

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENISE M. NOTARIAN and U.S. POSTAL SERVICE,
POST OFFICE, Chesterland, OH

*Docket No. 02-553; Submitted on the Record;
Issued June 10, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

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 July 1, 1999 employment injury; and (2) whether the Office properly denied appellant's request for an oral hearing.

The Office accepted that appellant, a 39-year-old part-time rural letter carrier, sustained mild bilateral carpal tunnel syndrome as a result of her federal employment.¹ Appellant ceased working on October 15, 2000 and she later resigned her position effective January 29, 2001. The Office paid appellant appropriate wage-loss compensation through December 11, 2000.

In a decision dated May 4, 2001, the Office terminated appellant's wage-loss compensation and medical benefits.² The Office based its determination on the February 27, 2001 report of Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon and Office referral physician.

By letter dated August 10, 2001, appellant sought review of her claim with the Branch of Hearings and Review.³ In a decision dated October 24, 2001, the Office found that appellant did not submit her request for an oral hearing within 30 days of the Office's May 4, 2001 decision,

¹ On September 30, 2000 appellant filed a notice of occupational disease and claim for compensation (Form CA-2). She identified July 1999 as the date she first realized her claimed condition was employment related.

² On March 23, 2001 the Office issued a notice of proposed termination of entitlement to compensation and medical benefits.

³ In her August 10, 2001 letter to the Branch of Hearings and Review, appellant referred to an earlier request for reconsideration, purportedly submitted on May 22, 2001. While the record includes a copy of appellant's May 22, 2001 request for reconsideration, which was also addressed to the Branch of Hearings and Review, there is no indication that the Branch of Hearings and Review received appellant's May 22, 2001 correspondence prior to August 2001.

and therefore, she was not entitled to a hearing as a matter of right. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issue could equally well be addressed through the reconsideration process.

The Office later considered appellant's August 10, 2001 correspondence as a request for reconsideration of the Office's May 4, 2001 decision terminating compensation and medical benefits. The Office reviewed appellant's claim on the merits and denied modification in a decision dated November 27, 2001.

The Board finds that the Office failed to meet its burden of proof in terminating appellant's compensation and medical benefits.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ 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.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁶ 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.⁷

The Office improperly relied on Dr. Kaffen's February 27, 2001 report as a basis for terminating further medical benefits and wage-loss compensation. Although Dr. Kaffen found that appellant's bilateral carpal tunnel syndrome "at least temporarily resolved," his report is not sufficiently documented. He noted that no medical records were provided except for return to work forms. Dr. Kaffen specifically commented that "EMG and nerve conduction studies were not provided." Furthermore, he did not administer any diagnostic studies of his own. Dr. Kaffen's opinion is based solely on the results of his physical examination, the statement of accepted facts and a brief medical history. While appellant complained of "mild numbness and tingling sensation in both hands with certain activities," the lack of "objective physical findings" on examination was the basis of Dr. Kaffen's opinion regarding appellant's ability to resume her former duties as a part-time letter carrier. Notwithstanding his assessment that appellant was no longer precluded from performing her prior duties, Dr. Kaffen advised that adequate future treatment would consist of "occasional use of splints and restriction of activities with upper extremities."

The Board finds that Dr. Kaffen's February 27, 2001 report is not based on a complete and accurate factual and medical background. While the lack of objective evidence on physical examination lends support to Dr. Kaffen's conclusion, the Board cannot overlook the fact that Dr. Kaffen did not review appellant's prior diagnostic studies or administer any recent objective

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁷ *Calvin S. Mays*, 39 ECAB 993 (1988).

studies.⁸ As Dr. Kaffen provided a less than thorough evaluation of appellant's condition, the Board finds that the Office failed to meet its burden of proof in terminating appellant's medical benefits and wage-loss compensation.

The decisions of the Office of Workers' Compensation Programs dated November 27 and May 4, 2001 are hereby reversed.⁹

Dated, Washington, DC
June 10, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁸ On reconsideration, appellant submitted additional medical evidence, including a June 26, 2001 nerve conduction study, which her treating physician interpreted as demonstrating ongoing bilateral carpal tunnel syndrome.

⁹ In light of the Board's disposition of the claim on the merits, the question of whether the Office properly denied appellant's request for an oral hearing is rendered moot.