

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORRAINE D. BURKMAN and U.S. POSTAL SERVICE,
POST OFFICE, Oak Lawn, IL

*Docket No. 01-2029; Submitted on the Record;
Issued April 26, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation as of October 18, 2000.

The Office accepted that appellant, then a 58-year-old letter carrier, sustained contusions to the left hand, left hip and lumbosacral spine, and lumbar myositis, in the performance of duty on October 3, 1977. Appellant stopped working in April 1978 and did not return to federal employment.

By letter dated September 15, 2000, the Office notified appellant that it proposed to terminate her compensation based on the medical evidence of record. In a decision dated October 18, 2000, the Office terminated appellant's compensation for wage-loss and medical benefits.

In a decision dated April 3, 2001, an Office hearing representative affirmed the termination decision. The hearing representative also found that evidence submitted subsequent to the termination decision was sufficient to warrant further development.¹

The Board finds that the Office met its burden of proof to terminate compensation as of October 18, 2000.

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

¹ As the hearing representative affirmed the termination decision, and therefore found that appellant was not entitled to continuing compensation pending further development of the evidence, it does represent an adverse decision. The Board also notes that although the hearing representative referred to a conflict in the medical evidence, a conflict under 5 U.S.C. § 8123(a) cannot be created between two attending physicians. *See Adina D. Blanco*, 39 ECAB 510 (1988).

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.²

In a report dated March 10, 1999, an attending physician, Dr. Raymond W. Schlueter, an osteopath, provided a history and results on examination. He diagnosed senile kyphosis, degenerative arthritis, degenerative disc disease of dorsal and lumbar spine, generalized osteoporosis and atherosclerosis. Dr. Schlueter opined that the bulk of appellant's complaints were age related and she probably had long since recovered from the acute effects of her employment injury.

By letter dated March 31, 1999, the Office requested that Dr. Schlueter clarify his opinions regarding appellant's employment-related condition. In a report dated April 8, 1999, Dr. Schlueter noted that appellant's injuries had occurred over 20 years earlier. He indicated that due to the time frame he could not put a specifically state when the employment injuries had resolved, but "I do not feel that the patient currently suffers from residuals of those work-related injuries." Dr. Schlueter further opined that appellant's current condition was attributable to the degenerative condition of the musculoskeletal system that related to the aging process.

The record therefore contained a reasoned opinion from an attending physician that residuals of the employment injuries had ceased. Appellant did not submit additional probative evidence on this issue prior to the October 18, 2000 decision. Accordingly, the Board finds the Office met its burden of proof to terminate compensation as of October 18, 2000.

The decisions of the Office of Workers' Compensation Programs dated April 3, 2001 and October 18, 2000 are affirmed.

Dated, Washington, DC
April 26, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

² *Patricia A. Keller*, 45 ECAB 278 (1993).