

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE WRIGHT and U.S. POSTAL SERVICE,
POST OFFICE, Jersey City, NJ

*Docket No. 02-1236; Submitted on the Record;
Issued October 2, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate compensation effective March 1, 2001.

On November 15, 1984 appellant, then a 30-year-old letter carrier, filed a claim alleging that on November 14, 1984 she sustained an injury to her right arm, head and stomach when she fell while in the performance of duty. The Office accepted the claim for cervical syndrome, muscle strain and a miscarriage. Appellant filed a notice of recurrence of disability in October 1985; in June 1987 she returned to a light duty, four hours per day position. The employing establishment terminated appellant's employment in February 1994.

In a letter dated January 29, 2001, the Office notified appellant that it proposed to terminate her compensation on the grounds that the medical evidence established that her employment-related condition had ceased. By decision dated March 1, 2001, the Office terminated compensation for wage-loss and medical benefits. In a decision dated January 25, 2002, an Office hearing representative affirmed the termination decision.

The Board finds that the Office met its burden of proof to terminate compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.¹

In this case, the Office found a conflict in the medical evidence between an attending physician, Dr. Ernesto Tolentino, an orthopedic surgeon, and Dr. Andrew Weiss, an orthopedic surgeon. In a report dated April 5, 1999, Dr. Tolentino indicated that appellant had a chronic

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

lumbosacral disability, while in a report dated June 21, 2000, Dr. Weiss opined that appellant's employment-related injury had resolved and she was capable of working her regular duties as a letter carrier.

Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.² When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.³

To resolve the conflict in this case, the Office referred appellant, along with medical records and a statement of accepted facts, to Dr. Paul A. Foddai, a Board-certified orthopedic surgeon. In a report dated January 3, 2001, Dr. Foddai provided a history and results on examination. He indicated that he found no evidence of a cervical radiculopathy or peripheral neuropathy. Dr. Foddai stated that appellant did sustain a cervical sprain as a result of her employment fall, but this had resolved and appellant was capable of resuming her normal employment. He noted that appellant had degenerative disc disease of the lumbar spine, but he opined that this was not causally related to the employment injury.

Dr. Foddai provided a reasoned medical opinion that appellant did not have a continuing employment-related condition. It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁴ The Board finds that Dr. Foddai constitutes the weight of the evidence in this case.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability that continued after termination of compensation benefits.⁵

In this case, appellant submitted a report dated April 20, 2001 from Dr. Tolentino. He does not discuss the accepted employment injuries. With respect to a lumbar condition, Dr. Tolentino indicated that appellant had been treated off and on for exacerbations of her lower back condition since 1985, without providing a reasoned medical opinion on causal relationship with the employment injury. His report is therefore of diminished probative value and does not establish an employment-related condition after March 1, 2001. Therefore, appellant had failed to meet her burden to reinstated benefits.

² *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

³ *William C. Bush*, 40 ECAB 1064 (1989).

⁴ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁵ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

The decision of the Office of Workers' Compensation Programs dated January 25, 2002 is affirmed.

Dated, Washington, DC
October 2, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member