

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELLA MURRAY and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 00-1305; Submitted on the Record;
Issued March 21, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective January 5, 2000.

Appellant, a 61-year-old mailhandler, filed a notice of traumatic injury on May 25, 1999 alleging that she hurt her right side when she stumbled on entering an elevator at work. The Office accepted appellant's claim for cervical and low back strain as well as right hip and thigh strains. On November 23, 1999 the Office proposed to terminate appellant's compensation. By decision dated January 5, 2000, the Office terminated appellant's compensation.¹

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

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.² 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.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate

¹ Following the Office's January 5, 2000 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board will not review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

In this case, appellant's attending physician, Dr. Vincent Baldwin, a Board-certified neurologist, released appellant to return to full duty in her date-of-injury position with the additional restriction of no repetitive bending of the back on July 14, 1999. Appellant began working eight hours a day on July 27, 1999.

The Office referred appellant to a second opinion evaluation with Dr. John Lavorgna, a Board-certified orthopedic surgeon. In a report dated July 25, 1999, Dr. Lavorgna noted appellant's history of injury and performed a physical examination. He found that the temporary aggravation of appellant's condition had ceased and that she had no residuals and no disability due to her May 25, 1999 employment injury.

Section 8123(a) of the Federal Employees' Compensation Act,⁶ provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." In this case, the Office properly found a conflict of medical opinion evidence between appellant's attending physician, Drs. Baldwin and Lavorgna, the Office's second opinion physician. The Office referred appellant, a statement of accepted facts and a list of specific questions to Dr. Clarence A. Boyd, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a report dated October 1, 1999, Dr. Boyd noted appellant's history of injury, reviewed the medical records and performed a physical examination. He found no evidence of the accepted conditions of cervical and low back strain or right hip and thigh strains. Dr. Boyd stated that appellant had no objective findings, no disability due to her injury and no need of additional medical treatment.

Where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁷ In this case, Dr. Boyd's report is entitled to the weight of the medical evidence. He performed a physical examination and found full range of motion of the cervical spine and left shoulder as well as the lumbar spine. He also found normal neurological function in appellant's upper and lower extremities. Dr. Boyd concluded that appellant had no physical limitations as a result of the stumbling incident of May 25, 1999.

Following Dr. Boyd's report and the notice of proposed termination of compensation, appellant submitted an additional report dated November 9, 1999 from Dr. Baldwin. He noted appellant's continued complaints of pain and recommended a magnetic resonance imaging scan.

⁵ *Id.*

⁶ 5 U.S.C. §§ 8101-8193, 8123(a).

⁷ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

Dr. Baldwin stated that appellant lacked range of motion in her cervical spine and demonstrated muscle spasm in both the cervical and lumbar spines. He stated that appellant had taken a turn for the worse and was currently totally disabled.

Although Dr. Boyd reported his physical findings and his conclusion that appellant had sustained a recurrence of total disability, he failed to provide a history of injury or, an opinion on the causal relationship between appellant's current condition and her accepted employment injury. He also did not explain how and why he believed that appellant was totally disabled due to her accepted employment injury. Without the necessary medical opinion evidence regarding the causal relationship supported with medical rationale, this report is insufficient to establish appellant's continuing disability and medical residuals. As Dr. Baldwin was on one side of the conflict that Dr. Boyd resolved, the additional report from Dr. Baldwin is insufficient to overcome the weight accorded Dr. Boyd's report as the impartial medical specialist or to create a new conflict with it.⁸

As the weight of the medical opinion evidence represented by the well-rationalized report, of Dr. Boyd establishes that appellant has no disability or medical residuals due to her May 25, 1999 employment injury, the Office met its burden of proof to terminate appellant's compensation benefits.

The January 5, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 21, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁸ *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).