

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOMINQUA LOCOCO and U.S. POSTAL SERVICE,
POST OFFICE, Novelty, OH

*Docket No. 00-1089; Submitted on the Record;
Issued March 14, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits.

On December 19, 1995 appellant, a 25-year-old window clerk, hurt her back when she lifted a sack into a hamper. The Office accepted her claim for lumbosacral sprain. Appellant returned to limited duty on May 6, 1996.

On March 4, 1997 the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, for an opinion on injury-related residuals. In a report dated March 26, 1997, Dr. Kaffen related appellant's history and complaints, which included the following: persistent low back pain that was constant in nature and aggravated by bending and lifting; radiation into the left buttock and proximal thigh; paresthesias in the left buttock and occasionally to the calf. Findings on physical examination included the following: tenderness over the left sacroiliac region and left paraspinous muscles; a moderate degree of muscle guarding; 30 degrees flexion, 20 degrees extension and 20 degrees lateral bending both left and right; and pain with flexion and lateral bending. A straight leg raising test was negative on the right but on the left produced a complaint of low back pain to the left buttock at approximately 30 to 40 degrees.

Dr. Kaffen reported that the findings of previous diagnostic studies indicated a diagnosis of lumbosacral sprain. Based on the history and physical examination, Dr. Kaffen opined that appellant continued to experience residuals of her low back injury of December 19, 1995. He explained that these residuals consisted of persistent pain, muscle guarding and limitation of motion. Dr. Kaffen added that appellant was not capable of returning to the duties of a window clerk, as this involved continuous lifting, standing and stretching and unloading of mail trucks. He recommended conservative treatment, including medication.

Appellant's attending physician, Dr. Tim Nice, saw appellant in September 1997 and returned her to work on a somewhat limited basis. He reported that her current limitations should be considered permanent.

The Office again referred appellant, together with the medical record and a statement of accepted facts, to Dr. Kaffen for an opinion on injury-related residuals. In a report dated August 19, 1998, he related appellant's complaints and his findings, which were substantially similar to those in his previous report.

Responding to questions posed by the Office, Dr. Kaffen reported that there were no objective physical findings to indicate persistent residuals of the 1995 work injury and that on an objective basis, appellant's work-related lumbar strain had resolved. He stated that appellant was capable of working her date-of-injury job but with a lifting restriction of 20 pounds. It was a common occurrence, he explained, that patients who have previous low back injuries were more likely to have a recurrent injury. On October 7, 1998 Dr. Kaffen stated that the 20-pound lifting restriction was for the prevention of recurrent injury to appellant's low back.

On December 9, 1998 the Office issued a notice of proposed termination of medical benefits. The Office explained that the weight of the medical evidence established that appellant had no residuals from her December 19, 1995 work injury and that she was capable of returning to her date-of-injury position with no restrictions.

In a decision dated January 11, 1999, the Office terminated appellant's medical benefits.

The Board finds that the Office met its burden of proof in terminating appellant's medical benefits.

Once the Office accepts a claim it has the burden of proof to justify a termination or modification of compensation benefits.¹ After it has determined that an employee has a condition causally related to his or her federal employment, the Office may not terminate compensation without establishing that the condition has ceased or that it is no longer related to the employment.²

The August 19, 1998 opinion of Dr. Kaffen, the Office referral physician, is sufficiently reasoned to establish that residuals of the accepted employment injury have resolved.

Based on the history and physical examination he related on March 26, 1997 Dr. Kaffen reported that appellant continued to experience residuals of her low back injury of December 19, 1995, including persistent pain, muscle guarding and limitation of motion. On August 19, 1998, however, Dr. Kaffen opined that appellant's work-related lumbar strain had resolved, despite her continuing complaints of pains. Dr. Kaffen noted that all motions on physical examination were accompanied by complaints of pain but a neurological examination revealed deep tendon reflexes to be equal bilaterally with no motor or sensory deficit.

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² See *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

His review of the medical records indicated that a magnetic resonance imaging administered on two occasions was negative for herniated discs and that an electromyograph study with nerve conduction showed no evidence of lumbar radiculopathy. Based on these results, Dr. Kaffen concluded that there were no objective physical findings to indicate persistent residuals of the 1995 work injury. While Dr. Kaffen imposed a lifting restriction of 20 pounds, he explained that this restriction was prophylactic in nature, to prevent recurrent injury to appellant's low back.³

The Board finds that Dr. Kaffen's 1998 report constitutes the weight of the medical opinion evidence and establishes that appellant has no work-related residual condition from her 1995 back injury.

The January 11, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed

Dated, Washington, DC
March 14, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

³ See *Brady L. Fowler*, 44 ECAB 343 (1992).