

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARDELLA R. ERVIN and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 00-654; Submitted on the Record;
Issued March 22, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits after September 7, 1999.

On July 18, 1996 appellant, then a 36-year-old mail processor, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that on July 17, 1996 she realized that she injured her right arm and shoulder as a result of sweeping stackers, ledges, pull trays and A-frames. She did not stop work but began performing restricted duties. On October 30, 1996 the Office accepted the claim for right shoulder strain.

In a December 16, 1996 report, Dr. James Silverblatt, Board-certified in internal medicine, noted that he had seen appellant on four different occasions in his office for shoulder pain that she attributed to repetitive motion at work. Dr. Silverblatt noted that, on each occasion, he felt that the nature of the injury was muscular/tendinous. He noted that he did not see her again until December 3, 1996 when she once again had recurrence of right shoulder pain while working on the mail-sorting machine. Dr. Silverblatt diagnosed tendinitis and possible impingement syndrome.

In a letter dated January 12, 1998, the employing establishment inquired into the need for continuing work restrictions.

In an April 20, 1998 report, Dr. Patrick T. Hergenroeder,¹ Board-certified in orthopedic surgery, examined appellant. Dr. Hergenroeder diagnosed bursitis and tendinitis of the right shoulder. He also noted that he injected appellant with xylocaine and steroid and noted that appellant was completely disabled. Dr. Hergenroeder advised appellant to return in a month.

¹ It appears the employing establishment initially referred appellant to Dr. Hergenroeder.

In a report dated May 6, 1998, Dr. Hergenroeder noted that appellant had come in for a recheck of her right shoulder noting that the injection of cortisone was not helpful. He noted that appellant's x-rays were negative and that there was no evidence of any acromioclavicular (AC) joint arthritis, spurring or impingement defects at the greater tuberosity. Dr. Hergenroeder diagnosed bursitis and tendinitis of the right shoulder and indicated that appellant had no disability and could continue to work.

On November 20, 1998 the Office referred appellant to Dr. Moses Leeb, a Board-certified orthopedic surgeon, for a second opinion evaluation.

In a report dated December 17, 1998, Dr. Leeb examined appellant. He noted that appellant had full range of motion of the right shoulder and no objective evidence of residual impairment of function of the right shoulder resulting from the shoulder strain as initially reported. Dr. Leeb stated that there was no evidence of residual impairment that would preclude appellant from returning to her date-of-injury job as a mail processor. He noted that appellant could perform her work of lifting trays of mail up to 20 pounds but would be precluded from lifting 70 pounds.

In a January 22, 1999 concurring report, Dr. Hergenroeder reviewed Dr. Leeb's January 17, 1998 report and indicated that he accepted the facts and evaluation relative to appellant.²

In an April 23, 1999 disability certificate, Dr. Silverblatt noted that appellant had chronic right shoulder bursitis which was aggravated by repetitive movement and overhead movement. He requested that appellant not be placed in activities that would aggravate her condition.

In an April 27, 1999 letter, the Office requested that appellant provide updated information from Dr. Silverblatt including his opinion with respect to Drs. Leeb and Hergenroeder's reports and a discussion of appellant's remaining residuals and work restrictions.

In a June 7, 1999 report, Dr. Silverblatt noted that an examination of appellant's right shoulder revealed a "completely normal range of motion and motor strength with testing with regard to various resistance maneuvers." He noted that appellant is a relatively short statured person and after a significant amount of lifting of 20-pound mail trays over her head, she develops a right shoulder pain primarily over the supraspinatus region. Dr. Silverblatt stated that it was conceivable that, although she did not have any abnormalities on physical examination, this musculature became strained with repetitive motions such as that involved in her daily work activities. He also noted that it must be recognized that there was a "possibility" that she has a functional problem due to her height and repetitive motions.

On July 8, 1999 the Office sent Dr. Leeb a letter requesting clarification of his findings from his December 17, 1998 report.

