

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOREEN COPELAND and U.S. POSTAL SERVICE,
WILLIAMS BRIDGE POST OFFICE, Bronx, NY

*Docket No. 00-1552; Submitted on the Record;
Issued May 1, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective December 1, 1998.

The Board has duly reviewed the case record and finds that the Office properly terminated appellant's compensation effective December 1, 1998 on the grounds that she did not have any residual disability related to her employment injury of February 19, 1991.

On February 26, 1991 appellant, then a 34-year-old letter carrier, filed a claim for traumatic injury claim alleging that on February 19, 1991 she injured her back while in the performance of duty. The Office accepted appellant's claim for back strain and the employing establishment placed her in a limited-duty status on February 26, 1991.¹

In a medical report dated October 14, 1992, stated that appellant had permanent chronic scapular tendinitis and that she should be on permanent light duty with no lifting, pulling or pushing.²

On February 16, 1993 and on subsequent dates the employing establishment requested that the Office provide an independent examination to determine appellant's work capacity.

¹ On April 17 and September 6, 1991 and January 8, 1992 appellant filed claims for recurrences of disability. On September 28, 1993 the Office denied appellant's claim for recurrence of disability on or after January 7, 1992. On September 10, 1993 appellant alleged that, on October 14, 1992 and February 1 and August 31, 1993, she sustained recurrences of disability based on her February 19, 1991 work-related injury. By decision dated February 10, 1994, the Office denied appellant's claim for recurrences of disability alleged to have occurred on October 14, 1992 and February 1 and August 31, 1993.

² The Dr. Rashmi C. Sheth referenced his April 29, 1992 report wherein he stated that appellant was on permanent restriction.

In a March 28, 1996 medical report, Dr. Sheth, appellant's treating physician and Board-certified in orthopedic surgery, stated that appellant had a chronic left scapular tendinitis and was on permanent restricted duty.

On January 8, 1997 the Office referred appellant to Dr. Raymond P. Koval, Board-certified in orthopedic surgery, for a second opinion on whether appellant continued to have disability causally related to her accepted employment injury.

In a report dated January 9, 1997, Dr. Koval opined, based upon appellant's employment injury and medical history, a review of the medical records, statement of accepted facts and physical examination, that the objective evidence indicated that appellant did not have any continuing disability from her accepted employment injury. Furthermore, he opined that appellant would be able to perform her usual federal employment and that no further medical treatment was necessary. An orthopedic examination of the spine and upper extremities revealed no pathology. Dr. Koval noted that appellant had a normal neurological examination and that she had free and unrestricted straight leg raising. Her Lasegue's and Patrick's tests were negative. He also noted no spasm.

On February 3, 1998 the Office referred appellant to Dr. Richard E. Stern, Board-certified in orthopedic surgery, for an impartial medical examination to resolve the conflict in medical opinion between Drs. Koval and Sheth.

In a report dated October 2, 1998, Dr. Stern, based upon a review of the records, statement of accepted facts and physical examination, concluded that appellant had no residual disability from her employment injury and was capable of performing her usual job. He stated that appellant had no tenderness over the cervical or thoracic spine or paracervical, superscapular or parathoracic muscles bilaterally and that her Vertex compression test was negative. Dr. Stern noted full range of motion in all joints in both upper and lower extremities with no swelling or tenderness. He further stated that appellant's neurological examination was intact in both extremities. Dr. Stern opined:

"The diagnosis is a resolved thoracic strain, which if the history is correct was causally related to the incident of February 19, 1991. The claimant's subjective complaints are not substantiated by any objective findings. I find no evidence of any causally related disability and no reason why this claimant cannot resume the normal duties of her occupation without restriction or limitation. It should be noted that the findings of the CAT [computerized axial tomography] scan of hemangioma at T7 are of no clinical significance and unrelated to the episode of February 19, 1991."

On October 28, 1998 the Office issued appellant a notice of proposed termination of compensation and medical benefits. The Office determined that the weight of the evidence, resting with the opinion of an impartial medical examiner, established that appellant had disability or residuals related to the accepted work injury of February 19, 1991.

In a decision dated December 1, 1998, the Office terminated appellant's compensation effective that date.

By letter dated November 22, 1999, appellant through counsel, requested reconsideration. On February 1, 2000 the Office in a merit decision, denied appellant's request for modification and found that the opinion of Dr. Stern, the impartial medical examiner, represented the weight of the evidence that appellant had no residuals of her February 19, 1991 injury.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective December 1, 1998 on the grounds that she had no further work-related disability.

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 or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁶

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report.⁷

In this case, the Office accepted that appellant sustained back strain and paid appropriate medical benefits. The Office subsequently referred appellant to Dr. Stern for an impartial medical examination. The Board finds that the weight of the medical evidence rested with Dr. Stern who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. He performed a complete examination, reviewed the record and advised that appellant had not continued disability from her accepted employment injury, was capable of performing her usual employment and that further medical treatment was unnecessary. Accordingly, as Dr. Stern was appointed impartial medical examiner for the purpose of resolving the conflict between the opinions of Drs. Koval and Sheth and his opinion is sufficiently well rationalized and based upon a proper factual background, the Office properly gave this decision special weight.⁸

³ *Lawrence D. Price*, 47 ECAB 120 (1995).

⁴ *Id*; see *Patricia A. Keller*, 45 ECAB 278 (1993).

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

⁶ *Id*.

⁷ See *Connie Johns*, 44 ECAB 560 (1993).

⁸ *Roger Dingess*, 47 ECAB 123, 126-27 (1995).

Pursuant to her request for reconsideration, appellant argued that Dr. Stern was unaware of her responsibilities. However, he noted a familiarity with appellant's position description in his report and was also provided a statement of accepted facts which noted her position as a letter carrier.

The Board, therefore, finds that Dr. Stern, as the impartial medical examiner, established that appellant ceased to have any disability or condition causally related to her employment injuries, thereby justifying the Office's December 1, 1998 termination of benefits.⁹

The February 1, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 1, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁹ See *Joe Bowers*, 44 ECAB 423 (1993).