

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICKI WOJTILA and U.S. POSTAL SERVICE,
POST OFFICE, Euclid, OH

*Docket No. 99-764; Submitted on the Record;
Issued December 9, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that residuals of appellant's employment injury had ceased; and (2) whether appellant has established a recurrence of disability commencing August 21, 1997.

In the present case, the Office accepted that appellant sustained a low back strain and L4-5 herniated nucleus pulposus in the performance of duty on August 1, 1995. The record indicates that appellant worked in a full-time light-duty position commencing in April 1996. Appellant filed a notice of recurrence of disability (Form CA-2a) for the period August 21 to 26, 1997.

By letter dated October 16, 1997, the Office notified appellant that it proposed to terminate compensation benefits. In a decision dated December 7, 1997, the Office determined that residuals of the employment injury had ceased and appellant's compensation benefits were terminated. The Office also denied appellant's claim for a recurrence of disability commencing August 21, 1997. By decision dated August 21, 1998, an Office hearing representative affirmed both the termination of benefits and the denial of a recurrence of disability.

The Board has reviewed the record and finds that the Office met its burden of proof in terminating appellant's compensation.

In the present case, the record indicates that appellant had returned to full-time, light-duty work. With respect to continuing compensation benefits, the Office has the burden of justifying termination or modification of compensation.¹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.²

In this case, the Office found a conflict in the medical evidence between the attending physician, Dr. John G. Nemunaitis, an internist, and Dr. Allen M. Segal, an osteopath, selected as a second opinion referral physician. Dr. Segal opined in a June 6, 1997 report that appellant had no continuing work restrictions, while Dr. Nemunaitis opined in a July 15, 1997 report that appellant continued to have employment-related restrictions.

The Office referred appellant to Dr. Ralph J. Kovach, a Board-certified orthopedic surgeon, to resolve the conflict. Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.³ In a report dated September 30, 1997, Dr. Kovach stated in pertinent part that appellant "has findings on physical examination only of tenderness at the site wherein she had a recent injection approximately one week prior to my examining her. Otherwise, this is a normal examination showing no objective findings to substantiate her subjective complaints. Specifically, there is no evidence of radiculopathy. It is also my opinion that my findings do not substantiate any residuals of the accepted work-related injury of August 1, 1995. My reasoning is described in my physical examination. This is a normal examination."

The Board finds that Dr. Kovach's report represents the weight of the evidence with respect to appellant's continuing employment injury. It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁴ Dr. Kovach provided an unequivocal opinion that residuals of the employment injury had ceased. The Board therefore finds that the Office met its burden in terminating medical benefits in this case.

The Board further finds that appellant has not established a recurrence of disability commencing August 21, 1997.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁵

² *Furman G. Peake*, 41 ECAB 361 (1990).

³ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁴ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁵ *Terry R. Hedman*, 38 ECAB 222 (1986).

In the present case, appellant failed to submit any probative medical evidence with respect to disability for the light-duty position on or after August 21, 1997. Appellant has therefore not met her burden of proof and the Office properly denied her claim for a recurrence of disability.

The decision of the Office of Workers' Compensation Programs dated August 21, 1998 is affirmed.

Dated, Washington, D.C.
December 9, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member