

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES L. KIMBROUGH and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Hazelwood, MO

*Docket No. 00-2190; Submitted on the Record;
Issued August 12, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's employment-related disability had ceased.

On February 9, 1998 appellant, a 43-year-old parcel post distributor, machine (PPDM) operator, filed an occupational disease claim (Form CA-2) alleging that he suffered from carpal tunnel syndrome as a result of his federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for right carpal tunnel syndrome and ulnar nerve entrapment. Additionally, the Office authorized surgery for right carpal tunnel release and ulnar nerve release. Appellant received appropriate wage-loss compensation.

Following appellant's most recent surgery on November 23, 1998, his treating physician, Dr. Daniel Scodary, a Board-certified neurosurgeon, released him to return to part-time limited duty effective January 5, 1999. Over the next month and a half, Dr. Scodary gradually increased appellant's work tolerance to eight hours per day effective February 18, 1999. However, Dr. Scodary continued to limit appellant's keying activity.

In a report dated March 31, 2000, Dr. Scodary indicated that based on the objective evidence appellant was able to perform all active duties required of him. However, Dr. Scodary indicated that appellant may have some residual neuropathy from his diabetes, which may be responsible for some of the burning sensation in his elbow and numbness in his hand. He concluded that appellant had returned to baseline and was able to perform his duties without limitations.

By decision dated April 5, 2000, the Office found that appellant was no longer entitled to limited duty because the medical evidence established that he no longer had any continuing disability for regular-duty work as a PPDM operator.

The Board finds that the Office met its burden in this case.

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

Appellant's treating physician indicated that appellant could perform the duties of his date-of-injury job without restriction. Although Dr. Scodary acknowledged appellant's ongoing subjective complaints of "burning sensation in his elbow and numbness in his hand," these symptoms were likely attributable to diabetic neuropathy, which was unrelated to appellant's accepted employment injury. Dr. Scodary further noted that a February 11, 1999 functional capacity evaluation revealed that appellant was capable of functioning within the realm of his job duties.

The absence of any ongoing employment-related disability is further evidenced by the May 22, 1999 opinion of Dr. Robert A. Young, a Board-certified plastic surgeon, who found that appellant's employment duties had temporarily aggravated his underlying diabetic condition.² Dr. Young further indicated that the temporary aggravation was resolved by the two surgical releases in 1998, which allowed appellant to return to baseline. He attributed appellant's ongoing symptoms to his diabetes. Dr. Scodary reviewed Dr. Young's May 22, 1999 report and characterized Dr. Young's assessment of appellant as "extremely detailed and accurate."

Accordingly, the Board finds that appellant does not have any continuing disability causally related to his accepted employment injury and is no longer entitled to limited-duty work.

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

² The Office referred appellant to Dr. Young to resolve an earlier conflict of medical opinion between Dr. Scodary and Dr. John A. Gragnani. As previously noted, Dr. Scodary had originally imposed restrictions with respect to appellant's keying activities. He initially limited appellant to one hour of keying at a time and later recommended that appellant suspend all keying activities pending further evaluation. The Office referred appellant to Dr. Gragnani, who found that appellant was capable of working without restrictions. In view of the conflicting opinions between Drs. Scodary and Gragnani, the Office referred appellant to Dr. Young for an independent medical evaluation.

The April 5, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 12, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

David S. Gerson
Alternate Member