

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIZABETH A. CAMPBELL and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, TN

*Docket No. 99-1459; Submitted on the Record;
Issued November 22, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to justify termination of appellant's compensation benefits effective January 2, 1999.

On May 18, 1998 appellant, then a 48-year-old casual clerk,¹ filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that her foot became tangled in plastic wrap causing her to fall and sustain a contusion to both knees, a fracture of the right wrist and a cut to her eye. She stopped work on May 18, 1998. Appellant's claim was accepted for a fractured right radius and ulna, a fractured left distal radius and a face cut. She received continuation of pay and thereafter disability compensation from August 16 until September 12, 1998.

Accompanying her claim, appellant submitted a note from Dr. Dennis L. Stohler, an orthopedic surgeon, dated May 19, 1998; an undated attending physician report and two supplemental attending physician reports dated June 22, 1998. The note from him indicated that appellant could not work for 10 days. The attending physicians report, signed by Dr. Stohler, diagnosed appellant with a fracture of the right radius ulna and a fracture of the left distal radius with knee and facial contusions. He indicated with a checkmark "yes" that the condition was caused or aggravated by an employment activity, with no further comments. The supplemental attending physician reports dated June 22, 1998, prepared by Dr. Stohler indicated appellant was not permitted to use the right upper extremity and had limited use of the left upper extremity until June 15, 1998. Additionally, appellant was not permitted to lift greater than two pounds.

Thereafter, appellant submitted progress notes from Dr. Stohler indicating her status. Included in these notes were reports noting her duties and indicating that she could return to light

¹ Appellant was a temporary employee and her contract expired June 21, 1998.

work. On August 11, 1998 the Office assigned a registered nurse to appellant to assist in her recovery.²

In a September 23, 1998 work restriction evaluation, Dr. Stohler opined that appellant could work eight hours daily with no pushing, pulling or lifting more than 50 pounds.

By letter dated October 20, 1998, the Office requested an evaluation from Dr. Stohler regarding appellant's condition based on his objective findings. The Office specifically requested the doctor's opinion regarding appellant's ability to resume her regular duties; whether appellant has reached maximum medical improvement; and if appellant would sustain permanent impairment due to her May 18, 1998 employment-related injury.

On October 29, 1998 Dr. Stohler submitted a report indicating appellant could return to her regular duties at the employment establishment. He noted appellant had not reached her maximum medical improvement but he expected this to occur by December 1998.

On November 17, 1998 the Office issued a notice of proposed termination of wage-loss compensation on the grounds that Dr. Stohler's October 29, 1998 report established no continuing disability as a result of the May 18, 1998 employment injury. The Office noted that the claim would remain open for payment of medical benefits. The Office provided 30 days in which the appellant could respond to this notice.

Appellant submitted progress notes from Dr. Stohler dated August 31 and October 26, 1998. The August 31, 1998 notes indicated that appellant may return to work with restrictions including no pushing, pulling or lifting greater than 50 pounds. The October 26, 1998 notes indicated a healed fracture of the distal right radius and ulna and a healed fracture of the distal left radius ulna. He also stated that appellant may return to work with no pushing, pulling or lifting greater than 100 pounds.³

By decision dated December 21, 1998, the Office terminated appellant's benefits effective January 2, 1999 on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her May 18, 1998 employment injury.⁴

² By letter dated October 5, 1998, appellant indicated that she no longer desired the services of the registered nurse provided to her by the Office.

³ Appellants usual work requirements included pushing and pulling of up to 50 pounds and intermittent lifting of up to 70 pounds.

⁴ The Office on April 7, 1999 issued a decision denying appellant's request for a hearing. This decision is null and void as the Board and the Office may not simultaneously have jurisdiction over the same case. The Office may not issue a decision granting or denying a request for a hearing regarding the same issue on appeal before the Board. *See Arlonia B. Taylor*, 44 ECAB 591 (1993). Furthermore, the Office on July 22, 1999 issued a decision denying modification of its prior decision. This decision is also null and void as the Office and the Board may not have concurrent jurisdiction over the same issue in a case. *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41ECAB 880 (1990).

The Board finds that the Office has met its burden of proof to terminate benefits effective January 2, 1999.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁵ 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.⁶

In this case, on October 29, 1998 Dr. Stohler submitted a response to an Office request regarding appellant's ability to work and indicated that appellant was able to return to her regular duties as a casual clerk. Although he stated that she had not reached her maximum medical improvement, he indicated that she could resume her regular duties. Following issuance of the Office's notice of proposed termination of compensation appellant submitted earlier treatment notes from Dr. Stohler from August 31 to October 26, 1998. As noted in the Office's December 21, 1998 decision, these treatment notes predate the October 29, 1998 report that released appellant to her regular work duties. The October 26, 1998 treatment note indicated that appellant could push, pull or lift up to 100 pounds. This restriction was consistent with appellant's usual job requirements.

As appellant's attending physician, Dr. Stohler had full knowledge of the relevant facts and had numerous opportunities to examine appellant and to evaluate the course of her condition. He is a specialist in the appropriate field. At the time wage-loss benefits were terminated Dr. Stohler had clearly opined appellant could return to her regular duties. His opinion is found to be probative and reliable. The Board finds that Dr. Stohler's opinion is probative on the issue of appellant's ability to work.⁷ And as the record contains no medical evidence to the contrary, the Board further finds that his opinion constitutes the weight of the medical evidence and is sufficient to justify the Offices's termination of benefits.⁸

⁵ *Harold S. McGough*, 36 ECAB 332 (1984).

⁶ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁷ See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

⁸ The Board may not review new medical evidence submitted after issuance of the Office's December 21, 1998 decision. See 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated December 21, 1998 is hereby affirmed.

Dated, Washington, DC
November 22, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member