² Dr. Hergenroeder accepted the facts and evaluation with the exception of a mistake as to the last date he saw appellant. He confirmed the last date he saw appellant was May 6, 1998.

In a July 17, 1999 report, Dr. Leeb replied that he reviewed his report of December 15, 1998 as well as the report of appellant's attending orthopedic surgeon and her primary care physician. He stated that his restriction of weight lifting of 70 pounds was not consistent with his objective findings with regard to the right shoulder, which revealed no actual abnormalities. Dr. Leeb stated that he was amending his evaluation to indicate that appellant could perform her full duties as a letter carrier with no restrictions.

On August 5, 1999 the Office issued a notice of proposed termination of compensation and medical benefits. Appellant was allotted 30 days to submit evidence if she disagreed with the proposed action.

In a decision dated September 7, 1999, the Office terminated appellant's entitlement to compensation benefits as the evidence of file failed to establish that the ongoing condition and disability was causally related to the work injury.

The Board finds that the Office properly terminated appellant's entitlement to compensation benefits after September 7, 1999.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.³ 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 disability has ceased or that it is no longer related to the employment.⁴ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁵ 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.⁶

In this case, the Office accepted the claim for right shoulder strain. Dr. Hergenroeder, indicated in his May 6, 1998 report that appellant's x-rays were negative and that there was no evidence of any AC joint arthritis, spurring or impingement defects at the greater tuberosity. He diagnosed bursitis and tendinitis of the right shoulder and noted that she could continue to work. Dr. Hergenroeder did not indicate that the bursitis and/or tendinitis were related to appellant's work. Dr. Leeb, in his December 17, 1998 report, noted that appellant had no objective evidence or residual impairment of the right shoulder and could return to her date-of-injury job as a mail processor with a restriction that precluded her from lifting 70 pounds. On January 22, 1999 Dr. Hergenroeder concurred with Dr. Leeb's December 17, 1998 report and stated that the last time he saw appellant was on May 6, 1998. Appellant subsequently provided an April 23, 1999 disability certificate from Dr. Silverblatt noting that she had chronic right shoulder bursitis which was aggravated by repetitive movement and overhead movement. The certificate did not

³ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁴ *Id.*

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁶ *Id.*

preclude her from work but merely requested that she engage in activities that did not aggravate her condition. Dr. Silverblatt did not provide a rationalized explanation as to how this bursitis was related to her work or precisely what activities should be precluded.⁷ In his June 7, 1999 report, Dr. Silverblatt noted that “examination of appellant’s right shoulder revealed a completely normal range of motion and motor strength with testing with regard to various resistance maneuvers.” He also indicated that it was “conceivable” that, due to appellant’s stature, after a significant amount of lifting of 20-pound mail trays over her head, she develops a right shoulder pain primarily over the supraspinatus region. Dr. Silverblatt noted that, “although she does not have any abnormalities on physical examination, the musculature becomes strained with repetitive motions such as those in her daily work activities.” He indicated that there is a “possibility” that appellant has a functional problem due to her height and repetitive motions. Dr. Silverblatt’s report indicated that appellant’s right shoulder was normal and speculated about a functional problem related to appellant’s height.⁸ Dr. Leeb clarified his findings in a July 17, 1999 report and noted that appellant’s shoulder revealed no actual abnormalities and appellant could perform her full duties as a letter carrier with no restrictions. Consequently, all of the physicians ultimately agreed that appellant did not have any abnormalities on physical examination. Dr. Leeb concluded that appellant’s employment-related condition resolved and no other physician of record has provided an unequivocal and reasoned opinion to support any continuing work-related condition.

Therefore, the Office properly terminated appellant’s compensation benefits.

⁷ The opinion of the physician must be based upon a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion. *See James Mack*, 43 ECAB 321 (1991).

⁸ The Board has held that an opinion, which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur P. Vliet*, 31 ECAB 366 (1979).

The decision of the Office of Workers' Compensation Programs dated September 7, 1999 is hereby affirmed.

Dated, Washington, DC
March 22, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member