

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY REESE and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 98-1412; Hearing Held on November 2, 2000;
Issued January 29, 2001*

*Appearances: Dorothy Reeset, pro se; Miriam D. Ozur, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation for wage loss and medical benefits effective March 1, 1997; and (2) whether appellant abandoned her hearing request.

The Office accepted that on November 10, 1976 appellant, then a 46-year-old clerk, sustained tendinitis and synovitis when a metal letter arm struck her right wrist as she was trying to loosen jammed mail. Appellant stopped work on November 10, 1976, sustained several recurrences of disability from December 17, 1976 through February 26, 1981 and ceased work completely on February 26, 1981.

Appellant's attending physician, Dr. Neal R. Dunkelman, a Board-certified physiatrist, stated in multiple reports from 1995 through 1996 that appellant continued with traumatic right hand and wrist pain, right index finger synovitis, compression neuropathy of the right hand, a left dorsal ganglion cyst and possible reflex sympathetic dystrophy (RSD). He added that she was considered permanently disabled.

By report dated March 14, 1996, Dr. Verghese George, a Board-certified orthopedic surgeon and an Office second opinion specialist, examined appellant and diagnosed "status post synovectomy of the distal radioulnar joint of the right wrist, healed [and] [g]eneralized arthritis type to be determined, unrelated to the injury of November 10, 1976." He opined:

"At the time of this examination, there is no activity. However, [appellant's] history is suggestive that there are flare-ups. In view of the disease in the other joint, it is my opinion that she has diffuse arthritis condition in multiple joints. It should be noted the function of her right wrist and fingers is excellent. The injury

as described could not have caused a diffuse, generalized arthritis that [appellant] complains of. At most it could have caused a temporary right wrist exacerbation. As regards to her traumatic episode to the right wrist due to the injury of November 10, 1976, the prognosis is good. She has reverted to a *status quo ante*. [Appellant] has an excellent working capacity. In my opinion on the basis of today's examination, she can work as a postal clerk with restrictions not to lift packages over five pounds. This restriction is due to the preexistent arthritis."

On July 11, 1996 the Office issued a notice of proposed termination of compensation, finding that Dr. George's report constituted the weight of the medical opinion evidence and established that appellant had no further disability causally related to her accepted employment conditions. The Office gave appellant 30 days within which to submit further medical evidence to establish continuing disability.

In response, appellant submitted a July 22, 1996 report from Dr. Dunkelman, which indicated that appellant was totally and permanently disabled, that no recovery was expected and that she was continuing to receive physical therapy twice a week. Dr. Dunkelman opined that her condition was due to the injury for which compensation was claimed. He diagnosed chronic bilateral neuropathy of the hands, RSD and a dorsal ganglion cyst.

The Office determined that a conflict in medical opinion evidence existed between Drs. Dunkelman and George and referred appellant, together with a statement of accepted facts, questions to be addressed and the complete case record to Dr. Sanford R. Wert, a Board-certified orthopedic surgeon specializing in hands, for an impartial medical examination to resolve the conflict.

By report dated January 10, 1997, Dr. Wert reviewed appellant's factual and medical history, noted that she was presently receiving physical therapy five days a week, noted the results upon physical examination and provided the following impression:

"[Appellant's] claim was accepted for tendinitis and synovitis of the right wrist. Both diseases are self-limiting. In my opinion she should have been able to resume working within six weeks. Or at worst, under extreme circumstances, a few months. For some unknown reason [appellant] has been on full disability for 16 years and only worked intermittently from 1976 through 1980. The question is not whether she can return to work today, but how has she stayed out of work for all this time?

"As stated by [appellant], disability has become her livelihood."

* * *

"My findings are of degenerative arthritis of both wrists, the right wrist being slightly worse than the left. This appears to be a result of systemic disease; perhaps rheumatoid arthritis. On strict ground I believe that the arthritis is causing her present symptomatology and that this was not causally related to her work-related injury.

“[Appellant] stated that the problems with her left wrist developed as a result of having to use the left wrist more because of her right wrist disease. I do not particularly see how she has been using either wrist, as she has been totally disabled for many years. Her husband prepares her meals and does most things for her. Therefore, I do not think that injury to her right wrist caused her left wrist problems.”

In an attached work restriction evaluation, Dr. Wert noted that appellant should not lift or carry, or perform repetitive motor movements and he reiterated that appellant had rheumatoid arthritis of both wrists.

By decision dated January 23, 1997, the Office finalized the proposed termination of compensation finding that the well-rationalized report of the impartial medical examiner was entitled to special weight and, therefore, constituted the weight of the medical opinion evidence that appellant had no continuing disability causally related to her accepted employment-related conditions.

On February 20, 1997 the Office received an undated request from appellant for an oral hearing on the termination of her compensation.

A date for the hearing was set, but appellant requested postponement for personal reasons. The hearing was rescheduled for December 8, 1997 at 11:00 a.m. The record reflects that notice of the rescheduled hearing was mailed to appellant at 134-17 166th Place, Apt 12A, Jamaica, NY, 11434 on November 6, 1997.¹ Appellant, however, did not request a postponement at least three days prior to the scheduled hearing, did not appear at the hearing, did not request in writing within 10 days after the date set for the hearing that another hearing be scheduled and did not show good cause for not appearing at the scheduled hearing.

