

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TAMARA R. VANN and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, NC

*Docket No. 03-1749; Submitted on the Record;
Issued August 12, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective June 4, 2003 on the grounds that she had no disability after that date due to her March 27, 2002 employment injury.

On March 27, 2002 appellant, then a 41-year-old mailhandler, sustained a right ankle sprain and right foot contusion when a wheel rim fell on her right ankle and foot. Appellant stopped work for various periods and participated in physical therapy and vocational rehabilitation efforts. She received appropriate compensation from the Office.

In January 2003 appellant began to attend Alamance Community College in conjunction with a vocational rehabilitation program. On April 23, 2003 the Office advised appellant that it proposed to terminate her compensation based on the reports of Dr. Marcus V. Duda, an attending Board-certified orthopedic surgeon. By decision dated June 3, 2003, the Office terminated appellant's compensation effective June 4, 2003 on the grounds that she had no disability after that date due to her March 27, 2002 employment injury.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective June 4, 2003 on the grounds that she had no disability after that date due to her March 27, 2002 employment injury.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The weight of the medical evidence is represented by the well-rationalized opinion of Dr. Duda, an attending Board-certified orthopedic surgeon. In a report dated April 7, 2003, Dr. Duda stated that appellant was 12½ months status post crush injury to her right foot “for which she has developed complex regional [pain] syndrome, type one.”⁵ He noted that on examination radiographs showed no fracture, osteoporosis or bone density changes. Dr. Duda indicated that the skin color, temperature and texture were equal in both feet and that there was no point tenderness.⁶ He stated that appellant had symptom magnification with pain upon any movement of her ankle or forefoot. On March 5, 2003 the Office requested that Dr. Duda provide an opinion regarding whether appellant’s March 27, 2002 employment injury, right ankle sprain and right foot contusion, had resolved. On April 14, 2002 Dr. Duda provided an affirmative opinion that the March 27, 2002 employment injury had resolved.⁷

The Board has carefully reviewed the opinion of Dr. Duda and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Duda’s opinion is based on a proper factual and medical history and he provided rationale in support of his determination that appellant no longer had residuals of her March 27, 2002 employment injury. He explained that appellant no longer had any objective findings on examination or diagnostic testing and indicated that her right foot and ankle problems could be explained by her symptom magnification. While he suggested that appellant had complex regional pain syndrome, type one, of the right foot related to the March 27, 2002 employment injury, he did not provide a clear opinion to that effect and the Office has not accepted such an employment-related condition. Moreover, Dr. Duda did not indicate that appellant had any disability due to such a condition.

⁴ See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ He also provided a current diagnosis of complex regional pain syndrome, type one.

⁶ In a report dated August 23, 2002, Dr. Duda had also indicated that the temperature, color, turgor and hair growth were equal in both lower extremities and noted that appellant had good pulses bilaterally. He stated, “I plan to follow-up in four weeks at which time I believe we could make her a release for the work without restrictions.” It appears that appellant may have returned briefly to light-duty work during this period, although it is not clear from the record.

⁷ The record also contains an April 24, 2003 report in which Dr. Duda stated that appellant was 12½ months status post crush injury to her right foot “for which she has developed complex regional pain syndrome, type one.

The decision of the Office of Workers' Compensation Programs dated June 3, 2003 is affirmed.⁸

Dated, Washington, DC
August 12, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁸ Appellant submitted additional evidence after the Office's June 3, 2003 decision, but the Board cannot consider such evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).