

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNN A. GRINGERI and U.S. POSTAL SERVICE,
POST OFFICE, North Reading, MA

*Docket No. 01-958; Submitted on the Record;
Issued November 29, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she had no continuing disability resulting from her accepted work injury.

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

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation. Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.¹

Appellant's October 31, 1999 notice of occupational disease was accepted by the Office on February 1, 2000 for herniated discs at C4-5, C5-6 and C6-7 and cervical strain. The Office advised appellant that she could claim compensation for lost time from work by filing a Form CA-7 through her employing establishment.²

On February 8, 2000 appellant filed a claim for compensation alleging that she was totally disabled from October 8, 1999 to February 25, 2000 due to her June 8, 1998 work-related injury.³

¹ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

² Appellant stated in her claim form that she has been out of work since October 8, 1999.

³ Appellant filed subsequent claims for wage loss to September 22, 2000.

In a report dated April 17, 2000, Dr. Bruce R. Cook, Board-certified in neurological surgery, examined appellant that day, noting “no dominant osteophyte or disc herniation” and referred her to a physiatrist.

In a report dated May 9, 2000, Dr. Elizardo P. Carandang, Board-certified in physical medicine and rehabilitation, examined appellant and reported “functional range of motion of the shoulders, elbows, wrists and fingers and both hips, knees and ankles.” He noted that her peripheral pulses were intact as well as her upper and lower limb reflexes. However, Dr. Carandang noted “tautness along the lower cervical paraspinals and upper and middle trapezius and rhomboids bilaterally.” Dr. Carandang noted chronic muscle fatigue and strain in her cervical and shoulder muscles with some elements of myofascitis. He stated that after a limited four to six weeks of physical therapy, appellant “should be able to do at least some duty.”

In a report dated August 10, 2000, Dr. Arthur P. Safran, a Board-certified internist and a second opinion physician, stated that he examined appellant that day and reported findings. He noted that appellant had a normal gait and hip pain but found no objective findings of weakness or sensory impairment. Dr. Safran noted normal reflexes without atrophy. No paraspinal spasm was found. Neck turning was complete in lateral bending, limited to 75 degrees in each direction. He noted pain in abducting and rotating hips and tenderness in the paravertebral region of the neck, at the interscapular region and in the lower back. Forward flexion was normal. Dr. Safran diagnosed fibromyalgia and cervical spondylosis. He added that the conditions were not employment related because the symptoms were “generalized, not specifically related to a particular event since they are widespread throughout the body. There is also no evidence of neurological impairment.”

In a report dated August 15, 2000, Dr. Carandang stated that appellant was “being followed for neck and shoulder girdle pain.” Upon examination, he noted intact reflexes with no focal or sensory loss to her upper limbs. He stated that appellant should perform her exercises at home and that he “would try to get her into some modified work. She will not be returning, or will not try to return to work until the middle of next month.”

In a supplemental report dated September 5, 2000, Dr. Safran stated that appellant had no symptoms of herniated disc since there was no evidence of radiculopathy or myelopathy. He added that the herniated disc as revealed in the MRI scan did not compress a nerve root.

On December 12, 2000 the Office issued a notice of proposed termination on the grounds that appellant had no residuals based on her work-related injury.

In response, appellant submitted a December 18, 2000 report from Dr. Jody Naimark, appellant’s treating physician and Board-certified in family practice, who stated that she had been treating appellant since June 1998 for “left shoulder pain and painful arc.” She stated that appellant was unable to abduct her left arm and that she should be referred to an orthopedic surgeon “to develop and evaluate before she develops a frozen shoulder.” In a decision dated January 17, 2001, the Office terminated compensation effective that date.

The Board finds that Dr. Safrans’ reports are sufficient to meet the Office’s burden of proof in terminating compensation.

Dr. Safran, a Board-certified internist and a second opinion physician, provided a rationalized medical opinion to support that appellant's fibromyalgia and cervical strain were not causally related to appellant's work-related injury. He noted no objective findings of weakness or sensory impairment and normal reflexes. Although he noted appellant's subjective complaints of hip and neck pain, he did not support her complaints with objective test results to establish that her work-related condition caused her pain. He further noted that appellant's magnetic resonance imaging scan did not reveal a compressed nerve root. Further, Dr. Carandang's August 15, 2000 report did not provide a rationalized medical opinion to support appellant's disability from work, finding that her reflexes were intact with no focal or sensory loss to her upper limbs. He also noted that she would return to work in the middle of September 2000.

Therefore, the Board finds that the weight of the medical evidence rests with the opinion of Dr. Safran, the second opinion specialist, who provided a rationalized medical explanation of why appellant had no residuals based on her work-related injury and is sufficient to meet the Office's burden of proof in terminating appellant's compensation.⁴

The December 12, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 29, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁴ Dr. Naimark's December 18, 2000 report refers to appellant's left shoulder condition which the Office had not accepted as a work-related injury.