

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CINDY L. FRANZ and U.S. POSTAL SERVICE,
POST OFFICE, Colorado Springs, CO

*Docket No. 02-1759; Submitted on the Record;
Issued October 22, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate medical benefits as of March 15, 2002.

The Office accepted that on December 15, 1996 appellant sustained cervical and thoracic strains while loading parcels in the performance of duty. Appellant returned to a light-duty position and in May 1997 her treating physician returned her to work without restrictions. The record indicates that subsequently appellant had intermittent periods of disability.

By decision dated November 28, 2000, the Office terminated compensation benefits. In a decision dated April 2, 2001, an Office hearing representative determined that the Office had not met its burden to terminate compensation. The hearing representative found that the orthopedic surgeon selected as an impartial medical specialist, Dr. Robert E. Carlton, did not resolve the issues presented.

In a letter dated November 8, 2001, the Office notified appellant that it proposed to terminate compensation benefits on the grounds that the weight of the medical evidence did not support a continuing employment-related condition. By decision dated March 15, 2002, the Office terminated medical benefits.

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

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.¹

¹ *Furman G. Peake*, 41 ECAB 361 (1990).

The Office found a conflict in the medical evidence between the attending physician, Dr. John Tyler, Jr., a physiatrist, and second opinion referral orthopedic surgeons, Drs. Robert Schuett and Jeffrey Hrutkay.² Dr. Tyler diagnosed a cervical facet syndrome and indicated that appellant continued to need treatment such as physical therapy. In a report dated August 18, 1998, Dr. Hrutkay indicated that a soft tissue injury would normally have resolved in a few months, and there were no objective findings to explain appellant's continued complaints of neck pain. In a report dated October 5, 1998, Dr. Schuett diagnosed cervical and thoracic strain. Dr. Schuett also indicated that the strain would have been expected to resolve within six months, and he stated that he found no objective findings that would substantiate ongoing complaints of neck pain. In a report dated November 17, 1998, Dr. Tyler stated that he disagreed with some of the findings of Drs. Schuett and Hrutkay; he stated that appellant had a cervical facet problem and this was causing her complaints of chronic pain.

As noted above, the hearing representative found that the initial physician selected to resolve the conflict, Dr. Carleton, did not resolve the conflict. On remand, the Office determined that Dr. Carleton had retired, and Dr. Herbert Maruyama, a Board-certified orthopedic surgeon, was selected as the impartial medical specialist. In a report dated July 20, 2001, Dr. Maruyama provided a history and results on examination. He indicated that strains of the neck and upper back are common but do not usually last more than four to five months; when symptoms continue, some objective findings must be obtained to account for the prolonged symptoms. Dr. Maruyama noted that appellant had minimal degenerative changes at the C5-6 level, which probably preexisted the December 14, 1996 employment injury. He stated that he could not find any objective abnormalities as residuals of the employment injury. Dr. Maruyama stated that cervical facet syndrome was not a specific scientific diagnosis, but a descriptive term for a collection of symptoms.

The Board finds that Dr. Maruyama represents the weight of the evidence in this case. 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.³ Dr. Maruyama provided a reasoned medical opinion that appellant did not continue to have any objective residuals of the employment injury. The Board notes that appellant submitted a report dated November 29, 2001 from Dr. Tyler, reiterating his opinion that appellant had a cervical facet syndrome. Additional reports from a physician on one side of the conflict that is properly resolved by an impartial specialist are generally insufficient to overcome the weight accorded the impartial specialist's report or create a new conflict.⁴ The Board finds that the weight of the evidence supports a finding that the employment injuries had resolved by March 15, 2002.

² The record indicates that the Office inadvertently referred appellant for two second opinion examinations.

³ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁴ *See id.*; *Dorothy Sidwell*, 41 ECAB 857 (1990).

The decision of the Office of Workers' Compensation Programs dated March 15, 2002 is affirmed.

Dated, Washington, DC
October 22, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member