

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CECILIA E. WALLACE and FEDERAL JUDICIARY,
NORTHERN DISTRICT BANKRUPTCY COURT, Chicago, IL

*Docket No. 02-2152; Submitted on the Record;
Issued February 14, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation.

Appellant's claim filed on February 20, 1999 was accepted for left medial epicondylitis. She explained that her work in docketing motions and cases and doing data entry caused severe pain after a few hours and that her left elbow condition began developing in 1996. Appellant underwent extensive physical therapy prescribed by her treating physician, Dr. James A. Hill, a Board-certified orthopedic surgeon, who diagnosed an ulnar neuritis on August 4, 1999 in addition to the epicondylitis.

Dr. Hill released appellant to work with restrictions on August 25, 1999. Appellant underwent epicondyle release and ulnar nerve transposition on October 1, 1999. On February 9, 2000 appellant completed a functional capacity evaluation and on March 13, 2000, Dr. Hill again released appellant to return to work with restrictions on reaching, repetitive movements and lifting.

On April 5, 2000 the employing establishment offered appellant a light-duty job within her restrictions. The Office found the position to be suitable on April 24, 2000 and informed her that she had 30 days to accept the offer or explain her refusal. Appellant disagreed that the position was suitable because the duties outlined required much more physical effort than Dr. Hill permitted. On May 26, 2000 the Office informed her that she had 15 days to accept the position or face termination of compensation.

On June 14, 2000 the Office asked Dr. Hill to review the employing establishment's job offer for suitability. Appellant retired effective June 23, 2000.

On July 31, 2000 Dr. Hill stated that an electromyography and nerve conduction studies showed a ulnar neuropathy in appellant's left elbow but she had full range of motion with some

tenderness on palpation and decreased sensation. He referred her to Dr. Charles Carroll IV, a Board-certified orthopedic surgeon, who examined appellant on October 24, 2000 and recommended ulnar nerve decompression.

Appellant had surgery on her left ulnar nerve on January 25, 2001. She was treated with physical therapy and followed up with Dr. Carroll. On April 30, 2001 Dr. Carroll released appellant to full activity. On July 20, 2001 he reported full range of motion in her left elbow and released her to normal activity. Dr. Carroll referred appellant back to Dr. Hill to treat her complaints of pain in her left shoulder.

On September 30, 2001 the Office issued a notice of proposed termination of compensation, based on Dr. Carroll's April 30, 2001 report. Appellant disagreed, noting that she now had left shoulder pain, which indicated that she had not fully recovered and was left with a scarred and deformed left arm due to her work-related nerve condition.

On October 22, 2001 the Office terminated appellant's wage-loss compensation on the grounds that her treating physician had released her to full activity and that she had submitted no medical evidence showing that the accepted left elbow condition still disabled her for work. Appellant was advised that she remained eligible for medical benefits for her accepted left elbow condition. She requested a hearing, which was held on March 20, 2002.

On May 20, 2002 the hearing representative affirmed the termination of appellant's compensation on the grounds that the medical evidence failed to support any continuing disability due to appellant's work-related left elbow condition. He noted that the October 9, 2001 report of Dr. Hill addressed treatment of appellant's thumbs and left shoulder conditions not accepted by the Office as employment related.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ 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.²

In this case, the only condition the Office accepted as work related was left medial epicondylitis, first diagnosed by appellant's treating physician, Dr. Hill, on March 31, 1999. He had been treating appellant for tendinitis since October 1997 and stated that the epicondylitis was aggravated by appellant's use of a computer keyboard for data entry.

In subsequent reports, Dr. Hill repeated his diagnosis and eventually referred appellant to Dr. Carroll for surgery on the left ulnar nerve. Following the operation on January 25, 2001 and

¹ *Betty Regan*, 49 ECAB 496, 501 (1998).

² *Raymond C. Beyer*, 50 ECAB 164, 168 (1998).

physical therapy, Dr. Carroll stated on March 19, 2001 that appellant reported overall improvement in her elbow, with decreased numbness and tingling and increased range of motion and strength. He added that he anticipated a positive outcome and “a high level of release to work,” although appellant was retired.

On April 30, 2001 Dr. Carroll reported that appellant’s ulnar neuritis had resolved and that examination confirmed a full range of motion, with grip strength of 20 pounds on the left and 30 pounds on the right. She might have residual pain but was “markedly improved.” Dr. Carroll added: [Appellant] is released to full activity at this point.”

After a follow-up visit on July 30, 2001, Dr. Carroll noted appellant’s shoulder pain and referred her to Dr. Hill. Dr. Carroll stated that appellant reported relief of numbness and tingling in her left hand, less discomfort in her elbow and an increased threshold of activity. Examination showed full range of motion of the left elbow, with grip strength of 30 pounds in the left and 45 pounds in the right. Dr. Carroll opined that appellant’s ulnar nerve symptoms had markedly improved and released her “to normal activity using the left arm.”

Dr. Hill subsequently treated appellant for her shoulder pain, which he stated was caused by a left rotator cuff tendinitis and referred her back to Dr. Carroll for tenosynovitis of the left thumb. Dr. Carroll examined her on January 30, 2002 and stated that the tenosynovitis was not related to the ulnar nerve problem. He reiterated that appellant could continue using her left arm in a normal fashion and added that she had reached maximum medical improvement.³

While appellant alleged that she was unable to take care of her own needs or get a good night’s sleep because of her left arm, the repetitive reports of Dr. Carroll establish that the work-related epicondylitis had resolved through surgery and was no longer causing any disability. Dr. Hill stated on October 9, 2001 that appellant’s shoulder problem was “definitely related to her left upper extremity problem,” but provided no explanation or rationale for this conclusion. The Board finds that the medical evidence is sufficient to meet the Office’s burden of proof in terminating appellant’s compensation.⁴

³ The Office has not issued a final decision as to appellant’s entitlement to a schedule award for permanent impairment of her left upper extremity, the issue is not before the Board in this appeal. *See* 20 C.F.R. § 501.2(c).

⁴ *See Jimmie H. Duckett*, 52 ECAB ____ (Docket No. 99-1858, issued April 6, 2001) (opinion that appellant’s back condition was due to the natural progression of her spondylitis was sufficiently rationalized to establish that his work-related back condition had resolved and to meet the Office’s burden of proof in terminating compensation).

The May 20, 2002 and October 22, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
February 14, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member