

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY A. SILVA and DEPARTMENT OF JUSTICE, FEDERAL BUREAU
OF PRISONS, THREE RIVERS, TX

*Docket No. 99-384; Submitted on the Record;
Issued November 8, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits on the grounds that her disability causally related to a September 20, 1993 employment injury had resolved.

On September 20, 1993 appellant, then a 34-year-old correctional officer, sustained right shoulder, neck, thoracic and lumbosacral sprains in the performance of duty when she was pinned against an ice machine by a cart loaded with approximately 300 pounds of records. Effective September 23, 1993 appellant was placed on the periodic compensation roll to receive benefits for temporary total disability based on the claimed conditions.

In a form report dated January 18, 1994, Dr. David P. Petros, appellant's attending Board-certified internist with a specialty in rheumatology, diagnosed carpal tunnel syndrome and mixed connective tissue disease. He indicated that the conditions were caused by the September 20, 1993 employment injury and that she was totally disabled.

In a form report dated June 2, 1994, Dr. Petros diagnosed fibromyalgia, Raynaud's phenomenon and early mixed connective tissue disease. He indicated that these conditions were causally related to the September 20, 1993 employment injury and that appellant probably also had another underlying connective tissue disease, as yet undefined, which was not related to the employment injury. Dr. Petros indicated that appellant was totally disabled.

In a report dated August 16, 1994, Dr. Petros stated that he was treating appellant for her mixed connective tissue disease and right shoulder pain. He stated that laboratory studies suggested early mixed connective tissue disease.

In a report dated October 18, 1995, Dr. Frank A. Luckay, a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant's condition and detailed findings on examination and diagnosed fibromyalgia with secondary sympathetic dystrophy of

the right upper extremity, a mild right impingement syndrome and Raynaud's phenomenon and indicated that appellant was totally disabled.

In a supplemental report dated December 6, 1995, Dr. Luckay stated that when he examined appellant there were definite objective findings of a mild right shoulder impingement syndrome but no evidence of a cervical, thoracic or lumbosacral strain. He stated that appellant's main problem was a sympathetic dystrophy of the right upper extremity which was secondary to her September 20, 1993 employment injury. Dr. Luckay noted that appellant was asymptomatic of any upper extremity problems prior to the date of the employment injury.

In notes dated November 15, 1996 through March 26, 1998, Dr. Petros provided findings on examination and diagnosed mixed connective tissue disease with elements of scleroderma, myositis, lupus and arthritis.

In a narrative report dated February 12, 1998, Dr. Theodore W. Parsons, III, a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant's condition and findings on examination and diagnosed mixed connective tissue disease with lupus and probable chronic pain syndrome. He stated that there was no current evidence of a right shoulder sprain and indicated that appellant's continuing right shoulder complaints were probably caused by her connective tissue disease. Dr. Parsons stated that he found no evidence of reflex sympathetic dystrophy. He stated that appellant was disabled from her regular job due to her mixed connective tissue disease and that this condition was not causally related to the September 20, 1993 employment injury.

By letter dated May 15, 1998, the Office advised appellant that it proposed to terminate her compensation benefits on the grounds that her disability causally related to her September 20, 1993 employment injury had resolved.

By decision dated September 25, 1998, the Office terminated appellant's compensation benefits.¹

The Board finds that the Office did not meet its burden of proof in terminating appellant's compensation benefits due to an unresolved conflict in the medical evidence.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.²

¹ This case record contains evidence, which was submitted subsequent to issuance of the Office's September 25, 1998 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

² *See Alfonso G. Montoya*, 44 ECAB 193 (1992); *Gail D. Painton*, 41 ECAB 492 (1990).

In this case, Dr. Parsons, an Office referral physician and Board-certified orthopedic surgeon, opined that appellant had no remaining disability or medical condition causally related to her September 20, 1993 employment injury, which included sprains of the right shoulder, neck and back. He also opined that appellant's mixed connective tissue disease was not related to the employment injury.³ However, appellant's attending Board-certified internist specializing in rheumatology, Dr. Petros, stated his opinion in notes and reports dated between 1994 and 1998 that appellant had developed mixed connective tissue disease, which was causally related to the September 20, 1993 employment injury. Dr. Parsons opined that appellant's continuing right shoulder problems were probably caused by connective tissue disease, which he found was unrelated to the September 20, 1993 employment injury. Due to the unresolved conflict in the medical evidence as to whether appellant had any remaining disability or medical condition causally related to the September 20, 1993 employment injury, the Office did not meet its burden of proof in terminating appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated September 25, 1998 is reversed.

Dated, Washington, DC

Dated, Washington, DC
November 8, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

³ As noted above, Dr. Parsons opined that appellant's continuing right shoulder problems were probably caused by the connective tissue disease.