

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY A. JOHNIGAN-SHAW and U.S. POSTAL SERVICE,
GRATIOT STATION, Detroit, MI

*Docket No. 01-1813; Submitted on the Record;
Issued November 6, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective September 18, 2000.

On March 14, 1999 appellant, then a 39-year-old letter carrier, sustained an employment-related aggravation of right shoulder strain.¹ She stopped work that day and received appropriate compensation. Appellant was initially treated by Dr. Raj J. Nagarsheth, who is a family practitioner and is Board-certified in pediatrics. She then came under the care of Dr. Walter L. Everett, a Board-certified orthopedic surgeon, who submitted a report dated August 3, 1999 in which he diagnosed lumbosacral syndrome and advised that, while she could not return to work as a letter carrier, she could perform light duty.² Magnetic resonance imaging (MRI) scan of the lumbar spine on August 26, 1999 was interpreted as normal. In an October 7, 1999 report, Dr. Everett advised that examination of appellant's shoulder revealed full range of motion with some irritability with vigorous examination and no impingement or painful arc or evidence of instability. He noted the MRI findings and concluded appellant had symptomatic disability and suggested that she see a psychiatrist.

Appellant was referred to a rehabilitation nurse who referred her to Dr. Maury R. Ellenberg, a Board-certified physiatrist. By report dated October 26, 1999, Dr. Ellenberg, noted a chief complaint of lower back pain and on examination noted findings of pain in the lower back area with no spasm and normal range of motion. Examination of the upper extremities was normal. He advised that she could return to restricted duty, beginning at four hours per day. In a treatment note dated November 19, 1999, Dr. Nagarsheth diagnosed back and shoulder sprains

¹ On her claim form, appellant advised that lifting tubs and trays of mail and parcels and carrying her mail satchel caused back and right shoulder problems. The Office has not accepted that any back condition is employment related.

² The record indicates that appellant refused job offers on October 8 and 29, 1999. On December 3, 1999 she accepted a job offer.

and advised that appellant could not return to her regular duties. In a November 29, 1999 report, Dr. Ellenberg diagnosed low back pain and advised that appellant could return to clerical duties with a weight restriction of 25 pounds. She was to begin working four hours per day and increase one hour per day each week. In a November 30, 1999 report, he noted the additional complaint of shoulder pain. Examination revealed discomfort at the extremes of motion.

On December 1, 1999 the Office referred appellant, along with a statement of accepted facts, a set of questions and the medical record, to Dr. Norman L. Pollak, a Board-certified orthopedic surgeon, for a second opinion evaluation.³ In a December 14, 1999 report, Dr. Pollak noted appellant's complaints of pain in the shoulder and back. Examination revealed tenderness in the right flank area and posterior shoulder area. Impingement test elicited a complaint of pain with passive flexion and in turning of the upper limb towards the left. Reflex and motor testing strength were normal. Sensation was intact other than the tips of the dorsal fingers on the right hand which were numb and dull. Phalen's and Tinel's tests were negative. Straight leg raising test was negative. X-rays of the lumbosacral spine and right shoulder were normal. Dr. Pollak found no real indication of injury, other than the possibility that there were injuries in two earlier automobile accidents and felt that her back complaints were connected with those incidents. He stated that there were no findings in relation to the lower back area, noting that the MRI scan was normal and advised that there were no findings, either on examination or x-ray, regarding the right shoulder. Dr. Pollak concluded that appellant had no objective findings and could return to her normal job duties and certainly the limited job she was offered. In an attached work capacity evaluation, he advised that appellant had no restrictions.

Appellant returned to limited duty on January 3, 2000.

Dr. Ellenberg continued to submit reports in which he noted that appellant continued to have complaints of pain in the shoulder and back. His recommendations were unchanged. In a May 30, 2000 report, Dr. Ellenberg advised that appellant had been in an automobile accident on April 26, 2000. He noted findings of tenderness in the back and shoulder regions and diagnosed myofascial lower back and neck pain. In a July 11, 2000 report, Dr. Ellenberg noted that he had reviewed Dr. Pollak's report and recommended that appellant be involved in a rehabilitation program which would help restore her to full duty. In an August 1, 2000 report, Dr. Ellenberg noted appellant's complaints of pain in the back and shoulder areas. He increased her lifting restriction from 8 to 17 pounds.

By letter dated August 15, 2000, the Office informed appellant that it proposed to terminate her compensation, based on the opinion of Drs. Ellenberg and Pollak. Appellant did not respond and, by decision dated September 18, 2000, the Office terminated her benefits, effective that day, on the grounds that she no longer experienced residuals of the employment injury.

In a treatment note dated September 5, 2000 that was received by the Office on October 23, 2000, Dr. Ellenberg advised that appellant continued to have myofascial pain in the

³ The statement of accepted facts noted that appellant's claim was accepted for aggravation of right shoulder strain and did not indicate that appellant filed a claim regarding a back injury. There were no questions regarding her back condition. *See supra* note 1.

back and shoulder. He concluded that he would see her in follow-up only on an “as needed” basis. In a September 19, 2000 treatment note also received on October 23, 2000, Dr. Ellenberg advised that appellant “apparently injured her shoulder while working at the [employing establishment].” He provided no other history of injury and diagnosed upper trapezius strain. On October 4, 2000 appellant, through her representative, requested a hearing.

In a report dated February 1, 2001, Dr. Nagarsheth diagnosed lower back and shoulder pain. His impression was fibromyalgia, rule-out rheumatoid arthritis. In a February 19, 2001 treatment note, Dr. Nagarsheth repeated his findings and diagnosis.

At the hearing, held on March 14, 2001, appellant testified, *inter alia*, that she stopped work on October 6, 2000. In a June 12, 2001 decision, an Office hearing representative affirmed the September 18, 2000 decision. The instant appeal follows.

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

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.⁴

The medical evidence relevant to the termination of appellant’s compensation includes reports from Dr. Ellenberg, a Board-certified physiatrist, who treated appellant. While Dr. Ellenberg continued to advise that appellant had findings of tenderness in the shoulder region, he did not provide an opinion regarding the cause of this condition. Dr. Pollak, a Board-certified orthopedic surgeon who provided a second opinion evaluation for the Office, concluded that appellant had no objective findings and could return to her normal job duties with no restrictions.

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors which enter in such an evaluation include 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.⁵ The Board finds that the weight of the medical evidence regarding the termination of appellant’s compensation rests with the opinion of Dr. Pollak as he provided comprehensive, well-rationalized reports in which he explained his findings and conclusions. The Board, therefore, finds that appellant had no employment-related disability on or after September 18, 2000, and the Office met its burden of proof to terminate her compensation benefits on that date.

⁴ See *Patricia A. Keller*, 45 ECAB 278 (1993).

⁵ *Gary R. Sieber*, 46 ECAB 215 (1994).

The decision of the Office of Workers' Compensation Programs dated June 12, 2001 is hereby affirmed.

Dated, Washington, DC
November 6, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member