

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY E. JONES and U.S. POSTAL SERVICE,
POST OFFICE, Orlando, FL

*Docket No. 01-1753; Submitted on the Record;
Issued August 12, 2002*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

Appellant, a 55-year-old letter sorter machine operator, filed a notice of traumatic injury on May 4, 1986, alleging that she developed low back pain in the performance of duty. The Office accepted appellant's claim for low back sprain and chronic bulging disc L4-5. The Office proposed to terminate appellant's compensation benefits on July 26, 2000. By decision dated September 1, 2000, the Office terminated appellant's compensation benefits. Appellant requested an oral hearing and by decision dated May 22, 2001, the hearing representative affirmed the Office's September 1, 2000 decision.

The Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

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.⁴

In this case, appellant's attending physicians, Dr. Charles J. Crosby, an osteopath, and Dr. James K. Shea, a physician Board-certified in physical medicine and rehabilitation, continued to support appellant's claim for disability. The Office referred appellant for a second opinion evaluation with Dr. Chris P. Tountas, a Board-certified orthopedic surgeon. In a report dated July 5, 2000, Dr. Tountas related appellant's history of injury and conducted a physical examination. He found that appellant's lumbar lordotic curve was normal and that there was no evidence of back muscle spasm. Dr. Tountas noted that there was a significant discrepancy between seated and straight leg raising, nonanatomic sensory deficit in the left lower extremity and surveillance evidence indicating a greater level of activity than reported when taking her history. He diagnosed lumbar strain/sprain resolved. Dr. Tountas concluded that appellant had no residuals of the accepted employment injury and that her additional complaints were due to the natural progression of degenerative disc disease. He found that appellant could not return to her date-of-injury position due to nonemployment-related conditions of degenerative disc disease, obesity and arthritis of the hip.

In notes dated December 1, 1999 through August 7, 2000, Dr. Shea stated that appellant's low back pain had decreased, but that she continued to experience severe leg cramps. He stated that prolonged sitting, standing, walking and movement aggravated appellant's pain. Dr. Shea noted that appellant's left leg collapsed under her on occasion and that her back pain radiated down her left leg.

Dr. Crosby completed a report on August 15, 2000 and listed his physical findings as somatic dysfunction of the cranial, cervical, thoracic, lumbar and sacral regions as well as L4 root dysfunction. He stated that appellant had objective reflex changes. Dr. Crosby opined that appellant's May 4, 1986 employment injury caused her lumbar nerve root dysfunction. He reviewed Dr. Tountas' report and noted that Dr. Tountas had not reviewed diagnostic studies of appellant's lumbar spine. Dr. Crosby stated, "His conclusions I feel did not follow in a logical sequence and do not reflect the objective facts with regard to history and physical examination with regard to [appellant]." He further concluded that appellant's condition was an ongoing problem as a result of her employment injury and that any other view of the facts would be unreasonable.

Section 8123(a) of the Federal Employees' Compensation Act,⁵ provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." In this case, the Board finds that there is an unresolved conflict between appellant's attending physicians, Drs. Crosby and Shea and the Office's second opinion physician, Dr. Tountas. Dr. Shea continued to support appellant's disability for work and her ongoing complaints of back pain. Dr. Crosby provided his findings on physical examination including somatic dysfunction of the spine and objective reflex changes as well as reviewing

⁴ *Id.*

⁵ 5 U.S.C. §§ 8101-8193, § 8123(a).

Dr. Tountas' report. He concluded that appellant's current condition was due to her employment injury and noted that Dr. Tountas failed to review diagnostic studies in reaching his conclusions. Dr. Tountas reviewed the factual evidence submitted by the Office and noted that this established that appellant was capable of more physical activity than she reported. He also noted that she had no objective findings of spasm, significant discrepancy between seated and straight leg raising, and nonanatomic sensory deficit in the left lower extremity.

Due to the disagreement between appellant's physicians and the second opinion physician regarding appellant's physical findings and the extent of her disability, the Office failed to meet its burden of proof to terminate appellant's compensation benefits as there is an unresolved conflict of the medical evidence.

The May 22, 2001 and September 1, 2000 decisions of the Office of Workers' Compensation Programs are hereby reversed.

Dated, Washington, DC
August 12, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member