

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TRACY D. PATTEN and U.S. POSTAL SERVICE,
POST OFFICE, Longview, WA

*Docket No. 99-2534; Submitted on the Record;
Issued May 23, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits as of February 23, 1998 on the basis that appellant's employment-related disability had ceased.

On April 15, 1996 appellant, then a 33-year-old distribution clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained injuries to her shoulder and neck pain as a result of pushing and pulling heavy equipment in the performance of duty. She identified April 11, 1996 as the date she first became aware of her employment-related condition. Appellant ceased work on April 13, 1996 and shortly thereafter, she returned to work in a limited-duty capacity. Approximately 3 weeks after returning to limited duty, appellant resumed her previous duties. However, she sustained a recurrence of disability on August 17, 1996, followed by a second injury to her right shoulder on August 30, 1996. Appellant subsequently returned to part-time, limited-duty work in September 1996; however, she ceased working again in February 1997. The Office accepted the claim for right shoulder strain and appellant received appropriate wage-loss compensation.

In April 1997, the Office referred appellant for examination by Dr. Thomas J. Croy, a Board-certified orthopedic surgeon. In a report dated April 25, 1997, he indicated that he would allow appellant to resume her normal work activities. Appellant's treating physician, Dr. Jon E. Kretzler, an orthopedic surgeon, indicated that, as of February 11, 1998, she had not reached preinjury status and that he was not prepared to release appellant to return to work until she completed a work hardening program.

By decision dated February 25, 1998, the Office terminated appellant's compensation benefits on the grounds that there was no conclusive medical evidence indicating that she continued to suffer disabling residuals of her employment injury. The February 25, 1998 decision terminating benefits was subsequently affirmed by an Office hearing representative on December 31, 1998.

The Board finds that the Office did not meet its burden of proof in terminating appellant's compensation benefits.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.²

In the instant case, the Office found that Dr. Croy's April 25, 1997 opinion constituted the weight of the medical evidence and established that appellant was no longer disabled due to her accepted condition. Under the Federal Employees' Compensation Act,³ the term disability is generally defined as the "Incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury."⁴

In his report dated April 25, 1997, Dr. Croy noted an impression of "[p]ersistent right upper thoracic, shoulder and neck pain" of uncertain etiology. He acknowledged that appellant's pain was real although he could not identify specific objective evidence to support it. Dr. Croy recommended further testing in order to determine the cause of appellant's pain. As previously noted, he stated that he would allow appellant to resume her normal work activities. Dr. Croy also indicated that he would allow appellant full use of her arm and shoulder. However, in response to a specific question posed by the Office, he further explained that he "would start [appellant] off with restrictions of overhead repetitive type tasking and then progress her to full activities."⁵

Appellant's duties as a distribution clerk included, *inter alia*, "reaching above shoulder" and Dr. Croy specifically noted in his report that appellant's employment duties, such as "sorting mail, lifting or overhead activities," could exacerbate shoulder problems. His recommendation included, at least initially, with restrictions of overhead repetitive type tasking." The Office, however, did not seek clarification on this point. Inasmuch as Dr. Croy's report does not clearly indicate that appellant no longer had residuals of the accepted condition such that she could return to work without restriction, the Office erred in relying upon this evidence as a basis for terminating appellant's compensation.⁶

¹ *Curtis Hall*, 45 ECAB 316 (1994); *John E. Lemker*, 45 ECAB 258 (1993); *Robert C. Fay*, 39 ECAB 163 (1987).

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Charles P. Mulholland*, 48 ECAB 604, 606 (1997).

⁵ The Office inquired as to whether appellant was capable of returning to the position held at the time of her injury.

⁶ *Marvin T. Schwartz*, *supra* note 5.

The December 31, 1998 decision of the Office of Workers' Compensation Programs is, hereby, reversed.

Dated, Washington, D.C.
May 23, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member