

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

³ *Id.*

In the present case, the Office based its decision to terminate appellant's compensation on the medical report of Dr. Kovach, who stated that his examination indicated that her brachioplexus palsy had resolved, that she showed no evidence of any inflamed biceps tendon and had no true findings of a right shoulder sprain. He stated that his examination excluded the need for any ongoing physical therapy and related that appellant conceded experiencing only a minimal amount of pain. Based on Dr. Kovach's probative, well-rationalized opinion that appellant's accepted, work-related conditions had resolved, therefore, the Office properly found that Dr. Kovach's opinion represented the weight of the medical evidence in terminating benefits. The Board, therefore, affirms the Office's January 21, 1999 termination decision.

Following the Office's termination of compensation, the burden to establish entitlement to compensation shifted to appellant. Causal relationship must be established by rationalized medical opinion evidence. Appellant, however, failed to submit any medical evidence following the Office's January 21, 1999 termination decision, therefore, she did not meet this burden. Accordingly, as there is no reasoned medical evidence addressing and explaining why her current claimed conditions and disability were caused by her original, accepted conditions, appellant has not met her burden of proof in establishing that she continues to suffer residuals from her employment-related arm and shoulder conditions. The Board, therefore, affirms the August 25, 1999 decision of the hearing representative affirming the January 21, 1999 decision terminating benefits.

The decisions of the Office of Workers' Compensation Programs dated August 25 and January 21, 1999 are hereby affirmed.

Dated, Washington, D.C.
May 10, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member