

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARYANN AMIRAND and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Boston, MA

*Docket No. 99-1483; Submitted on the Record;
Issued November 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective April 27, 1997 on the grounds that her disability causally related to her July 5, 1990 employment injury had ceased as of that date.

The Board has duly reviewed the case record and finds that the Office met its burden of proof in terminating appellant's compensation.

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 has ceased or that it is no longer related to the employment.¹

On July 5, 1990 appellant, then a 36-year-old registry clerk, sustained a contusion of the buttocks and a left knee strain in the performance of duty. Effective January 23, 1991 she was placed on the periodic rolls to receive compensation benefits for temporary total disability.

By letter dated March 17, 1997, the Office advised appellant that it proposed to terminate her compensation benefits on the grounds that the weight of the medical evidence established that she no longer had any disability causally related to her July 5, 1990 employment injury. By decisions dated April 25, July 14 and October 30, 1997, the Office denied modification of its decision. By letter dated October 30, 1998, appellant requested reconsideration and submitted additional evidence. By decision dated January 26, 1999, the Office denied modification of its October 30, 1997 decision.

¹ See *Alfonso G. Montoya*, 44 ECAB 193 (1992); *Gail D. Painton*, 41 ECAB 492 (1990).

In a report dated January 22, 1997, Dr. Philip I. Salib, a Board-certified orthopedic surgeon and Office referral physician, provided a history of appellant's condition, course of treatment and findings on examination. He reviewed the physical requirements of appellant's job noted in the Office's statement of accepted facts. Dr. Salib stated:

"In the upright position, [appellant's] spine is straight and the lumbar lordosis is maintained. The latter reverses partially on flexion. Forward flexion is 40 degrees accompanied by pain in the right side of the lower back....

"When digital palpation is applied to the lumbosacral level, [appellant] experiences numbness and pain in the right buttock and trochanteric regions. In the recumbent position, she has a straight leg raising of 10 degrees on each side accompanied by a jerky movement. However, in the sitting position, [appellant] reaches 80 degrees. This is a strongly positive [F]lip[']s test described by Waddell as the cardinal sign of the nonorganic (functional) back syndrome.... The neurovascular examination of both lower extremities is symmetrical and normal.

"[Appellant's] left knee shows no signs of instability, any localized tenderness or intra-articular effusion. The patella does not present crepitus on its undersurface and the apprehension test is negative....

"Positive Waddell's nonorganic (functional) back syndrome with jerky movement of the muscles of the lower extremity without anatomical etiological basis suggestive of a psychiatric or neuropsychiatric etiology. Recovered sprain of the lumbosacral region leaving no positive objective findings.... Sprain of the medial side of the left knee ending by complete recovery with practically no positive objective findings.

"The sprain or sprain of the soft tissues is known to recover within a few weeks up to eight or ten at most, but never up to six years as in her case.

"According to today's examination, [appellant] is capable of doing any desk job staying sedentary most, if not all, of the time. A strong element of nervous overlay governs the clinical picture and, therefore, she is in need of an evaluation by a specialist in this field.

"Only from the orthopedic viewpoint and after today's examination, there is no positive objective finding that prevents her from returning to her normal duties. However, the nervous overlay and the positive Waddell's syndrome are enough to prevent [appellant] from doing her normal duties. She is capable of doing any light work that does not require lifting more than 20 pounds at a time and repeated bending over."

The Board finds that the thorough and well-rationalized report of Dr. Salib establishes that appellant had no remaining disability or medical condition causally related to her work-related contusion of the buttocks and left knee strain sustained on July 5, 1990. The Office

therefore met its burden of proof in terminating appellant's compensation benefits effective April 27, 1997 based upon Dr. Salib's opinion that her employment-related disability had ceased.

The reports of appellant's attending physician are not sufficient to overcome the weight of Dr. Salib's opinion or create a conflict in the medical evidence which would necessitate referral of appellant for an independent medical examination.

In a report dated August 5, 1997, Robert S. Schull, appellant's attending Board-certified orthopedic surgeon, noted that appellant had a significant past history of polio as a child, a Hauser procedure, epiphysiodesis of her left lower extremity, patellofemoral arthritis with a patellectomy in 1983 and a left proximal tibial osteotomy in 1984. He stated that he had seen appellant intermittently since her 1990 employment injury and opined that she was disabled due to her work injury.

In a report dated May 6, 1998, Dr. Schull provided a history of appellant's condition and noted that appellant gradually improved from her July 1990 employment injury but her lower back never became symptom free. He noted that a magnetic resonance imaging (MRI) scan performed in 1990 showed evidence of a small central disc protrusion at L4-5. Dr. Schull stated that appellant continued to have intermittent flares-ups of mechanical low back and right-sided leg pain and remained disabled from her job.

However, he failed to provide a well-rationalized medical opinion explaining how a buttocks contusion and left knee strain could cause disability for six and one-half years following the July 5, 1990 employment injury. Nor did Dr. Schull explain why he did not consider the possible relationship between appellant's problems and her preexisting and concurrent conditions of advanced degenerative arthritis of the left knee, previous left knee surgery and polio. Due to these deficiencies, his medical opinion is of limited probative value and thus insufficient to establish that appellant had any remaining disability or medical condition causally related to her 1990 employment injury.

The decision of the Office of Workers' Compensation Programs dated January 26, 1999 is hereby affirmed.

Dated, Washington, DC
November 15, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member