

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENA D. HORTON and U.S. POSTAL SERVICE,
POST OFFICE, Santa Rosa, CA

*Docket No. 02-120; Submitted on the Record;
Issued June 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits on the basis that she no longer suffered from residuals of her April 1, 1996 employment injury; and (2) whether appellant established entitlement to a schedule award.

On December 30, 1999 appellant, a 40-year-old window clerk, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that as a result of her federal employment she suffered from numbness in her arms and fingers, severe headaches, neck pain and low back pain. She stated that she first became aware of her condition on or about April 1, 1996. Additionally, appellant identified December 3, 1999 as the date she realized her condition was caused or aggravated by her employment.

The Office initially denied appellant's claim on the basis that she failed to establish a causal relationship between her claimed condition and her employment. However, on reconsideration the Office accepted the claim for temporary aggravation of cervical degenerative disc disease.

On February 15, 2001 appellant filed a claim for compensation (Form CA-7) for continuing disability beginning December 30, 1999. She also requested a schedule award for her accepted employment injury.

In a decision dated June 22, 2001, the Office awarded appropriate wage-loss compensation for the period December 30, 1999 through December 13, 2000. Additionally, the Office found that the medical evidence established that, as of December 14, 2000, appellant no longer suffered from residuals of her accepted condition of temporary aggravation of cervical degenerative disc disease. Consequently, the Office terminated appellant's medical benefits and denied any further wage-loss compensation.¹ The Office also denied appellant's claim for a

¹ On May 17, 2001 the Office issued a notice of proposed termination of medical benefits.

schedule award on the basis that there were no permanent residuals of her accepted employment injury.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation 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 would require further medical treatment.⁵

Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon and Office referral physician, examined appellant on December 14, 2000. In a similarly dated report, he diagnosed multilevel degenerative disc disease in the cervical spine at C5-6 level, with possible left upper extremity radicular involvement. Dr. Swartz also noted possible carpal tunnel syndrome of the left hand. He explained that appellant's job as a window clerk aggravated her degenerative disc disease; however, as she was no longer working as a window clerk, "the aggravation appears to have been temporary." Dr. Swartz attributed appellant's current complaints of neck and upper back pain and numbness and pain in the left upper extremity to her preexisting degenerative disc disease. He also stated that her possible carpal tunnel syndrome might be work related. In a follow-up report dated February 12, 2001, Dr. Swartz stated that recent diagnostic studies found no evidence of carpal tunnel syndrome.

Appellant's treating physician, Dr. Robert P. Heckey, a Board-certified family practitioner, reviewed Dr. Swartz's report and in a report dated April 12, 2001, he concurred with Dr. Swartz's assessment that appellant's temporary aggravation of cervical disc disease had resolved. Dr. Swartz added that appellant was "back to her baseline level[,] which involves chronic cervical disc disease."

In response to a May 16, 2001 Office inquiry, regarding the date appellant's temporary aggravation of cervical degenerative disc disease resolved, Dr. Heckey estimated that the condition resolved around December 2000. He explained that appellant was improved somewhat in October 2000 and significantly improved by January 2001.

In a report dated June 1, 2001, Dr. Heckey elaborated on his prior assessment and stated that appellant's condition had stabilized and the effects of her employment injury have resolved.

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁵ *Calvin S. Mays*, 39 ECAB 993 (1988).

He added that she is now at a permanent and stationary status with regard to her neck problems and with the restrictions that have been placed upon her; her condition has not been exacerbated. However, Dr. Heckey expressed reluctance about adjusting appellant's work restrictions "for fear that there [would] be a worsening of her underlying condition." He specifically stated "I am concerned that if she returns to her full, unlimited work activity or full-work duration ... her condition will worsen." Accordingly, Dr. Heckey indicated that he did not "feel comfortable in releasing [appellant] to full activity or in any way changing her current restrictions."

The reports of Drs. Swartz and Heckey clearly establish that appellant's accepted condition of temporary aggravation of cervical degenerative disc disease has resolved. While both Drs. Swartz and Heckey imposed ongoing work restrictions, these limitations were prophylactic in nature and were not attributable to appellant's accepted condition, but instead attributable to her preexisting cervical degenerative disc disease. The Board finds that the weight of the medical evidence establishes that appellant no longer suffers from residuals of her April 1, 1996 employment-related orthopedic condition. Furthermore, the Office properly awarded wage-loss compensation through December 13, 2000 based on Dr. Swartz's findings. While Dr. Heckey stated that appellant's employment-related condition resolved around December 2000, he did not otherwise provide a specific date. Accordingly, the Office reasonably relied upon Dr. Swartz's December 14, 2000 examination and report as the date appellant's employment-related disability ceased.

The Board also finds that appellant failed to establish entitlement to a schedule award.

Section 8107(a) of the Federal Employees' Compensation Act provides for payment of disability compensation "if there is *permanent* disability involving the loss or loss of use, of a member or function of the body...."⁶ In this instance, appellant is not entitled to a schedule award because the medical evidence of record does not establish that she has a "permanent" disability as a result of her April 1, 1996 employment-related injury. Dr. Heckey stated in a February 1, 2001 report that appellant "has permanent changes in her cervical spine that will affect her functioning the rest of her life." While appellant has a permanent condition, it is not attributable to her employment as both Drs. Swartz and Heckey indicated that the employment-related aggravation of appellant's preexisting cervical degenerative disc disease had resolved. As appellant does not have a "permanent disability" arising from her accepted employment-related condition, she is not entitled to a schedule award.

⁶ 5 U.S.C. § 8107(a) (Emphasis added).

The June 22, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 18, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member