

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FLORDELIZA F. McCURDY and U.S. POSTAL SERVICE,
POST OFFICE, West Sacramento, CA

*Docket No. 00-2241; Submitted on the Record;
Issued June 6, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to receive compensation for intermittent periods between November 29, 1999 and January 6, 2000 due to her employment injury.

In February 1997, appellant, then a 39-year-old distribution clerk, filed an occupational disease claim alleging that she sustained an employment-related right shoulder impingement.¹ In April 1998, appellant filed another occupational disease claim alleging that she sustained employment-related bilateral carpal tunnel syndrome. The Office of Workers' Compensation Programs accepted that appellant sustained an employment-related right shoulder impingement and bilateral carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on November 2, 1998² and a left carpal tunnel release on October 29, 1999; both surgical procedures were authorized by the Office.

Appellant stopped work on the date of her October 29, 1999 surgery; she stopped work for her scheduled work periods of October 29 to December 2, 1999 and December 5 to December 9, 1999. She returned to her limited-duty work on December 13, 1999 and then stopped work for the periods December 20 to 21, 1999 and January 5 to 6, 2000. The Office paid appellant compensation for total disability for the periods she stopped work between October 29 and November 28, 1999. Appellant claimed that she sustained intermittent disability during the period November 29, 1999 to January 6, 2000 due to her employment injury.³ By decision dated May 22, 2000, the Office denied appellant's claim on the grounds that she did not meet her burden of proof to establish that she sustained employment-related disability during the period November 29, 1999 to January 6, 2000.

¹ In 1997, appellant began working in a limited-duty position at the employing establishment.

² The Office paid appellant compensation for periods she stopped work after her November 2, 1998 right carpal tunnel release.

³ Appellant used leave during these periods and claimed entitlement to reimbursement.

The Board finds that appellant is entitled to receive compensation for intermittent periods between November 29 and December 12, 1999 due to her employment injury, but is not entitled to receive compensation for intermittent periods between December 13, 1999 and January 6, 2000.

Under the Federal Employees' Compensation Act,⁴ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁵ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

In its May 22, 2000 decision denying appellant's claim, the Office asserted that it was appellant's burden of proof to establish that she sustained employment-related disability during the period November 29, 1999 to January 6, 2000. However, when the Office began paying appellant total disability compensation after her authorized surgery on October 29, 1999, it had the burden to present evidence justifying the termination of such compensation after that date. The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation effective November 29, 1999, but only met its burden of proof to terminate appellant's compensation effective December 13, 1999.

The Office asserted that the record contains a report in which Dr. Susan E. Scholey, an attending physician Board-certified in physical medicine and rehabilitation, provided an opinion that appellant could return to her limited-duty position on November 29, 1999. However, this report was completed on October 27, 1999, *i.e.*, on a date prior to appellant's October 29, 1999 surgery and merely provided an estimated return to work date rather than a reasoned opinion on appellant's work capabilities at that time. Therefore, this report would not be sufficient to justify termination of appellant's total disability compensation effective October 29, 1999. The record does, however, contain reports dated December 7, 1999 in which Dr. Scholey provided an opinion that appellant could return to limited-duty work effective December 13, 1999.⁸ These reports would be sufficient to justify termination of appellant's total disability compensation effective December 13, 1999.

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of the reliable, probative and

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁶ *Id.*

⁷ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁸ Appellant in fact returned to her limited-duty work on December 13, 1999. The restrictions recommended by Dr. Scholey would appear to be in accordance with appellant's limited-duty work requirements.

substantial evidence that she had a employment-related total disability, which continued after termination of compensation benefits.⁹

Because the Office met its burden of proof to terminate appellant's total disability compensation effective December 13, 1999, appellant had the burden of proof to establish that she was entitled to receive total disability compensation after that date. However, appellant did not submit any medical evidence which clearly showed that she was entitled to receive total disability for the intermittent periods she stopped work between December 13, 1999 and January 6, 2000.¹⁰ Therefore, appellant would not be entitled to receive total disability for such intermittent periods between December 13, 1999 and January 6, 2000.

The May 22, 2000 decision of the Office of Workers' Compensation Programs is affirmed as modified to reflect that appellant is entitled to receive total disability compensation for intermittent periods between November 29 and December 12, 1995 U.S.C. § 8123(a). due to her employment injury, but is not entitled to receive total disability compensation for intermittent periods between December 13, 1999 and January 6, 2000.

Dated, Washington, DC
June 6, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁹ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

¹⁰ Appellant stopped work for the periods December 20 to 21, 1999 and January 5 to 6, 2000.