

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LEON ROBINSON and DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 98-1642; Submitted on the Record;  
Issued January 14, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant's disability causally related to his January 19, 1981 employment injury or to other factors of his employment ended by October 5, 1983.

The Office of Workers' Compensation Programs accepted that appellant's January 19, 1981 employment injury resulted in bursitis and bicipital tenosynovitis of the left shoulder. Appellant received continuation of pay from February 2, 1981, when he stopped work, until March 18, 1981, after which the Office began paying compensation for temporary total disability.

By decision dated September 29, 1983, the Office terminated appellant's compensation effective October 3, 1983 on the basis that the weight of the medical evidence established that appellant had no residual disability causally related to his employment. After denying a request for a hearing as untimely on May 22, 1984, the Office issued a decision dated July 25, 1984 again finding that the weight of the medical evidence established that appellant had no residual disability causally related to his employment. Appellant requested a hearing and an Office hearing representative, by a decision dated May 6, 1985, found that the Office had an obligation to have appellant psychiatrically evaluated. The Office vacated its July 25, 1984 decision. After a psychiatric evaluation, the Office, by decision dated October 2, 1985, found that the medical evidence failed to support a causal relation between the disability claimed and appellant's employment injury.

By submission dated December 21, 1993 appellant, through his attorney, requested reconsideration of the Office's decision terminating his compensation. By decision dated March 16, 1994, the Office found that the additional evidence submitted with this request was not sufficient to warrant modification of its prior decision. Appellant appealed to the Board, which, by decision dated October 17, 1996, found that there was a conflict of medical opinion between the reports of appellant's physicians submitted with the December 21, 1993 request for reconsideration and an Office medical adviser on the question of whether appellant had a

thoracic outlet syndrome causally related to his employment.<sup>1</sup> To resolve this conflict of medical opinion, the Office referred appellant, the case record and a statement of accepted facts to Dr. Andrew B. Sattel, a Board-certified orthopedic surgeon. After procuring an original and supplemental report from Dr. Sattel, the Office, by decision dated May 16, 1997, found that appellant had no residuals of his January 19, 1981 employment injury.

The Board finds that appellant's disability causally related to his January 19, 1981 employment injury or to other factors of his employment ended by October 5, 1983.

In a report dated March 27, 1997, Dr. Sattel, the Board-certified orthopedic surgeon to whom the Office referred appellant to resolve the conflict of medical opinion regarding whether appellant had a thoracic outlet syndrome causally related to his employment, stated:

“[P]rovocative maneuvers at the time of my examination for thoracic outlet syndrome were unremarkable.... I did not find significant residuals that I would state are causally related to Mr. Robinson's work, specifically in regard to his left shoulder where impingement maneuvers were unremarkable as were the provocative maneuvers for brachial plexopathy. This was the principal area of his symptoms from the described incident in January 1981. His initial diagnosis was that of a bicipital tenosynovitis and acute bursitis of the left shoulder and I would not relate current residuals to his job as a propeller polisher at this time.”

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>2</sup> The opinion of Dr. Sattel, an impartial medical specialist resolving a conflict of medical opinion, was based on a review of the case record and contains sufficient rationale to be given special weight. It is sufficient to establish that appellant does not have a thoracic outlet syndrome or other residuals of his January 19, 1981 employment injury. In its conclusion that appellant had no continuing employment-related disability, Dr. Sattel's opinion is consistent with that of Dr. Leonard Klinghoffer, a Board-certified orthopedic surgeon to whom the Office referred appellant and his medical records on November 8, 1982. In a report dated December 27, 1992, Dr. Klinghoffer concluded: “I cannot explain the reason for continuing symptoms of such magnitude for such a long period of time, there are no definite objective findings now to go along with a significant physical problem of such long-standing duration and I ,therefore, cannot justify any disability now on the basis of physical disease. From an orthopedic standpoint this man should be able to return to whatever type of work he was able to perform two years ago.”

Dr. Klinghoffer suggested an evaluation “by a neuropsychiatrist if he continues to claim an inability to return to work.” Such an evaluation was done on referral by the Office; the Board-certified psychiatrist to whom appellant was referred, Dr. Perry A. Berman, concluded in

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<sup>1</sup> Docket No. 94-2386.

<sup>2</sup> *James P. Roberts*, 31 ECAB 1010 (1980).

an August 6, 1985 report that appellant was not suffering from a psychiatric disorder and that there was no psychiatric basis for his complaints of pain or disability. Appellant's attending physician, Dr. Carl Mogil, an osteopath, also concluded in January 21, 1982 report that appellant could return to work. In a February 11, 1982 report, Dr. Mogil indicated that appellant had no work tolerance limitations.

Other than the reports that gave rise to the conflict of medical opinion resolved by Dr. Sattel, the only medical reports that indicated that appellant continued to be disabled by employment-related conditions were those of employing establishment physicians performing fitness-for-duty examinations on March 1, 1982 and April 4, 1983. While these reports concluded that appellant could not perform the duties of his position of propeller polisher, the basis of this conclusion seems to be appellant's subjective complaints of pain. As the absence of objective signs of disability is more compatible with the absence of disability than with its presence,<sup>3</sup> these reports are of less probative value than the report of Dr. Sattel. The weight of the medical opinion evidence establishes that appellant's disability causally related to his January 19, 1981 employment injury or to other factors of his employment ended by October 5, 1983.

The decision of the Office of Workers' Compensation Programs dated May 16, 1997 is affirmed.

Dated, Washington, D.C.  
January 14, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>3</sup> *Anna Chrun*, 33 ECAB 829 (1982).