

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON D. FORDE and U.S. POSTAL SERVICE,
POST OFFICE, Denver, CO

*Docket No. 03-722; Submitted on the Record;
Issued April 16, 2004*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's entitlement to medical benefits effective November 23, 1998.

On August 21, 1998 appellant, then a 45-year-old automated mark-up clerk, filed a claim alleging that on August 20, 1998 she sustained injuries to her right shin and upper back in the performance of duty. On December 9, 1998 the Office accepted the claim for an aggravated thoracic sprain. The Office assigned claim number 12-0177384 to this claim and incorporated subsidiary cases, which were doubled into the current claim number as the master file.¹ Appellant returned to modified duty and came under the care of Dr. George Kohake, a family practitioner.

In November 23, 1998 reports, Dr. Kohake noted that appellant was asymptomatic and advised that her upper back strain had resolved. He opined that she could return to regular full-time work with a lifting restriction of 20 pounds, noting that she had not suffered any permanent aggravation of impairment from the August 1998 employment injury.

Appellant stopped work on May 6, 1999² and thereafter filed CA-7 forms for lost wages from September 25, 1998 to the present. By decision dated December 9, 1998, the Office found

¹ Appellant filed nine claims from August 17, 1998 through June 6, 2000 for conditions dealing with her left shoulder, left arm and upper back. These cases were assigned claim numbers 12-0181969, 12-0181963, 12-0191877, 12-0191054, 12-0191880, 12-0191879, 12-0191878, with claim number 12-0191877 consisting of two separate filings on January 31 and July 31, 2000 attributing the same condition of overuse syndrome of the left shoulder to employment duties arising on or about December 19, 1998. In decisions dated July 27, 1999, July 28, September 6, 11, and 22, 2000 all of the claimed conditions of these subsidiary cases were denied by the Office. As previously noted, all of these subsidiary claims were eventually combined into the current claim number as the master file.

² The employing establishment indicated that appellant stopped work on May 6, 1999 and filed an emotional condition claim. She had previously filed a stress claim in 1996 that was denied.

that appellant was not entitled to continuation of pay. In decisions dated March 30 and September 14, 1999, the Office denied claims for wage-loss compensation.

In a May 2, 2000 report Dr. Kohake noted that he had not seen appellant since September 21, 1999. He provided no work restrictions and noted that she was being followed by another physician for nonwork related brachial neuritis. On May 16, 2000 Dr. Kohake advised that appellant had no back problems or symptoms with full range of motion in all directions. He reviewed a limited-duty job assignment and recommended modifications, which included a permanent lifting restriction not to exceed 25 pounds. Dr. Kohake released appellant from his care with no impairments. The employing establishment incorporated Dr. Kohake's recommended modifications into a limited-duty job assignment, which he had approved on May 18, 2000 as being suitable to appellant, and then offered appellant the modified-job assignment.

On June 12, 2000 appellant submitted an April 12, 2000 report in which Dr. Suzanne Bralliar, a Board-certified family practitioner, noted that she was evaluating appellant for injuries related to the left upper back, right upper back, right shoulder, right arm, and occasional neck. After providing the history of injury as related by appellant, Dr. Bralliar noted that appellant's current complaints pertained to her arms, the right arm being worse than the left, with symptoms progressing into the shoulders, neck and upper chest and back. Examination findings were provided with the following conditions being diagnosed: bilateral upper extremity overuse syndrome; cervicothoracic strain, pain and spasm, chronic; multilevel cervical degenerative disc and bony changes and disc protrusions; left upper extremity axillary deep vein thrombosis; left upper extremity thoracic outlet syndrome and suspected rotator cuff tear and/or mild impingement syndrome; and rheumatic disease induced mitral valve stenosis with related complications. Dr. Bralliar advised that appellant had reached maximum medical improvement and assigned prophylactic work restrictions. She opined that appellant sustained work injuries consisting of bilateral upper extremity cumulative trauma disorders that included cervical and thoracic strains from static, prolonged positioning. Dr. Bralliar stated that the records clearly reflected the relationship of appellant's injuries and treatments to her repetitive/cumulative motion work. She noted that it was not clear what the relationship of both upper extremities to appellant's original diagnosis (thoracic strain) or the potential relationship of an axillary deep vein thrombosis that appellant suffered approximately six months after she was initially seen for her work-related problems. Dr. Bralliar advised that the upper extremities required use of the cervical and thoracic spines to perform their functions. Because both the cervical and thoracic spines functioned together, she stated that it would be very difficult to significantly impact one area (thoracic spine) without impacting the attached area (upper extremity) and vice versa. Dr. Bralliar stated that appellant's history was consistent with her findings on examination, with medical anatomy and physiology and with the medical records. She then discussed the possible causes related to appellant's axillary thrombosis. Based on the above discussion, Dr. Bralliar opined that appellant's bilateral upper extremity and cervicothoracic signs and symptoms and the axillary vein thrombosis were all part of the same process, had the same mechanism of injury and were due to appellant's cumulative and repetitive work.

