

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOCELYN D. WHITE and U.S. POSTAL SERVICE,
POST OFFICE, Southeastern, PA

*Docket No. 00-161; Submitted on the Record;
Issued December 28, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant is entitled to a schedule award for her accepted condition of right carpal tunnel syndrome.

The Board has given careful consideration to the issue involved, appellant's contentions on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office of Workers' Compensation Programs dated January 21, 1999 is in accordance with the facts and the law in this case, and hereby adopts the findings and conclusions of the Office hearing representative.¹

Appellant subsequently filed a request for reconsideration. Her request was accompanied by a November 24, 1998 report from Dr. Nicholas P. Diamond, an osteopath specializing in pain management. Dr. Diamond reported that appellant had a combined right upper extremity impairment of 23 percent.² Appellant also submitted a January 12, 1999 report from Dr. Steven Mandel, a Board-certified neurologist, who examined appellant and interpreted a January 11, 1999 electromyogram (EMG), as revealing right greater than left carpal tunnel syndrome and left cubital tunnel syndrome which remained unchanged since 1996.

In a decision dated June 4, 1999, the Office denied modification of the prior decision.

¹ In concluding that appellant was not entitled to a schedule award, the Office hearing representative accorded special weight to the April 28, 1997 report of Dr. Andrew B. Sattel, a Board-certified orthopedic surgeon and impartial medical examiner. He indicated that appellant "exhibited nonorganic findings, as well as inconsistencies and no strong objective findings regarding evidence for peripheral neuropathy." In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

² Dr. Diamond also provided an impairment rating of the left upper extremity, however, the instant claim has not been accepted for an employment-related injury involving appellant's left upper extremity.

In his January 12, 1999 report, Dr. Mandel did not offer an opinion regarding whether appellant had any permanent impairment as a result of her accepted employment injury. With respect to appellant's recent EMG, the doctor noted that the findings remained unchanged since a prior study administered in November 1996. Consequently, this evidence is insufficient to overcome the weight of the medical evidence as represented by the April 28, 1997 opinion of the impartial medical examiner.

Dr. Diamond's November 24, 1998 report is similarly insufficient to overcome the weight of the medical evidence. While Dr. Diamond had not previously offered an opinion, his findings are insufficient to create a conflict of medical opinion inasmuch as his report is not sufficiently rationalized.³ Although Dr. Diamond attributed appellant's current subjective and objective findings to her previous employment, the doctor failed to discuss the fact that appellant had not worked for a period of 34 months prior to his examination. This oversight is particularly significant in light of the fact that Dr. Sattel concluded based on his April 1997 examination that appellant lacked objective findings to support her subjective complaints. Consequently, Dr. Diamond's report does not rise to the level of rationalized medical opinion evidence, and thus, does not overcome the weight of the medical evidence as represented by the opinion of the impartial medical examiner, Dr. Sattel.

In light of the foregoing discussion, the Office properly concluded that the evidence submitted on reconsideration was insufficient to warrant modification of the prior decision dated January 21, 1999.

The June 4 and January 21, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
December 28, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

³ *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (the Board found that a medical opinion not fortified by medical rationale is of little probative value).