

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

C.W., Appellant)
and) Docket No. 08-1389
U.S. POSTAL SERVICE, POST OFFICE,) Issued: March 5, 2009
Memphis, TN, Employer)

)

Appearances:
Aubrey E. Grant, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 11, 2008 appellant, through her representative, filed a timely appeal from the September 26, 2007 merit decision of the Office of Workers' Compensation Programs, which terminated her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether the Office properly terminated compensation for the accepted condition of neck sprain.

FACTUAL HISTORY

On February 15, 1998 appellant, then a 34-year-old distribution clerk, filed a claim alleging that she sustained a traumatic injury in the performance of duty on February 14, 1998: "Reaching getting mail out of a full chute. Pull something in my left arm and a big box fell into my arm at the same time." She was diagnosed on February 15, 1998 with a sprained arm and given a sling. Appellant also complained of neck pain. On February 21, 1998 clinical findings

included shoulder/neck tenderness. Appellant was diagnosed with probable muscle strain. On April 22, 1998 she was having mainly right posterior cervical pain and trapezius pain with pain down the right arm. On April 24, 1998 a magnetic resonance imaging (MRI) scan was reported to show an osteoarthritic spur at C3 but otherwise was normal. Cervical spine x-rays were also reported to be normal. The Office accepted the February 14, 1998 injury for neck sprain.

Appellant was later diagnosed with cervical facet syndrome. On June 2, 2000 the Office authorized medical treatment for cervical facet syndrome.

On May 19, 1998 appellant filed a separate claim (OWCP File No. xxxxxx075) alleging that her bilateral carpal tunnel syndrome was a result of her federal employment. She stated that she first became aware of this condition on February 17, 1998, about the same time as her February 14, 1998 injury and complaints of neck pain. On June 18, 1998 the Office informed appellant that it was accepting this claim for left elbow strain. It later indicated that it expanded the acceptance to include bilateral carpal tunnel syndrome.

On February 26, 2007 Dr. Rommel G. Childress, appellant's orthopedic surgeon, wrote that he had been treating appellant since May 30, 2000 for bilateral carpal tunnel syndrome. He explained that it was clearly documented that appellant was also being treated for cervical facet syndrome at the time of her 1998 injury. "There is some confusion," Dr. Childress admitted, "because [the initial treating physician] Dr. [John P.] Howser, [a neurosurgery consultant,] retired and I never received copies of all of his notes; however, there is clear documentation from her paperwork, that she had treatment including some cervical blocks for the problems." Dr. Childress added that carpal tunnel syndrome will sometimes give appellant fatigue and symptoms in her shoulder and neck.

On July 14, 2007 Dr. Howser stated that he saw appellant on July 10, 2007 and she basically remained the same. Appellant continued with neck pain, muscle spasms, trapezius pain and scapular pain along with a cervicogenic headache. Dr. Howser diagnosed cervical facet syndrome, cervicogenic headache and thoracic outlet syndrome on the left and bilateral carpal tunnel syndrome, postoperative on the right. He stated that appellant's restrictions and disability rating had not changed.

On July 17, 2007 Dr. Carl W. Huff, an orthopedic surgeon and Office referral physician, reviewed appellant's medical record. He noted that by September 22, 1999 appellant's cervical condition had resolved and she was declared at that time to have reached maximum medical improvement. Dr. Huff noted that, although Dr. Howser diagnosed appellant with cervical facet syndrome, her neck pain had no proven anatomical origin. He stated:

"She had some neck pain which was associated with a pulling of the mail and as of [September] 22[, 1999] this had completely resolved with cervical facet blocks. Based on the MRI scan of the cervical spine of [August] 10[, 2000] she has no more than normal aging of the cervical spine without indication of neural impingement."

On physical examination, appellant had mild tenderness in the right posterior cervical triangle. She had no palpated paraspinous muscle spasms. Appellant reported pain with extreme

rotation to the right. The vertex compression test, nerve root compression test and provocative maneuvers with thoracic outlet compression were all negative. Dr. Huff diagnosed neck pain. He opined that appellant had no residuals of the February 14, 1998 employment injury. Dr. Huff concluded that the conditions present at that time had resolved.

On August 9, 2007 the Office notified appellant that it proposed to terminate compensation for her February 14, 1998 employment injury based on Dr. Huff's report. It explained that appellant also had an approved occupational disease claim for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx075 and that her entitlement to ongoing benefits for bilateral carpal tunnel syndrome would be addressed separately under that case number.

