

**United States Department of Labor
Employees' Compensation Appeals Board**

CINDY S. BOYD, Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Phoenix, AZ, Employer)

**Docket No. 04-1714
Issued: March 9, 2005**

Appearances:
Cindy S. Boyd, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On June 28, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated April 14, 2004 that terminated her medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether the Office properly terminated appellant's benefits.

FACTUAL HISTORY

On November 20, 2001 appellant, then a 46-year-old casual clerk, filed an occupational disease claim alleging that she sustained a back condition which commenced on August 5, 2001 while performing her federal duties. On November 17, 2001 appellant went on limited duty.

In a November 17, 2001 report, Dr. Gary Seigel, a physician of unknown specialty, advised that x-rays of the thoracic spine and chest were unremarkable and diagnosed a strain to the midback and radiculopathy of both upper arms. He advised that appellant should be placed

on modified duty. A subsequent report from a physician whose signature is illegible and of unknown specialty, dated November 22, 2001, contained a diagnosis of thoracic pain and indicated no further treatment was needed.

On December 10, 2001 the Office accepted the claim for a thoracic strain as a work-related injury. Appellant stopped work in late January or early February 2002. She returned to work on February 8, 2003 as a modified casual clerk. On June 29, 2003 appellant's position was not renewed.¹

Appellant was treated by Dr. F.B. Jolley, Board-certified in physical medicine and rehabilitation, who submitted periodic reports in which he diagnosed cervical strain, fibrositis, bursitis, bilateral tennis elbow and pitcher's elbow. He noted that she had pain and was also depressed. In an undated report, received by the Office on March 4, 2002, Dr. Jolley repeated his diagnoses and advised that appellant was taken off work for a two-month period and she was given two injections. He opined that he felt there was a connection between the heavy work appellant was doing and the pain she was having, which began after she was doing her work for some time.

Appellant was also treated by Damian Smith, a chiropractor.²

By letter dated February 7, 2002, the Office advised appellant that her claim was accepted for thoracic strain on August 5, 2001; however, no compensation would be paid at that time, as additional information was needed to clarify why her physician, Dr. Jolley, initially advised that she could return to light duty and then advised that she would be off work for two to five months.

In a September 4, 2002 report, Dr. Zoran Maric, a Board-certified orthopedic surgeon, noted appellant's history of injury and treatment, which she related began in August 2001, after she lifted a large green sac and pulled it. He advised that she presented with persistent thoracic back pain; however, he did not find any objective evidence to substantiate her pain complaints. Appellant's examination was normal, with normal x-rays. Dr. Maric advised that appellant's complaints were nonorganic in nature and he could find no objective basis for any work restrictions or supportive care. Additionally, he explained that he opposed trigger point injections and advised discontinuing this type of treatment.

On November 7, 2002 the Office referred appellant for a second opinion examination with Dr. Niranjan Chandragiri, a Board-certified neurologist, regarding the nature and extent of her ongoing disability and need for treatment. In a January 8, 2003 report, he noted her history of injury and treatment and advised that appellant had thoracic sprain but no evidence of radiculopathy or neurological defect. Dr. Chandragiri related that she continued to have pain,

¹ A memorandum from the employing establishment indicated that appellant was not fired. Instead, she was a casual employee, not a career employee.

² Dr. Smith did not diagnose a subluxation as demonstrated by x-ray and, therefore, he is not considered a physician under the Act and his reports are of no probative medical value. See *Jack B. Wood*, 40 ECAB 95, 109 (1988).

but that she could return to light duty and gradually return to full duty over a two-month period. He further related that appellant was in need of further treatment, which included physical therapy.

In his report dated May 21, 2003, Dr. Jolley noted that appellant related that she was having severe pain after having performed several household tasks which included scrubbing the bathtub and doing the laundry.

The Office continued to develop the claim and by letter dated January 13, 2004, referred appellant for a second opinion examination along with a statement of accepted facts, a set of questions and the medical record to Dr. Charanjit Dhillon, a Board-certified neurologist.³

In a January 21, 2004 report, Dr. Jolley explained that he first saw appellant on August 27, 2001 during that time he noted that she related that she had prior back discomfort in April 2001. He noted that, while she was aware of it, she did not seek medical care. Dr. Jolley explained that on August 5, 2001 appellant alleged that she lifted a green sac and developed sudden and severe pain to her midback and sought treatment thereafter.

