

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TRESSIA LEWIS and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Kansas City, MO

*Docket No. 02-56; Submitted on the Record;
Issued August 1, 2002*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits; (2) whether the Branch of Hearings and Review properly denied appellant's request for an oral hearing; and (3) whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits on August 22, 2001.

Appellant, a 37-year-old mail processor, filed a notice of traumatic injury on June 18, 1999 alleging that on June 17, 1999 she injured her neck, shoulder, elbow and knee in the performance of duty. The Office accepted appellant's claim for a left shoulder contusion, resolved and a left ankle sprain, resolved on August 20, 1999.

Appellant filed a notice of recurrence of disability on October 4, 1999 alleging that her right foot, left knee and left elbow had not recovered from the June 17, 1999 employment injury. On December 10, 1999 the Office accepted appellant's claim for recurrence of a medical condition and authorized treatment.

The Office expanded appellant's claim to include a right foot sprain on January 5, 2000. The employing establishment terminated appellant's employment for just cause effective March 24, 2000. The Office accepted the additional condition of tarsal tunnel syndrome and authorized tarsal tunnel release on May 31, 2000. The Office entered appellant on the periodic rolls on July 16, 2000. By decision dated March 15, 2001, the Office terminated appellant's compensation benefits effective March 12, 2001 and medical benefits effective March 15, 2001.

Appellant appealed this decision to the Board in a letter dated March 27, 2001 and received by the Board on April 4, 2001. By order dismissing the appeal,¹ dated June 25, 2001, the Board dismissed the appeal noting that appellant indicated that she would prefer an oral

¹ Docket No. 01-1245, issued June 25, 2001.

hearing before the Office. In a decision dated July 10, 2001, the Branch of Hearings and Review denied appellant's request for an oral hearing finding that it was not timely filed.

Appellant requested reconsideration on June 21, 2001. The Office declined to reopen appellant's claim for consideration of the merits on August 22, 2001.

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.² 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.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ 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.⁵

In this case, the Office referred appellant to Dr. Ronald Zipper, an osteopath, for a second opinion evaluation. He found that appellant's shoulder injury, plantar fasciitis, left ankle and knee injury had resolved. However, Dr. Zipper concluded that appellant continued to experience right foot symptomatology as a result of a small avulsion fracture of the right cuboid and mild tarsal tunnel syndrome. He recommended a tarsal tunnel release and therapy.⁶ Dr. Zipper then began to provide regular treatment for appellant. He completed a report on December 7, 2000 and diagnosed tarsal tunnel currently asymptomatic and resolved with anti-inflammatory medications. Dr. Zipper performed a physical examination and reported his findings. He noted that appellant did not believe that she could return to her date-of-injury position which required eight hours of standing with breaks. Dr. Zipper stated that it was reasonable to conclude that appellant could return to work standing for 90 minutes at a time followed by a continuous alteration with sitting for 90 minutes at a time. He stated that he released appellant from his care but that she should return for reevaluation one month after returning to work within his restrictions.

On February 16, 2001 the Office requested additional information from appellant's original physician, Dr. T. Reid Ecton, a podiatrist. On March 12, 2001 Dr. Ecton responded and

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ The Board notes that the second opinion physician, Dr. Zipper, who later became appellant's attending physician, recommended a tarsal tunnel release in his initial report to the Office. The Office authorized this surgery on May 31, 2000. By letter dated June 12, 2000, the Office again informed appellant of the authorization for surgical repair and stated that when the approved surgical procedure was performed appellant would be eligible to apply for full compensation.

indicated with a checkmark “yes” that appellant’s accepted left ankle and foot conditions had resolved. He further indicated with a checkmark “yes” that appellant was capable of returning to her date-of-injury position related to her foot and ankle conditions.

The medical evidence of record does not clearly establish that appellant could return to her date-of-injury position. Dr. Ecton’s report does not provide any findings or demonstrate that his opinion was based on a physical examination of appellant. Further, there is no medical reasoning in support of his conclusions. He merely responded to queries from the Office by checking “yes” to indicate that he believed that appellant could return to work. The Board has held that an opinion on causal relationship which consists only of a physician checking “yes” to a medical form report question of the claimant’s disability is of diminished probative value.⁷ In this case, a checkmark “yes” cannot be sufficient to meet the Office’s burden of establishing that appellant no longer has disability causally related to her employment.

Dr. Zipper did not offer the opinion that appellant could return to her date-of-injury position. Instead he indicated that appellant had work restrictions. Therefore, his report is not sufficient to meet the Office’s burden of proof to terminate appellant’s compensation benefits.⁸

The decisions of the Office of Workers’ Compensation Programs dated August 22, July 10 and March 15, 2001 are hereby reversed.

Dated, Washington, DC
August 1, 2002

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁸ Given the disposition of this issue, it is not necessary for the Board to address whether the Office properly denied appellant’s request for an oral hearing and whether the Office abused its discretion by refusing to reopen appellant’s claim for consideration of the merits.