

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEE ANN BIDDIX and U.S. POSTAL SERVICE,
POST OFFICE, Takoma, WA

*Docket No. 01-1714; Oral Argument Held May 8, 2003;
Issued June 13, 2003*

Appearances: *Brook L. Beesley*, for appellant; *Julia Mankata-Tamakloe*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective July 13, 2000 on the grounds that she had no disability after that date due to her employment injuries.

On November 25, 1998 appellant, then a 40-year-old rural carrier assistant, filed a claim alleging that she sustained a right shoulder injury when she pulled a mail tray which was stuck on a seat.¹ The Office accepted that appellant sustained an employment-related right cervical strain, right posterior shoulder girdle strain and right lateral epicondylitis. Appellant also alleged that she sustained carpal tunnel syndrome due to performing repetitious tasks with her upper extremities at work.² In July 1999 the Office accepted that appellant sustained employment-related right carpal tunnel syndrome.³ The Office paid her compensation for various periods of disability.

In November 1999 the Office referred appellant to Dr. Alexander C. Miller, a Board-certified orthopedic surgeon, for evaluation of her accepted conditions. In a report dated December 10, 1999, Dr. Miller determined that appellant had no work restrictions related to her employment injuries and indicated that she could work eight hours per day with no restrictions.

¹ Appellant stopped work on November 25, 1998 and performed limited-duty work for the employing establishment for intermittent periods in 1999.

² Appellant indicated that on January 4, 1999 she first became aware that her claimed condition was caused or aggravated by employment factors. The record contains an electromyogram from January 4, 1999 which provides a diagnosis of right carpal tunnel syndrome.

³ The Office combined the files for appellant's injuries into the present file, which bears the number A14-337315.

By decision dated July 13, 2000, the Office terminated appellant's compensation effective July 13, 2000 on the grounds that she had no disability due to her employment injuries after that date. The Office based its termination on the opinion of Dr. Miller. In February 2001 appellant requested reconsideration of her claim. By decision dated March 13, 2000, the Office denied appellant's request for merit review.

The Board finds that, due to a conflict in the medical evidence, the Office did not meet its burden of proof to terminate appellant's compensation effective July 13, 2000 on the grounds that she had no disability after that date due to her employment injuries.

Under the Federal Employees' Compensation Act,⁴ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁵ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁶ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

In a report dated December 10, 1999, Dr. Miller, a Board-certified orthopedic surgeon, who served as an Office referral physician, diagnosed history compatible with right cervical strain, history compatible with right shoulder strain, history compatible with right elbow lateral epicondylitis and history compatible with right carpal tunnel syndrome.⁸ Regarding the cause of appellant's condition, he stated: "In my opinion, her cervical and right shoulder straining injuries are causally related to the work incident of November 13, 1989 and her right elbow lateral epicondylitis and carpal tunnel syndrome are not related to this condition nor to intermittent duties from that time until April 1999."⁹ Dr. Miller determined that appellant had no work restrictions related to her employment injuries and indicated that she could work eight hours per day with no restrictions.

In contrast Dr. James A. Williams, a Board-certified family practitioner specializing in occupational medicine, provided an opinion that appellant continued to have disability due to her employment injuries. In several reports dated between late 1999 and mid 2000, Dr. Williams diagnosed cervical sprain, right shoulder strain/sprain, right lateral epicondylitis and right carpal tunnel syndrome. He indicated that these conditions continued to be employment related and stated that appellant was disabled from all work. Dr. Williams recommended that appellant undergo additional diagnostic testing and participate in physical therapy.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁶ *Id.*

⁷ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁸ Dr. Miller reported that on examination appellant exhibited right trapezius/suprascapular pain; mild to moderate right elbow lateral epicondyle tenderness; and positive Tinel's sign and Phalen's test of the right upper extremity.

⁹ In response to a question regarding whether appellant's injuries had resolved, Dr. Miller stated: "Straining injuries typically resolve within 12 weeks."

The Board finds that there is a conflict in the medical evidence between the government physician, Dr. Miller, and appellant's physician, Dr. Williams, regarding whether appellant had continuing disability after July 13, 2000 due to her employment injuries -- right cervical strain, right posterior shoulder girdle strain, right lateral epicondylitis and right carpal tunnel syndrome. The Board finds that, since the Office relied on the opinion of Dr. Miller to terminate appellant's compensation benefits effective July 13, 2000 without having resolved the existing conflict, the Office failed to meet its burden of proof in terminating appellant's benefits.¹⁰

The July 13, 2000 decision of the Office of Workers' Compensation Programs is reversed.¹¹

Dated, Washington, DC
June 13, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ See *Gail D. Painton*, 41 ECAB 492, 498 (1990); *Craig M. Crenshaw, Jr.*, 40 ECAB 919, 922-23 (1989).

¹¹ Given the Board's disposition of the merit issue of the present case, it is not necessary to consider the Office's denial of appellant's request for merit review.