

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOSEPH A. BROWN, JR. and U.S. POSTAL SERVICE,  
POST OFFICE, New Orleans, LA

*Docket No. 00-2533; Submitted on the Record;  
Issued April 9, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to justify the termination of appellant's compensation benefits.

In April 1975 appellant, then a 43-year-old letter carrier, filed claims asserting that he developed a moderate muscle spasm and mild degenerative arthritis as a result of carrying a mailbag on his left shoulder. The Office accepted his claim for left shoulder strain and aggravation of degenerative arthritis.

In June 1976, appellant filed a claim asserting a recurrence of pain in his left shoulder, neck and arm while carrying a 19-pound mailbag. The Office accepted his claim for myofascitis of the left trapezius muscle and neuritis or pressure irritation of the left suprascapular nerve. Appellant received compensation for wage loss. In 1977, the Office reduced his compensation to reflect his capacity to earn wages as a manager, trainee. Appellant continued to receive compensation on the periodic rolls.

In 1999, when he failed to reply to a request for an updated medical report, the Office referred appellant, together with the medical record and a statement of accepted facts to Dr. Dudley S. Burwell, Jr., an orthopedic surgeon, for an opinion on the extent of remaining disability or residuals causally related to the work injury.

In a report dated May 25, 1999, Dr. Burwell related appellant's 1976 employment injury and current complaints. He described his findings on physical examination as follows:

“My exam[ination] reveals [appellant] to be a healthy appearing male of approximately his stated age. He has good strength to grip in both extremities. [Appellant] has apparent triceps atrophy of the left shoulder compared to the right. His cervical spine range of motion is limited actively to only 10 degrees of flexion, 20 degrees of extension and 30 degrees of rotation side to side. There is crepitation in the cervical spine with motion. [Appellant] has 5/5 strength in his

left and right shoulders and arm to abduction and forward flexion against resistance with the arm internally rotated.”

Dr. Burwell diagnosed cervical spine degenerative joint disease with apparent radiculopathy and nerve root impingement causing at least triceps atrophy. Responding to questions posed by the Office, he reported that the established diagnosis of the work-related injury was degenerative joint disease, cervical spine with aggravation. On the question of residuals, Dr. Burwell expressed the following opinion:

“Since this is an aggravation of a degenerative process, in my opinion it certainly has had ample time to resolve the aggravation and, therefore, I feel [appellant] does not have residuals from the work-related injury.”

Dr. Burwell reported that appellant was currently not able to perform the physical requirements of his date-of-injury job and specifically was not able to perform heavy lifting. He added: “In my opinion the length of time for an aggravation of a degenerative process to occur would be six months after the initial injury, which would place [appellant] [maximum medical improvement] date at December 14, 1976.” Dr. Burwell observed that at the current state of appellant’s degenerative cervical condition, he doubted if any treatment would effectively allow appellant to return to his previous level of employment, though a limited fusion of his cervical spine might alleviate significant aspects of his symptoms.

In a decision dated September 13, 1999, the Office terminated appellant’s compensation benefits on the grounds that the weight of the medical evidence rested with the report of Dr. Burwell, which established that appellant had no physical condition or disability causally related to his work injury.

Appellant requested an oral hearing before an Office hearing representative and submitted medical opinion evidence to support continuing residuals.

In a decision dated June 28, 2000, the hearing representative found that the Office’s September 13, 1999 decision was proper at the time it was issued. The hearing representative noted that the file was lacking any interim reports from appellant’s treating physician, so the Office properly referred appellant for a second opinion examination. Dr. Burwell provided a history of the work injury, findings on examination and his opinion that appellant had no further residuals of the 1976 work injury.

The hearing representative affirmed the Office’s September 13, 1999 decision terminating benefits but remanded the case for referral to an impartial medical specialist because the medical evidence appellant subsequently submitted was sufficient to create a conflict of medical opinion.

The Board finds that the Office met its burden of proof to justify the termination of appellant’s compensation benefits.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability 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.<sup>2</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.<sup>3</sup>

The Office terminated benefits in this case after receiving the May 25, 1999 opinion of Dr. Burwell, the Office referral physician. He provided a history of the work injury, findings on examination and an opinion supported by medical rationale. Dr. Burwell opined that appellant had no residuals of his employment injury because the work-related aggravation of his degenerative process had ample time to resolve. In addressing maximum medical improvement, Dr. Burwell indicated that an aggravation of a degenerative process would resolve within six months of the initial injury.

The Board finds that Dr. Burwell's opinion is based on an accurate history and is sufficiently well reasoned to establish that the accepted left shoulder strain and aggravation of degenerative arthritis have resolved. Dr. Burwell's opinion constitutes the weight of the medical evidence and justifies the Office's termination of compensation benefits. The Board will therefore affirm the Office's June 28, 2000 and September 13, 1999 decisions on the issue termination.

The Office hearing representative determined that a conflict in medical opinion now exists between Dr. Burwell and appellant's treating physician, necessitating referral to an impartial medical specialist pursuant to 5 U.S.C. § 8123(a). The Board will remand the case for such further development of the medical evidence.<sup>4</sup>

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>4</sup> See 20 C.F.R. § 501.2(c) (there shall be no appeal with respect to any interlocutory matter disposed of by the Office while the case is pending).

The June 28, 2000 and September 13, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
April 9, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member