On July 18, 2000 the Office notified appellant that it proposed to terminate her medical benefits for the accepted August 20, 1998 thoracic strain, effective November 23, 1998. The

Office relied upon Dr. Kohake's reports of that date, wherein he stated that appellant's upper back strain had resolved.

On July 28, 2000 appellant declined the modified-job offer and included a July 21, 2000 report from Dr. Margaret M. Reiland, a licensed clinical psychologist. Dr. Reiland indicated that appellant had a disabling psychological condition as a result of her experiences with the employing establishment. She further opined that, while appellant might be able to physically perform the functions of the proposed position, she psychologically could not withstand the pressure of working in a hostile environment and that such a return to work would exacerbate appellant's symptoms of depression and anxiety.

The Office addressed appellant's additional concerns pertaining to the modified-job offer in letters dated July 13 and 24, 2000.

By decision dated August 22, 2000, the Office terminated appellant's medical benefits, finding that the work-related injury condition had resolved no later than November 23, 1998. The Office further stated that any claimed wage-loss compensation on or after November 23, 1998 was also denied, as there was no medical evidence to substantiate a work-related disability after that date.³

On November 2, 2000 appellant filed an appeal before the Board, which was docketed as No. 01-342. By decision dated May 21, 2001, the Board issued an order dismissing the appeal on the grounds that appellant did not timely submit an AB-1 form.

By letter dated August 20, 2001, appellant requested reconsideration of the termination decision of August 22, 2000. An 11 page argument of error and numerous documents which were previously of record was submitted.⁴

In a September 5, 2001 decision, the Office denied modification of the August 22, 2000 decision.⁵ The Office found that Dr. Kohake's November 23, 1998 reports clearly established that appellant had no permanent restrictions or aggravation due to the August 20, 1998 injury. The Office noted that appellant was seen by Dr. Kohake in May 2000 at the request of the Office

³ The Office noted that appellant submitted no new medical evidence or argument in response to its proposed action.

⁴ These included medical reports by Dr. Kohake dated November 23, 1998, Dr. Reiland's July 21, 2000 report, the April 12, 2000 report of Dr. Bralliar, an Office field nurse assignment letter, correspondence to and from the employing establishment, including copies of the employing establishment's jobs offers dated September 29, 1998, January 13, 1999 and May 9, 2000, with the approval and suggested modifications by Dr. Kohake, along with the modified job offer of May 18, 2000, which appellant subsequently refused. The Board notes the duplicate evidence was considered in subsidiary cases. *Supra* note 1.

⁵ Although the case caption indicates appellant's request for review was denied, the language of the decision indicates modification was denied. The Board therefore finds that the decision dated August 22, 2000 is a decision on the merits.

and concluded that appellant would be entitled to compensation, if claimed, only for any pay lost to attend examinations by Dr. Kohake, as authorized by the Office through May 2000.⁶

Appellant continued to dispute the suitability of the July 2000 job offer and requested reimbursement through administrative leave or workers' compensation. She additionally filed a CA-2 form dated June 29, 2001 for a thoracic strain, stating she first became aware it was employment-related on August 17, 1998, and filed CA-7 forms for wage-loss compensation from May 16, 2000 to the present.

