

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN THOMPSON and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, CA

*Docket No. 01-405; Submitted on the Record;
Issued October 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation for wage loss and medical benefits as of July 10, 2000; and (2) whether the Office properly denied appellant's request for reconsideration without merit review of the claim.

On April 23, 1976 appellant, then a 34-year-old letter carrier, filed a claim alleging that on April 22, 1976, she injured her right foot and ankle when she stepped in a grass-covered hole and turned her foot. Appellant did not return to work. The Office accepted the claim for a right ankle sprain, and a torn peroneal retinaculum of the right ankle. In 1988 the Office undertook further development of the medical evidence, including referral to Dr. Ernest E. Ramey, a Board-certified orthopedic surgeon selected as an impartial medical specialist. In a report dated July 27, 1988, Dr. Ramey opined that appellant continued to have residuals of the employment injury.

Appellant continued to receive compensation for wage loss through December 12, 1993, when the Office suspended her compensation for failure to participate in vocational rehabilitation. By letter dated October 26, 1999, appellant's representative indicated that appellant was ready to resume participation in vocational rehabilitation. The Office then referred appellant, along with medical records and a statement of accepted facts, to Dr. Ibrahim Yashruti, a Board-certified orthopedic surgeon.

In a letter dated June 8, 2000, the Office advised appellant that it proposed to terminate compensation for wage loss and medical benefits, based on the report of Dr. Yashruti. By decision dated July 10, 2000, the Office terminated compensation benefits. In a decision dated August 4, 2000, the Office determined that appellant's request for reconsideration was insufficient to warrant merit review.

The Board finds that the Office met its burden of proof to terminate compensation for the accepted employment injuries.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.²

In a report dated April 17, 2000, Dr. Yashruti provided a history and results on examination. Dr. Yashruti stated that his objective findings were swelling in the ankle, foot and lower legs, right worse than left. He diagnosed bilateral lower leg edema, “etiology unknown, probably due to her underlying pulmonary emboli condition.” Dr. Yashruti opined that he did not see any evidence of a peroneal retinacular condition, and he further opined that the physical findings were not related to the April 22, 1976 injury, unless the pulmonary emboli were considered a complication of the right ankle injury. The Board notes that the statement of accepted facts indicates that pulmonary embolism was not an accepted condition. Although the record contains a brief report dated August 31, 1978 from Dr. C. Raghunathan, an internist, opining that the pulmonary emboli was a consequence of the employment injury, this opinion is not supported by sufficient medical rationale and does not establish any pulmonary embolism as employment related.

The Board finds that Dr. Yashruti provided an unequivocal opinion, based on an accurate background, that the accepted employment injuries had resolved. In the absence of any other contemporaneous medical evidence, the Board finds that Dr. Yashruti constitutes the weight of the evidence and the Office met its burden to terminate compensation.

The Board further finds that the Office properly denied appellant’s request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,³ the Office’s regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a specific point of law, or (2) advancing a relevant legal argument not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.608(b) states that any application for review that does not

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Furman G. Peake*, 41 ECAB 361 (1990).

³ 5 U.S.C. § 8128(a) (providing that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

⁴ 20 C.F.R. § 10.606(b)(2).

meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.⁵

In this case, appellant did not submit any additional evidence with her July 20, 2000 request for reconsideration. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument. The Board finds that appellant did not meet any of the above requirements under section 10.606(b)(2), and therefore the Office properly denied the reconsideration request without merit review of the claim.

The decisions of the Office of Workers' Compensation Programs dated August 4 and July 10, 2000 are affirmed.

Dated, Washington, DC
October 4, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ 20 C.F.R. § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).