In a February 11, 2004 report, Dr. Dhillon noted appellant's history of injury and treatment, including that, dating back to November 17, 2001, thoracic spine x-rays were normal. He conducted a physical examination and indicated that appellant had normal range of motion of the neck and thoracic area and the glenohumeral joints were unremarkable. Dr. Dhillon also indicated that there was no spasm or winging of the posterior thoracic muscles. He noted that superficial palpation of an area near the scapula, where appellant reported pain upon left neck turning, was noted as being "severely painful." However, upon distraction, "reasonable pressure" could be exerted over the area. Dr. Dhillon explained that, while appellant was initially diagnosed with a thoracic strain, her current physical examination did not support this diagnosis. He noted that the current etiology of appellant's persistent pain symptoms remained unclear, as thoracic strain would typically resolve with or without treatment after a period of several weeks to several months and explained that appellant continued to be in the same position despite the extensive time off from work, which was inconsistent with a persisting thoracic strain. Dr. Dhillon noted that appellant had "significant psychological factors" that might be the cause of continuing symptoms, including "significant depression." He indicated that she should likely be treated for depression. Dr. Dhillon concluded that appellant no longer had a work-related disability or restrictions and that there were no medical residuals from the thoracic strain.

On March 10, 2004 the Office issued a notice of proposed termination of benefits.⁴ The Office proposed to terminate appellant's benefits on the basis that the weight of the medical evidence, as represented by the report of Dr. Dhillon, established that she had no continuing disability or residuals causally related to the August 5, 2001 work injury.

³ The record reflects that appellant had also contacted the Office to assist her with finding a treating physician, as she was not satisfied with her treatment with Dr. Jolley.

⁴ In a memorandum of telephone call, the Office explained that a previously sent letter regarding a notice of recurrence should be disregarded, since her treating physician did not opine whether her accepted condition had resolved.

On March 29, 2004 the Office received a progress note from Dr. Jolley, dated January 14, 2004. He noted that appellant related that she no longer had her usual pain, although she experienced numbness several times each day and would lie down until the pain cleared and return to whatever task she was doing. Dr. Dhillon advised that he prescribed a new medication and that he would see her again in two months.

By decision dated April 1, 2004, the Office terminated appellant's benefits because the weight of the medical evidence showed that she no longer had residuals of the August 5, 2001 employment injury.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁵ 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.⁶ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁷ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

ANALYSIS

The Office terminated appellant's benefits based on the report of Dr. Dhillon, a Board-certified neurologist, who served as an Office referral physician. He examined her on February 11, 2004. Dr. Dhillon conducted a physical examination and noted normal findings regarding range of motion in the neck, thoracic and glenohumeral joints. He indicated that subjective symptoms reported on examination were inconsistent. Dr. Dhillon explained that despite an initial diagnosis of a thoracic strain, her current physical examination did not support the diagnosis. Dr. Dhillon explained that appellant's current physical examination was inconsistent with her diagnosis of a thoracic strain as that would have resolved with or without treatment after a period of a few weeks or a few months and noted that she continued to be in the same position, despite extensive time off from work, which was inconsistent with a persisting thoracic strain. Dr. Dhillon also noted that appellant had "significant psychological factors" that might be the cause of her continuing symptoms, particularly "significant depression" which needed to be addressed. However, he found no basis on which to attribute any disability or medical residuals to the accepted thoracic strain. Instead, he found that based on his examination that appellant no longer had residuals of her work-related thoracic strain. The Board finds that

⁵ *Curtis Hall*, 45 ECAB 316 (1994).

⁶ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁷ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁸ *Calvin S. Mays*, 39 ECAB 993 (1988).

Dr. Dhillon's report provided an accurate history of injury and results of physical examination and establishes that residuals of the accepted thoracic strain had resolved.

There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing medical residuals. Although the Office received a January 14, 2004 report from Dr. Jolley, in which he indicated that she no longer had pain, but experienced numbness and prescribed a new medication, he did not offer a rationalized opinion specifically addressing whether appellant continued to have residuals from the accepted employment injury. Furthermore, he did not further address comments in his May 21, 2003 report indicating that nonemployment factors, such as household cleaning and scrubbing, caused appellant pain.

The Board finds that the Office properly relied on Dr. Dhillon's report to conclude that appellant had no continuing residuals as a result of her accepted employment injury. Therefore, the Office met its burden of proof to terminate her benefits.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2004 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: March 9, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member