

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICK M. DUFFY and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Warrendale, PA

Docket No. 99-995; Submitted on the Record;
Issued May 15, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, 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 as of February 8, 1996 on the basis that he no longer suffered any continuing disability as a result of his employment-related lumbar strain and subluxations.

On December 23, 1987 appellant, then a 42-year-old mailhandler, sustained a traumatic injury to his neck and back while in the performance of duty. The Office accepted the claim for lumbar strain and subluxations at C4-5, T3-5 and T6. Additionally, the Office accepted that appellant sustained recurrences of total disability on May 25, 1989, November 6, 1991 and September 28, 1993, all of which were causally related to appellant's December 23, 1987 employment injury. The Office placed appellant on the periodic compensation rolls as a result of his September 28, 1993 recurrence of total disability.

By decision dated February 8, 1996, the Office terminated appellant's compensation on the basis that he no longer had any continuing disability as a result of his December 23, 1987 employment injury. The Office found that the July 21, 1995 examination and report of Dr. Robert M. Yanchus, a Board-certified orthopedic surgeon and Office referral physician, represented the weight of the medical evidence.¹

In a decision dated July 10, 1997, an Office hearing representative affirmed the February 8, 1996 decision terminating compensation. Appellant subsequently requested reconsideration; however, in a merit decision dated October 6, 1998, the Office denied modification of its prior decision.

¹ Dr. Yanchus concluded that appellant could return to his prior duties as a mailhandler without modifications or restrictions.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³

As noted above, the Office based its decision to terminate compensation on Dr. Yanchus' July 21, 1995 report. Dr. Yanchus characterized appellant's December 23, 1987 employment injury as "no more than a sprain to the neck and upper back." He explained that this was a "soft tissue injury amenable to recovery within a matter of a few weeks or months with no specific treatment necessary." Dr. Yanchus concluded that appellant's present symptoms were not related to the work injury, sustained 7½ years prior and that appellant could return to his prior duties as a mailhandler without any modifications or physical restrictions.

Appellant's treating physician, Dr. Alan J. Barnett, a Board-certified internist, reviewed Dr. Yanchus' opinion and in a report dated November 15, 1995, stated his disagreement with the findings of Dr. Yanchus. Dr. Barnett found that appellant had a persistent lumbar strain dating back to his 1987 employment injury and that appellant remained symptomatic. Additionally, Dr. Barnett stated that appellant was unable to perform full-time work even at a sedentary level indicating appellant had residual disability due to the accepted injury.

The Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.⁴ As there exists an unresolved conflict in medical opinion between Drs. Yanchus and Barnett, the Office did not meet its burden of proof to terminate appellant's compensation benefits.

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

The October 6, 1998 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC
May 15, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member