

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY PATE and U.S. POSTAL SERVICE,
POST OFFICE, Trenton, NJ

*Docket No. 00-1343; Submitted on the Record;
Issued March 7, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether Office of Workers' Compensation Programs properly terminated appellant's compensation benefits on the grounds that he had no continuing disability resulting from his accepted January 29, 1997 employment injury.

The Board has carefully reviewed the case record and finds that the Office has met its burden of proof in terminating appellant's compensation.

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.¹ 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.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ 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.⁴

On January 29, 1997 appellant, then a 49-year-old mailhandler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he injured his ankle when a machine rolled over it while he was loading a trailer. He stopped work on January 29, 1997, received continuation of pay and was subsequently placed on the periodic rolls

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

for temporary total disability. The Office accepted the claim for right ankle sprain, right knee sprain and neck sprain.

On January 9, 1998 the Office issued a notice of proposed termination of benefits on the grounds that appellant no longer suffered from any residuals of his work-related injuries. On March 16, 1998 the Office terminated appellant's compensation and medical benefits effective March 16, 1998 relying upon the January 7, 1998 medical report of Dr. Stanley R. Askin, a Board-certified second opinion orthopedic surgeon. The Office found that the February 17, 1997 magnetic resonance imaging (MRI) scans and March 18, 1997 x-ray interpretations reports had been previously submitted and were considered when issuing the proposed notice of termination. Lastly, the Office found the December 11, 1997 report by Dr. Ronald M. Krasnick, an attending orthopedic surgeon, to be of less probative value as he provided no objective findings to support his conclusion that appellant's condition remained unchanged objectively and subjectively.⁵

Appellant requested an oral hearing which was held on November 18, 1998. The hearing representative affirmed the termination order on January 27, 1999. The hearing representative found the October 22, 1998 progress notes by Dr. John J. Sweeney, III, an attending physician, were not probative as they failed to mention appellant's employment injuries.

The Board finds that Dr. Askin's report is sufficient to meet the Office's burden of proof in terminating compensation. On January 7, 1998 he stated that there was no objective evidence to support any continuing disability due to the accepted employment injury. Dr. Askin noted that appellant was overweight and diagnosed "degenerative changes in his neck and back," a "left sternoclavicular separation the age of which cannot be determined at the present time" and that appellant "may have had a contusion or sprain of his right ankle or foot and perhaps a contusion of his low back" due to the January 29, 1997 employment injury. He further advised that appellant had no objective findings in his right knee, which showed full range of motion. Dr. Askin concluded that appellant had no orthopedic, physical limitations due to the January 29, 1997 employment injury and was capable of performing his full-work duties. He also noted that basically appellant stated he hurt, but that appellant "evinces no clinical findings of significance the nature of which could be considered preclusive of gainful activity." In conclusion Dr. Askin opined, based upon the objective findings and review of appellant's medical records, that appellant's ankle and neck injuries resulting from the January 29, 1997 employment injury had resolved and that appellant had no residuals from the employment injury.

The Board finds that the reports of Drs. Krasnick and Sweeney are insufficient to create a conflict with the report of Dr. Askin. In his December 11, 1997 report, Dr. Krasnick opined that appellant "remains unchanged subjectively, the only difference being that he is developing some nodules diffusely in his left upper extremity suggestive of some inflammatory process." As noted by the Office, Dr. Krasnick failed to provide a rationalized opinion regarding appellant's disability beyond noting that appellant's condition had not changed and noting that appellant had subsequently developed nodules in his left upper extremity. Furthermore, Dr. Sweeney's

⁵ The Board notes that Dr. Krasnick submitted a work restriction evaluation form (Form OWCP-5) dated March 4, 1998 which stated that appellant was capable of working eight hours per day with restrictions and that he required vocational rehabilitation services.

progress notes provided no opinion as to a causal relationship between appellant's physical condition and his accepted employment injuries.

The Board therefore finds that the weight of the medical evidence rests with the opinion of Dr. Askin, the second opinion physician, who provided a rationalized explanation of why appellant had no continuing disability due to his accepted employment injury. His opinion is sufficient to meet the Office's burden of proof in terminating appellant's compensation.

The decision of the Office of Workers' Compensation Programs dated January 27, 1999 is hereby affirmed.

Dated, Washington, DC
March 7, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member