

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA M. DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, Gaithersburg, MD

*Docket No. 03-1960; Submitted on the Record;
Issued October 10, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

On July 16, 2001 appellant, then a 47-year-old mail handler, sustained an injury while loading and placing trays in a confined space at work. When she finalized a letter tray and turned, she was immobilized by excruciating pain on the left side of her body, shoulder and neck. The Office accepted her claim for the condition of cervical radiculopathy.¹ She received compensation for temporary total disability on the periodic compensation rolls.

In form reports dated June 7 and August 19, 2002, appellant's attending physician, Dr. Gary C. Dennis, a Board-certified neurosurgeon, stated that appellant was 100 percent disabled due to her neck and shoulder injuries, which he attributed to an incident involving a forklift. The Office referred appellant, together with the case file and a statement of accepted facts, to Dr. Robert A. Smith, a Board-certified orthopedic surgeon, for a second opinion.

In a report dated December 9, 2002, Dr. Smith related the history of appellant's present illness. He noted that her records suggested an accepted past injury to her neck and shoulder. Appellant related that she was initially injured in 1994 when she sustained a traction-type injury of the left shoulder. She was injured again in 1998 when she was struck by a forklift. Dr. Smith described essentially normal findings on physical examination. Examination of the left shoulder elicited some complaints of pain at the extremes of abduction and there was some mild crepitation to circumduction. Appellant brought with her the results of a cervical and shoulder magnetic resonance imaging (MRI) scan performed in July 2002. The cervical scan showed multiple disc bulges probably related to degenerative change. There appeared to be no herniation or significant stenosis. The C5-6 disc particularly showed a bulge but no foraminal

¹ Appellant had a history of cervical radiculopathy in 1998. She received extensive treatment for this condition prior to her July 16, 2001 injury.

narrowing. This did not correlate with an electromyographic study done in 1999, which supposedly showed a C6 radiculopathy. The shoulder scan showed degenerative changes in the acromioclavicular joint associated with impingement. There were also other findings of degenerative change in the joint. Dr. Smith reported that these findings were all consistent with typical wear and tear changes seen as one ages: "They are not necessarily related to any specific trauma."

Dr. Smith reported that there were no specific findings to suggest that appellant could not return to full-time modified work. He stated that appellant's crepitation may be related either to degenerative disease or to residuals of her prior trauma in 1994 and 1998. The cervical findings appeared to be incidental "as there are no physical findings of any active radiculopathy going on in the upper extremities at this time." In addition, he noted the two prior electromyographic studies did not correlate with the objective physical findings, and there were inconsistencies noted between the two tests. "Based on clinical examination today," Dr. Smith concluded, "[appellant] has reached maximum medical improvement and I see no evidence today of ongoing residuals from any injury on July 16, 2001." He noted that appellant's own orthopedic surgeon had exhausted all treatment measures and appellant had no gross physical findings that would necessitate physical therapy. Dr. Smith completed a work capacity evaluation with a lifting restriction of 25 pounds and stated, "This would appear to be related to her prior shoulder and neck injuries and her degenerative shoulder and cervical disease as outlined above." He concluded his report as follows:

"With regard specifically to the reported incident of July 16, 2001 it appears from what [appellant] is telling me that there was no specific injury on that date. She says she suddenly felt pain that caused her to be immobilized but on looking through the notes and examining her today, there appear to be no specific physical findings that would indicate she sustained any new injury on that date. Probably what she was experiencing was pain from preexisting arthritis and/or residuals from the prior injuries that have already been accepted. In any event, it appears that on my clinical exam[ination] and review of the records that [appellant] has reached maximum medical improvement and requires no further specific treatment or testing for the neck or shoulder from any of her injuries."

On December 24, 2002 the Office issued a notice of proposed termination of compensation based on the opinion of Dr. Smith. The Office advised appellant that she had 30 days to submit additional evidence or argument.

In a decision dated January 24, 2003, the Office terminated appellant's compensation benefits effective January 25, 2003 on the grounds that the weight of the medical evidence established that she had no continuing disability as a result of her injury.

The Board finds that the Office properly terminated appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability

² *Harold S. McGough*, 36 ECAB 332 (1984).

causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

The Office has met its burden of proof. Dr. Smith, a Board-certified orthopedic surgeon who served as an Office referral physician, examined appellant on December 9, 2002 and reported normal physical findings, except for some complaints of the extremities of shoulder abduction and some mild crepitation on circumduction. He noted no physical findings of any active radiculopathy in the upper extremities. A cervical scan showed multiple disc bulges, probably related to degenerative change, but no herniation or significant stenosis. A shoulder scan showed degenerative changes. These findings were all consistent, Dr. Smith reported, with typical wear and tear changes seen as one ages and were not necessarily related to any specific trauma. He saw no evidence of ongoing residuals from any injury on July 16, 2001 and he reported that appellant required no further specific treatment or testing for the neck or shoulder as a result of any of her injuries.

The Office provided Dr. Smith with appellant's record and a statement of accepted facts so that he could base his opinion on an accurate history. He reviewed her treatment notes and discussed the nature of the incident that occurred on July 16, 2001. His opinion is well reasoned and appears consistent with the findings he reported on physical examination and the results of diagnostic testing. There is no current medical discussion to the contrary.⁴ The Board finds that the opinion of Dr. Smith represents the clear weight of the medical evidence and establishes that appellant no longer suffers residuals or disability as a result of the employment injury that occurred on July 16, 2001.

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ The earlier form reports of Dr. Dennis are of little probative value. They relate a history of a forklift incident, not the twisting, tray-related incident on July 16, 2001 and they offer no medical narrative to dispute the opinion given by Dr. Smith. See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

The January 24, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 10, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member