

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JENNIFER CASTANEDA and U.S. POSTAL SERVICE,
DENVER AIRPORT MAIL CENTER, Denver, CO

*Docket No. 03-345; Submitted on the Record;
Issued June 24, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective April 5, 2001 on the grounds that she had no further disability causally related to her November 25, 1999 employment injury.

On November 25, 1999 appellant, then a 36-year-old casual mailhandler, filed a claim for a traumatic injury occurring on that date when she was "hit on the top of the head with an OTR (over-the-road) door." The Office accepted appellant's claim for a left open wound of the scalp, postconcussion syndrome and a mood disorder due to a closed head injury with major depressive episodes. Appellant returned to limited-duty employment. She received continuation of pay for intermittent dates from December 7, 1999 to January 20, 2000.

On June 15, 2001 the Office paid appellant compensation for intermittent wage-loss disability from February 29 to May 30, 2000. On July 14, 2001 the Office paid appellant compensation from May 31, 2000 to April 5, 2001.¹

Appellant filed a claim requesting wage-loss compensation after April 5, 2001. In a letter dated October 15, 2001, the Office requested additional medical evidence from appellant in support of her claim that she was disabled from employment. The Office noted that Dr. Samuel Y. Chan, a Board-certified psychiatrist and appellant's attending physician, had released her to return to work without restrictions on April 5, 2001.

In a decision dated December 5, 2001, the Office denied appellant's claim for compensation from April 5 to August 5, 2001 on the grounds that she failed to establish that she was disabled due to her accepted employment injury. By letter dated December 10, 2001,

¹ The employing establishment terminated appellant's employment effective June 2, 2000, the date her casual appointment ended.

appellant requested a hearing on her claim. In an August 28, 2002 decision, a hearing representative affirmed the Office's December 5, 2001 decision.

The Board finds that the Office improperly terminated appellant's compensation effective April 5, 2001 on the grounds that she had no further disability causally related to her November 25, 1999 employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²

In this case, appellant received compensation benefits for intermittent periods of total disability from February 29 to May 30, 2000 and from May 31, 2000 to April 5, 2001. Appellant stopped work entirely on June 2, 2000 due to her termination by the employing establishment. As the Office paid appellant compensation benefits continuously for over a year, the burden of proof was on the Office to establish that appellant was no longer disabled due to her accepted employment injury prior to terminating her compensation benefits. The fact that the Office paid appellant for a specified period of disability does not shift the burden of proof to the employee. The burden is on the Office with respect to the period subsequent to the date when compensation is terminated or modified.³

The Board finds that the Office did not present sufficient evidence to meet its burden of proof to terminate appellant's compensation effective April 5, 2001. The Office based its termination of appellant's compensation on the finding by Dr. Chan in a report dated April 5, 2001 that appellant could resume full-time regular employment. In his April 5, 2001 report, Dr. Chan stated:

“[Appellant] returns for follow-up of mild traumatic brain injury and post-traumatic headaches. [She] was last seen on March 21, 2001. She has concluded with physical therapy and cognitive rehabilitation. She continues to have improvement in regards to her memory. However, she continues to have significant complaints with regard to her headache.”

Dr. Chan diagnosed postconcussive syndrome with postconcussive headaches and noted that “[n]europsychological testing showed focal deficits consistent with mild brain injury.” He also diagnosed occipital neuralgia. Dr. Chan opined that appellant was approaching maximum medical improvement and “should be able to continue to work on a full-time and full-duty basis.”

¹ *David W. Green*, 43 ECAB 883 (1992).

² *See Del K. Rykert*, 40 ECAB 284 (1988).

³ *See Patrick P. Curran*, 47 ECAB 247, 251 (1995).

In a follow-up report dated April 25, 2001, Dr. Chan referred appellant to Dr. Richard L. Stieg, a Board-certified neurologist, due to her continued complaints of headaches.⁴ In follow-up reports dated June 5 and 27, 2001, Dr. Chan diagnosed, postconcussive headaches and recommended acupuncture. Dr. Chan also completed a form report on June 27, 2001. He diagnosed post-traumatic headaches and a mild brain injury and checked “yes” that the condition was caused by an employment activity. Dr. Chan opined that appellant could work 6 to 8 hours per day with restrictions on lifting over 10 to 15 pounds. He further found that appellant needed to frequently change tasks. In follow-up reports dated October 4 and 17, 2001, Dr. Chan performed acupuncture treatments on appellant in an attempt to improve her headaches.

In a letter dated November 1, 2001, Dr. Chan stated:

“[Appellant] has been followed by my service for a traumatic brain injury. [Appellant] demonstrated clinical signs that are consistent with permanent deficits. She has concentration difficulties. Therefore I do feel that for her to return to any kind of stressful environment, the environment would have to be modified. Her current work restrictions consist of no lifting greater than 10 [to] 15 pounds. She is to change tasks often. She is to do no multi-tasking. In regard to hours, [appellant] should work starting with four-hour shifts and gradually increase this to eight hours over the course of a month or two.

“Please note that a letter authored by myself from April of 2001, stating that [appellant] was at full-time and full-duty basis. This was in error.”

As previously discussed, the Office has the burden of establishing that the disabling condition ceased or that it was no longer related to employment before the Office may terminate or modify compensation benefits after accepting a claim. In this case, the record does not contain a physician’s well-rationalized opinion establishing that appellant’s disabling condition has ceased or that it was no longer due to her employment injury. Dr. Chan stated in his April 5, 2001 report that appellant could “continue to work” her regular employment; however, he provided no rationale for his finding that she could resume employment. Subsequent reports by Dr. Chan, including a June 27, 2001 form report listing specific work restrictions, indicate that appellant had continuing disability due to her employment injury. In his November 1, 2001 report, Dr. Chan explicitly stated that his April 2001 finding that appellant could resume her

⁴ In a report dated May 7, 2001, Dr. Stieg diagnosed a mild organic mental disorder secondary to appellant’s November 25, 1999 employment injury, a mixed headache disorder with features of a migraine and muscle tension pain which “may or may not be associated with some allodynia over the scalp, perhaps secondary to some sensory nerve damage in association with the laceration of her scalp.” Dr. Stieg noted that appellant also had possible “elements of somatization disorder” and recommended a psychological evaluation. In follow-up reports dated June 15 to November 13, 2001, Dr. Stieg continued to treat appellant for headaches and noted evidence of depression.

regular employment was erroneous. In view of the foregoing, the Board finds that the Office did not meet its burden of proof to terminate compensation effective April 5, 2001.⁵

The decisions of the Office of Workers' Compensation Programs dated August 28, 2002 and December 5, 2001 are reversed.

Dated, Washington, DC
June 24, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ The Office further authorized Dr. Chan's referral of appellant to Dr. Thomas A. Politzer, an optometrist. In a report dated January 5, 2001, Dr. Politzer discussed appellant's history of a November 1999 employment injury. He diagnosed a "mild ocular motor dysfunction and mild reduction in convergence. She has a mild reduction in accommodation and suspect visual field. I do believe that these problems are directly related to the head trauma that she sustained. He recommended bifocal lenses.