

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of YOLANDA L. HOFFMAN and U.S. POSTAL SERVICE,  
POST OFFICE, St. Louis, MO

*Docket No. 02-67; Submitted on the Record;  
Issued May 24, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective September 14, 1999.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective September 14, 1999.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to 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.<sup>1</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.<sup>2</sup>

The Office accepted that appellant's dog bites to her left arm and wrist and right leg were sustained in the performance of duty on December 8, 1997.

In an attending physician's report dated December 14, 1998, Dr. Jerome Williams, appellant's treating physician, stated that appellant sustained a post-traumatic sensory neuropathy as a result of her work-related injury of December 8, 1997 and that therefore she was placed on restricted light duty.

On June 10, 1999 the Office approved Dr. Daniel Phillips, Board-certified in neurosurgery, as a second opinion physician and requested that he determine whether appellant

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<sup>1</sup> *Wallace B. Page*, 46 ECAB 227 (1994).

<sup>2</sup> *Larry Warner*, 43 ECAB 1027 (1992).

had continuing medical residuals associated with her work-related injury and whether her work tolerance limitations were due to that injury.<sup>3</sup>

On June 4, 1999 Dr. Phillips stated that he examined appellant that day and reported findings. He noted that appellant's nerve conduction studies taken that day were negative and that her upper extremity examination was normal. Dr. Phillips further stated that the dog bites were "superficial" and were "not over the course of the nerves or nerve branches." He noted that sensory nerves which are disrupted when cut or punctured "do not generate the nature and extent of the symptom complex being described today." He determined that appellant was capable of working an eight-hour day without restrictions.

By decision dated September 14, 1999, the Office terminated appellant's compensation effective that day on the grounds that the medical evidence did not establish that she had medical residuals based on her work-related injury.

By letter dated September 29, 1999, appellant requested an oral hearing. In support of her request, appellant submitted a report dated January 13, 2000 from Dr. Howard I. Weiss, Board-certified in neurosurgery, who stated that appellant "appears to be having some sensory symptoms of the dog bite," and that "she may continue to have residual sensory symptoms." In a January 29, 1998 report, received by the Office on April 25, 2000, Dr. Weiss stated that appellant "may have a mild sensory neuropathy secondary to traumatic injury," but that the results of her neurological examination were normal and that physical examination results yielded no evidence of nerve dysfunction.

A hearing was held on March 21, 2000. By decision dated June 16, 2000 and finalized on June 20, 2000, the hearing representative affirmed the Office's September 14, 1999 decision.

By letter dated May 29, 2001, appellant requested reconsideration. In support of her request, appellant submitted an April 26, 2001 report from Dr. Robert A. Swarm, who stated that appellant had neuropathic pain on the medial aspect of the right thigh. By decision dated June 21, 2001, the Office denied modification.

In this case, the Office determined that the weight of the medical evidence rested with Dr. Phillips' second opinion report. Dr. Phillips noted that appellant referred only to symptoms associated with her right leg, noting symptoms of pain along the medial thigh and right great toe. He found that appellant had normal range of motion of the right foot and no swelling; he further found a negative Tinel's test, normal strength of the lower extremity without atrophy, no range of motion limitation of the leg, and a normal upper extremity examination. He conducted nerve conduction studies and noted that "the values for the nerves tested ... fall within the range of normal and do not disclose evidence of injury." Dr. Phillips found that appellant's test results demonstrated no residual medical condition of her "uncomplicated superficial dog bites," and that the test results "would indicate that she is neurologically capable" of working an eight-hour day as a letter carrier without restrictions.

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<sup>3</sup> The Office approved Dr. Phillips as a second opinion physician after it was determined that the appointment was made with him and not another doctor in the same practice. Dr. Phillips is also Board-certified in neurology.

None of the reports from either Dr. Williams or Dr. Weiss included a rationalized medical opinion establishing a causal relationship between appellant's symptoms and her work-related injury. No objective diagnostic test results were in the record which would support a finding of causal relationship. Indeed, Dr. Weiss' report provided probative evidence to support a finding of no causal relationship as he noted that his nerve conduction studies revealed no neuropathy. Dr. Weiss' statements that appellant appears to be having some sensory symptoms of the dog bite and that she may continue to have residual sensory symptoms, are not based on objective diagnostic test results, and thus are speculative, without probative value and did not provide a basis for conflict in medical opinion. With respect to Dr. Swarm's April 26, 2001 report, the Office correctly noted that the report did not provide a rationalized medical opinion in support of appellant's claim that her current medical condition was causally related to her work-related injury.

The June 21, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC

May 24, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member