In a decision dated January 29, 2002, the Office noted that it had accepted appellant's claim for a thoracic strain and found that the accepted condition had resolved as of November 23, 1998.⁷

The Board finds that the Office met its burden of proof to terminate appellant's medical benefits for the accepted condition of thoracic sprain effective November 23, 1998.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁸ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.¹⁰

In the instant case, the Office found the November 23, 1998 opinion of Dr. Kohake to be the weight of the medical evidence in establishing that appellant has no residuals of her accepted condition of thoracic sprain. In his detailed chart note and on an Office Form CA-17, Dr. Kohake advised that appellant's upper back strain had resolved. He noted that appellant had been treated for an upper back injury or strain injury by Kaiser physicians and had been released to full duty on October 5, 1998. Dr. Kohake further noted that as appellant had been released to full duty, he was examining her for the question of whether she had any permanent aggravation of her injury. After providing his examination findings, he opined that since appellant's range of motion was within normal limits and she was asymptomatic, she did not sustain any permanent aggravation. The physician advised that, although appellant's job description listed that she was

⁶ Compensation was not payable for visits to other providers or for periods of compensation previously denied in other decisions of record.

⁷ The Board notes that the decision indicates that the date of injury was August 17, 1998. The record, however, clearly provides that the injury date was August 20, 1998.

⁸ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁹ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

¹⁰ *Mary A. Lowe*, 52 ECAB 223 (2001).

supposed to lift 50 pounds continuously as well as intermittently, appellant should not have to continually lift more than 20 pounds and, if necessary, intermittently lift up to 50 pounds. A conditioning program was recommended. Appellant was released to full duty without any permanent restrictions or permanent aggravations as of November 25, 1998.

Following Dr. Kohake's November 25, 1998 release, the record reflects that appellant developed other medical conditions pertaining to her left shoulder and arm with work restrictions as a result. The record, however, is devoid of any medical restrictions or medical conditions arising from or due to the August 20, 1998 thoracic strain from the date Dr. Kohake released appellant from care for that injury on November 25, 1998.

The Board finds that Dr. Bralliar's April 12, 2000 report fails to address the question of whether appellant had any remaining residuals of her thoracic strain of August 20, 1998, such that she required further medical treatment after November 25, 1998. Although the physician opined that all of appellant's conditions resulted from her cumulative and repetitive work, the focus of this decision revolves around the question of whether appellant has any remaining residuals of her August 20, 1998 thoracic strain which required further medical treatment. It is not clear from Dr. Bralliar's report what, if any, actual medical reports were reviewed related to the August 20, 1998 work injury. Moreover, she failed to provide any medical rationale as to how a resolved thoracic sprain developed into or caused appellant's other medical conditions. Furthermore, only prophylactic restrictions were provided. Accordingly, Dr. Bralliar's April 12, 2000 report is entitled to less weight than that of Dr. Kohake on the issue that appellant's thoracic strain had resolved.

On May 16, 2000 Dr. Kohake reevaluated appellant in regard to the thoracic strain condition, at the request of the Office. In his report that day, the physician advised that appellant no longer had any back problems or symptoms and his examination revealed full range of motion in all directions without any complaint of symptoms. Dr. Kohake indicated that appellant could return to work and any restrictions were based on non-employment related conditions, *i.e.*, valvular heart disease and right arm problems. He released appellant without any impairment due to the accepted thoracic strain condition.

The Board has long held that the mere fact that the Office authorized and paid for medical treatment does not establish that the condition for which appellant received treatment was employment related.¹¹ Thus, the fact that the Office authorized compensation for the visits to Dr. Kohake through May 2000 does not establish that appellant continued to be disabled from her August 20, 1998 thoracic strain after November 23, 1998. The Board also finds that Dr. Reiland's report of July 21, 2000, indicating that appellant has a disabling psychological condition is irrelevant to the issue at hand. As there are no other medical reports of record to contradict Dr. Kohake's November 23, 1998 reports that the accepted thoracic strain of August 20, 1998 had resolved as of November 23, 1998, the Office met its burden of proof to terminate appellant's entitlement to medical benefits that day.

¹¹ *Dale E. Jones*, 48 ECAB 648 (1997).

The decision of the Office of Workers' Compensation Programs dated January 29, 2002 is hereby affirmed.

Dated, Washington, DC
April 16, 2004

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member