

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LENE A L. BUSBY and U.S. POSTAL SERVICE,
POST OFFICE, Costa Mesa, CA

*Docket No. 99-2121; Submitted on the Record;
Issued July 17, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating compensation benefits for the accepted temporary aggravation of lumbar and cervical arthritis; and (2) whether the Office properly determined that appellant abandoned her request for a hearing.

In the present case, the Office accepted that appellant sustained a right knee strain in the performance of duty on November 23, 1982, with subsequent right knee surgeries. The Office also accepted temporary aggravation of arthritis of the cervical and lumbar spine as consequential injuries.

By letter dated August 24, 1998, the Office advised appellant that it proposed to terminate benefits with respect to the spinal conditions only. The Office indicated that the proposed termination was based on evidence from Dr. James J. Murphy, a Board-certified orthopedic surgeon selected as an impartial medical specialist. In a decision dated October 15, 1998, the Office terminated benefits for the accepted spinal conditions. By decision dated May 11, 1999, the Office determined that appellant had abandoned her request for a hearing.

The Board finds that the Office did not meet its burden of proof in this case.

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

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

establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.²

In this case the Office found a conflict in the medical evidence between an attending physician, Dr. Steven C. Dennis, who had opined that appellant was permanently and totally disabled and Dr. Thomas R. Dorsey, an orthopedic surgeon serving as a second opinion physician. Appellant was referred for examination by Dr. Murphy to resolve the conflict.

The Board notes that the accepted conditions at issue in this case, temporary aggravations of cervical and lumbar arthritis, were consequential injuries from the right knee injury. As the Office explained to Dr. Dorsey, the aggravation of spinal arthritis “result[ed] from abnormal gait and utilization of crutches” from the right knee injury. The statement of accepted facts does not, however, clearly explain this relationship with the knee injury. Moreover, the reports of Dr. Murphy do not address the relevant issues with respect to termination of benefits. In his February 11, 1998 report, Dr. Murphy stated that it was reasonable that appellant would have had transient aggravations of cervical and lumbar spines; he stated that he would find “no amount of permanent disability” due to the aggravations. The Office attempted to clarify the issue, sending Dr. Murphy a memorandum defining temporary and permanent aggravations³ and requested a supplemental report. In a report dated April 1, 1998, Dr. Murphy stated that, based upon the definition provided, there were temporary aggravations with respect to the spinal arthritis. In response to inquiry from the Office as to whether appellant’s current spinal problems were “where it would be absent the injury” or whether the accepted conditions caused permanent changes, Dr. Murphy concluded that current spinal problems are where they would be absent the injury.

It appears that the Office considered that the issue in the case is whether the aggravations were temporary or permanent. It is accepted that the aggravations were temporary; the issue is whether the temporary aggravations had ceased. In this respect, Dr. Murphy does not provide a reasoned opinion that the aggravations had ceased. His reports indicate only that he believed the aggravations were temporary and not permanent, without clearly explaining whether the temporary aggravations had ceased. Dr. Murphy’s report does indicate that appellant continued to use crutches, but his comments are limited to upper extremity conditions. Since the Office apparently accepted the temporary aggravations as a result of using crutches and abnormal gait, there must be some explanation as to why the continued use of crutches no longer contributes to the spinal injuries or why any contribution is not employment related. Dr. Murphy does not provide a sufficiently reasoned opinion that either the aggravations had ceased or that any continuing aggravations were no longer employment related.

In a report dated September 15, 1998, Dr. Murphy reviewed the history provided in his initial report, without addressing the relevant termination issues.

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

³ Temporary aggravation was defined as a worsening of a preexisting condition with no residual alteration of the underlying condition; a permanent aggravation is a continuing and irreversible change in the underlying condition.

The Board accordingly finds that the reports from Dr. Murphy are of little probative value on the issue of whether the employment-related consequential spinal injuries had ceased. It is the Office's burden of proof on this issue and the Board finds that they did not meet their burden in this case.

In view of the Board's findings on the termination issue, it will not address the abandonment of hearing issue.

The decisions of the Office of Workers' Compensation Programs dated May 11, 1999 and October 15, 1998 are reversed.

Dated, Washington, DC
July 17, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member