

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET HARTMAN and U.S. POSTAL SERVICE,
POST OFFICE, Elgin, IL

*Docket No. 00-956; Submitted on the Record;
Issued December 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation effective December 5, 1999.

Appellant filed a claim alleging that she sustained injury to her shoulder while delivering mail on January 6, 1988. The Office accepted the claim for left shoulder and neck strains and C6-7, T2 and T6 subluxations. Appellant returned to light duty on February 29, 1988 then filed a recurrence of total disability commencing September 1, 1988. She returned to work at two hours per day on February 1, 1990, increasing to 4 hours per day by October 1990. In June 1993, she stopped working.

By decision dated June 30, 1993, the Office terminated appellant's compensation on the grounds that the medical evidence established that she no longer had residuals of an employment-related condition. The termination was set aside by decision dated February 5, 1996.

In a letter dated October 19, 1999, the Office advised appellant that it proposed to terminate compensation for wage loss and medical benefits on the grounds that the medical evidence established that her employment-related conditions had ceased. By decision dated November 19, 1999, the Office terminated compensation for wage loss and medical benefits as of December 5, 1999.

The Board finds that the Office met its burden of proof to terminate compensation for wage loss and medical benefits.

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 her employment, the Office may not terminate compensation without

establishing that the disability had ceased or that it was no longer related to the employment.¹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.²

In this case, the Office referred appellant to Dr. Julie M. Wehner, an orthopedic surgeon, for a second opinion examination. In a report dated June 2, 1999, Dr. Wehner provided a history and results on examination. She noted that x-rays revealed no subluxations. Dr. Wehner diagnosed chronic pain syndrome, opining that, based on normal clinical and radiological findings, appellant had no work restrictions and could return to her date-of-injury position. She also stated that there was no need for further treatment or testing. In a supplemental report dated August 6, 1999, Dr. Wehner opined that the work injury had aggravated the chronic pain syndrome, noting that it was difficult to say whether the aggravation was temporary or permanent. She noted that unless additional records were available as to appellant's condition, Dr. Wehner would say that the accident aggravated the pain "to a degree where it is now of a more permanent nature." Dr. Wehner did, however, reiterate her opinion that no further treatment was needed based on the normal clinical findings.

Based on Dr. Wehner's reports, the Office accepted an aggravation of chronic pain syndrome. Appellant was then referred to Dr. R. Samuel Mayer, a specialist in physical medicine and rehabilitation. In a report dated September 30, 1999, Dr. Mayer provided a history and results on examination. Dr. Mayer diagnosed chronic pain syndrome, but opined that current symptoms were not causally related to the employment injury. He indicated that it was impossible for a muscle strain from such minimal trauma to cause symptoms for over 11 years.³ Dr. Mayer concluded that her current pain condition was most likely related to depression and psychosomatic issues and was unrelated to the employment injury. He completed an OWCP-5 work capacity form indicating that appellant had no physical restrictions and any disability was due to depression.

The reports of Drs. Wehner and Mayer both contain reasoned opinions that appellant did not have any continuing disability for work causally related to an employment injury. With respect to medical benefits, Dr. Mayer clearly indicated his opinion that appellant did not have a continuing employment-related condition. Dr. Wehner indicated that appellant may have a permanent aggravation, but she also indicated that appellant had no need for further treatment or testing with respect to her condition. The Board finds that the reports of Drs. Wehner and Mayer provide probative evidence in support of the Office's termination of compensation for wage loss and medical benefits.

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Furman G. Peake*, 41 ECAB 361 (1990).

³ Dr. Mayer stated that he did not believe appellant had an aggravation of symptoms due to the employment injury, which is contrary to the Office's acceptance of an aggravation in this case. Dr. Mayer does, however, explain why he believed that current symptoms were not employment related.

Appellant did not submit probative evidence supporting a continuing employment-related condition. The record contains an undated report, received by the Office on November 18, 1999, from Dr. Frank Gamble, a chiropractor. Section 8101(2) of the Federal Employees' Compensation Act provides that the term "physician" ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."⁴ Although the Office accepted subluxations, Dr. Wehner had clearly indicated that the most recent x-rays available did not reveal any subluxations. Dr. Gamble does not diagnose a subluxation based on recent x-rays and, therefore, he is not a physician under the Act and his report is of no probative value.⁵

The weight of the probative medical evidence is sufficient to support the Office's finding that appellant was no longer entitled to compensation for wage loss or medical benefits as of December 5, 1999. The Board accordingly finds that the Office met its burden of proof in this case.

The November 19, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 6, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁴ 5 U.S.C. § 8101(2).

⁵ See *Jack B. Wood*, 40 ECAB 95, 109 (1988).