By decision dated December 18, 1997, the Office found that appellant had abandoned her request for a hearing.

The Board finds that the Office properly terminated appellant’s compensation for wage loss effective March 1, 1997.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation

¹ The Board notes that the record reflects that this is the address at which appellant has been receiving mail, prior to and after the hearing. Absent evidence to the contrary, a letter properly addressed and mailed in the course of business is presumed to have arrived at the mailing address. This is known as the “mailbox rule.” See, i.e., *Dorothy Yonts*, 48 ECAB 549 (1997); *A.C. Clyburn*, 47 ECAB 148 (1995); *Clara T. Norga*, 46 ECAB 473 (1995).

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

without establishing that the disability has ceased or that it is no longer related to the employment.³

In this case, while appellant's treating physiatrist, Dr. Dunkelman, believed that appellant remained totally disabled, the Office's second opinion specialist, Dr. George, opined that appellant's present condition was unrelated to her accepted employment conditions and that she could return to work with restrictions for eight hours a day.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

Thus, the Office correctly determined that a conflict in medical opinion evidence existed and properly referred appellant for an impartial medical examination to resolve the existing conflict.

Dr. Wert provided a well-rationalized report dated January 10, 1997 in which he reviewed appellant's factual and medical history, reported the results of a complete physical examination and answered the Office's question on whether appellant remained disabled due to her accepted employment-related conditions. Dr. Wert opined that appellant should have been able to resume working within six weeks, or at worst, within a few months. He found degenerative arthritis of both wrists, the right wrist being slightly worse than the left, which appeared to be a result of systemic disease, perhaps rheumatoid arthritis. He opined that appellant's arthritis was causing her present symptomatology, which was not causally related to her work-related injury. Although appellant stated that the problems with her left wrist developed as a result of using it more because of her right wrist disease, Dr. Wert did not particularly see how she had been using either wrist because she had been totally disabled for many years and her husband prepared her meals and did most things for her. Dr. Wert opined that the injury to appellant's right wrist did not cause her left wrist problems.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual and medical background, is entitled to special weight.⁴

In this case, Dr. Wert's impartial medical opinion was sufficiently well rationalized and based on a proper factual and medical background. Thus, it is entitled to that special weight and, therefore, becomes the weight of the medical opinion evidence of record on the issue of whether appellant remained disabled for work due to her accepted employment-related conditions.

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

⁴ *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

However, Dr. Wert did not address whether appellant had any nondisabling residuals of her accepted employment-related conditions or required any further medical treatment for such residuals.

The Board has explained that the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁶

Because Dr. Wert's impartial medical report did not address whether appellant had any nondisabling residuals of her accepted employment-related conditions, it does not constitute the weight of the medical opinion evidence on this issue and a conflict remains unresolved.⁷ Accordingly, the Office did not meet its burden of proof to terminate medical benefits.

The Board further finds that the Office properly determined that appellant abandoned her request for an oral hearing.

Section 10.137 of Title 20 of the Code of Federal Regulations sets forth the criteria for abandonment:

“A scheduled hearing may be postponed or cancelled at the option of the Office, or upon written request of the claimant if the request is received by the Office at least three days prior to the scheduled date of the hearing and good cause for the postponement is shown. The unexcused failure of a claimant to appear at a hearing or late notice may result in assessment of costs against such claimant.”

* * *

“A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.”⁸

Appellant did not request postponement or cancellation at least three days prior to the scheduled date of the hearing on December 8, 1997. Neither did appellant request within 10 days after December 8, 1997 that another hearing be scheduled. Appellant's failure to make

⁵ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁶ *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

⁷ The Board notes that Dr. George stated that appellant's history was suggestive of flare-ups and that Dr. Wert had indicated that at the time of his examination of appellant, she was presently receiving physical therapy five times a week at Dr. Dunkelman's office.

⁸ 20 C.F.R. §§ 10.137(a), 10.137(c).

such requests, along with her failure to appear at the scheduled hearing and her failure to show good cause for her nonattendance, constitutes abandonment of her request for a hearing.

On appeal, appellant argues that the November 6, 1997 notice of hearing was misplaced in the mail and finally arrived at her home more than 10 days after December 8, 1997, the rescheduled hearing date. In support of this assertion, appellant submitted to the Board a copy of a post office letter apologizing for the delay of some unspecified mail. The record does not indicate that appellant submitted this explanatory letter to the Office as rationale for her failure to appear at the hearing. Therefore, the Board has no jurisdiction to review its contents.⁹

The record does contain a memorandum dated November 5, 1997 from the hearing representative noting that appellant had called and requested more time to prepare for her hearing, which was scheduled “next week,” because she had obtained an attorney. The hearing representative told appellant that “she could be added” to the agenda for December 8, 1997 and stated that she responded “this was fine.” The Board finds that appellant has failed to establish that she did not have proper notice of the December 8, 1997 hearing.

The January 23, 1997 decision of the Office of Workers’ Compensation Programs is affirmed in part regarding the termination of appellant’s wage-loss compensation and reversed in part regarding the termination of medical benefits; the December 18, 1991 decision of the Office is hereby affirmed.

Dated, Washington, DC
January 29, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁹ The Board’s review on appeal is limited to the evidence that was before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).