

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TAMMY P. SMITH and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Hickory, NC

*Docket No. 00-1389; Submitted on the Record;
Issued December 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant's disability causally related to her August 24, 1990 employment injury ended by March 30, 1998.

On August 27, 1990 appellant, then a 31-year-old letter sorting machine operator, filed a claim for strained muscles in her left arm sustained on August 24, 1990 by lifting a mail sack over her head. The Office of Workers' Compensation Programs accepted that appellant sustained a strain of the cervical spine and a left shoulder strain.

On February 26, 1998 the Office which had been paying appellant compensation for temporary total disability since she last stopped work on November 15, 1996 issued a proposal to terminate appellant's compensation on the basis that she had no remaining objective residuals causally related to her August 24, 1990 employment injury.

By decision dated March 30, 1998, the Office terminated appellant's compensation effective that date on the basis that the weight of the medical evidence established that all residuals of her August 24, 1990 injury had ceased.

By letter dated April 14, 1998, appellant requested a hearing before an Office hearing representative, which was held on May 26, 1999. Appellant submitted additional medical evidence.

By decision dated August 5, 1999, an Office hearing representative found that the weight of the medical evidence established that appellant's accepted conditions of left shoulder sprain and cervical spine strain had resolved.

The Board finds that appellant's disability causally related to her August 24, 1990 employment injury ended by March 30, 1998.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.¹

The Office met its burden of proof with the February 13, 1998 report of Dr. Stephen R. Shaffer, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion evaluation. In this report, Dr. Shaffer accurately set forth appellant's history, reviewed the prior medical evidence and described appellant's complaints and findings on physical examination. He concluded:

“Only impression (1) [‘Remote old cervical sprain’] would be considered to be related to the [August 24, 1990] incident. This patient's problems as described are subjective. All her objective studies have been normal except possibly for cervical x-rays which have not been supplied for review. The patient's physical examination today is unreliable with her letting go on the left upper extremity and her positive Waddell's signs. Three FCE's [functional capacity examinations] have revealed sub maximum effort and positive symptom magnification and have been adjudged as being invalid.

“It would appear that the patient possibly acquired a sprain/strain of the cervical spine at the [August 24, 1990] incident, which would be anticipated to have subsided within 12 weeks from the time of that incident. Certainly the patient's main complaints today of periodic passing out and migraine headaches would have nothing to do with that incident. The complaints of numbness and tingling from the top of the left shoulder to the left ring and little fingers are refuted by previous normal studies.

“It appears to me that there are no orthopedic reasons or conditions attributable to the [August 24, 1990] incident, which would preclude or prevent this patient from working at her usual job for an 8-hour workday. She was adjudged at the last FCE on [January 27, 1998] as being considered to have the ability to perform medium-duty work easily with no restrictions.

“Thus, it would be my opinion that orthopedically this patient could return to full work duty status for 8 hours a day. I would consider her to have a 0 percent impairment of the cervical spine for the incident of [August 24, 1990].”

The reports of appellant's attending physicians do not contradict Dr. Shaffer's conclusion that appellant had no remaining disability causally related to her August 24, 1990 employment injury. In a report dated January 19, 1999, Dr. Richard W. Adams, a Board-certified orthopedic surgeon, who treated appellant from October 1990 to November 1996, stated: “To my knowledge, she had no previous problems with her neck and shoulder until the events of 1990. It is my opinion that the strain she suffered produced trauma to her shoulder, neck and upper back

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

and from this she developed fibromyalgia and chronic pain syndrome that ultimately resulted in having to cease work.” Dr. Adams stated that on May 1, 1998 evaluation of appellant for disability he found “she continued to have marked tenderness in the posterior aspect of her neck, limitation of motion of her neck and tenderness in her shoulder, trapezius muscles about her shoulder and the paraspinal muscles of her upper thoracic region. At that time I gave her a disability rating of 10 percent of the total body as a result of this ailment.”

Dr. Adams’ report does not outweigh or even create a conflict of medical opinion with the opinion of Dr. Shaffer. Not only does his January 19, 1999 report not indicate appellant was disabled, but Dr. Adams diagnoses conditions -- fibromyalgia and chronic pain syndrome -- not accepted by the Office or proven to be causally related to appellant’s August 24, 1990 employment injury. Although Dr. Shaffer indicated in an October 2, 1991 report that appellant’s degenerative changes of the neck seen on x-rays were probably aggravated by her August 24, 1990 employment injury, the doctor did not provide any rationale for this opinion.²

With regard to a chronic pain syndrome, the Office referred appellant to Dr. John Reckless, a Board-certified psychiatrist, to determine if she had any psychologic condition causally related to her employment injury. In a report dated November 10, 1997, Dr. Reckless diagnosed malingering and a very mild dysthymia not connected to appellant’s employment injury and stated that if appellant had a somatization disorder, it was not from her employment injury but rather from other sources over the years.

Similarly, the March 11, 1998 report from Dr. Baylen G. Kimball, a Board-certified anesthesiologist, does not indicate that appellant is disabled or that the 5 to 10 percent permanent impairment reported by Dr. Kimball is causally related to appellant’s employment injury. The September 17, 1998 report of Dr. Barrie Hurwitz, a Board-certified neurologist, notes appellant’s symptoms and findings on examination, but also does not state appellant is disabled or that her condition is causally related to her employment injury.

² Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee’s burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

The August 5, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 6, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member