Appellant submitted an August 16, 2007 report from Dr. Childress, who disagreed with the opinion of Dr. Huff. Dr. Childress stated that appellant had residuals for her documented injuries. Addressing both injuries, he reported that appellant had continuing symptoms that were persistent and a result of her documented work-related difficulties. Dr. Childress added:

"[Appellant] has provided me with some of Dr. Howser's early notes to review and if needed, I would like to send her for appropriate testing, in order to respond to Dr. Huff's rather unbelievable conclusions, considering that he saw the patient only once and has basically said that the patient has no residual, despite these things being accepted and reviewed by the department at the time that she was having these difficulties and she's required restrictions etc., for these, for a number of years."

In a decision dated September 26, 2007, the Office terminated compensation for the February 14, 1998 work injury effective September 30, 2007. It found that the weight of the medical evidence rested with Dr. Huff, who offered medical reasoning to support his conclusion that appellant had no residuals as a result of the February 14, 1998 work injury.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.¹ 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 causally related to 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

Authorization by the Office for medical examination or treatment constitutes a contractual agreement to pay for the services regardless of whether a compensable injury or

¹ 5 U.S.C. § 8102(a).

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

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

condition exists.⁴ The mere fact that the Office authorized and paid for some medical treatment does not establish that the condition for which appellant received treatment was employment related.⁵

ANALYSIS

The Office accepted appellant's February 14, 1998 employment injury for the condition of neck sprain. It, therefore, has the burden to justify the termination of compensation for that accepted condition. The Office must establish that appellant no longer has residuals of the 1998 neck sprain. This burden of proof, however, does not extend to the diagnosis of cervical facet syndrome. The Office did not accept that the February 14, 1998 incident at work caused or aggravated a cervical facet syndrome.⁶ It did authorize medical treatment for cervical facet syndrome on June 2, 2000, but it did not adjudicate whether the medical opinion evidence established that the February 14, 1998 incident at work caused or aggravated a cervical facet syndrome. The authorization simply obligated the Office to pay for the services authorized, without regard to whether the condition was an accepted injury, for so long as the authorization remained in effect.

In its September 26, 2007 decision, the Office terminated compensation for the February 14, 1998 neck sprain based on the July 17, 2007 report of Dr. Huff, an orthopedic surgeon and Office referral physician. Dr. Huff reviewed appellant's medical record and noted that appellant's neck complaints were reported to have resolved by September 22, 1999 and that she was found to have reached maximum medical improvement. Relying on the medical records, the physician found that appellant's sprain had resolved. Neither the initial treating physician, Dr. Howser nor the current treating physician, Dr. Childress, argue the contrary that appellant continues to suffer from a 1998 neck sprain. Rather both physicians suggest that she has cervical facet syndrome. As noted, however, the Office has not accepted this condition as causally related to the February 14, 1998 injury.

On the issue of whether appellant continues to suffer from the neck sprain she sustained on or about February 14, 1998, the Board finds that Dr. Huff's report represents the weight of the medical evidence and justifies the Office's termination of compensation benefits for the accepted condition. The Board will therefore affirm the Office's September 26, 2007 decision.

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.2.c (October 1990).

⁵ *Dale E. Jones*, 48 ECAB 648 (1997); *James F. Aue*, 25 ECAB 151, 153 (1974).

⁶ Appellant argues that the Office should have accepted something more than neck sprain. If she wants the Office formally to accept that the February 14, 1998 incident at work caused or aggravated a cervical facet syndrome, she has the burden to submit a medical opinion firmly establishing that diagnosis. This will require the physician to address the diagnostic testing showing no evidence of the disease. The physician must also soundly explain, based on a proper factual and medical history, how the February 14, 1998 incident caused or aggravated the condition. The care with which the physician presents his medical rationale will be critical to establishing the element of causal relationship. *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

As it noted in its August 9, 2007 notice of proposed termination, the Office will address appellant's entitlement to ongoing benefits for bilateral carpal tunnel syndrome separately under OWCP File No. xxxxxx075. To the extent that Dr. Childress contends that this carpal tunnel syndrome sometimes gives appellant fatigue and symptoms in her shoulder and neck, it would be appellant's burden to establish such a consequential injury under that claim.

CONCLUSION

The Board finds that the Office properly terminated compensation for the accepted neck sprain condition.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 5, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board