U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of EARNESTENE EASON and DEPARTMENT OF DEFENSE, DEFENSE PERSONNEL SUPPORT CENTER, Philadelphia, PA

*Docket No. 01-420; Submitted on the Record;*
*Issued October 3, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB

The issue is whether appellant's disability related to her April 24, 1990 employment injury ended by October 8, 2000.

On May 1, 1990 appellant, then a 59-year-old sewing machine operator, filed a claim for contusions of the left knee and foot and a muscle strain of her chest sustained in an April 24, 1990 fall at work. The Office of Workers' Compensation Programs accepted that appellant sustained a lumbar strain and multiple contusions.

Appellant received continuation of pay from April 25 to June 8, 1990, followed by compensation for temporary total disability until she returned to limited duty for four hours a day on March 11, 1991. Appellant stopped work on November 25, 1991 and did not return. The Office paid compensation for temporary total disability since then.

On August 8, 2000 the Office issued a notice of proposed termination of compensation on the basis that the medical evidence established that appellant had no continuing disability as a result of her April 24, 1990 employment injury. By decision dated October 5, 2000, the Office terminated appellant's compensation effective October 8, 2000 on the basis that the medical evidence established that appellant had no continuing disability as a result of her April 24, 1990 employment injury.

The Board finds that appellant's disability related to her April 24, 1990 employment injury ended by October 8, 2000.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.[1]

There was a conflict of medical opinion on whether appellant had continuing disability related to her April 24, 1990 employment injury. Appellant's attending physician, Dr. Leonard E. Rosenfeld, indicated in an April 28, 1999 report that appellant was unable to return to work. In an earlier report dated January 17, 1993, Dr. Rosenfeld attributed appellant's disability to a herniated disc suffered on April 24, 1990.

In a report dated February 3, 2000, Dr. Steven Valentino, to whom the Office referred appellant for a second opinion evaluation, concluded that appellant's lumbar strain and multiple superficial contusions had resolved, and that she had recovered from her April 24, 1990 employment injury without any residuals. Dr. Valentino also concluded that a small degenerative disc herniation seen on a magnetic resonance imaging (MRI) scan clearly was not causing any symptomatology, as his and prior examinations documented normal neurologic findings without radicular complaints.

To resolve this conflict of medical opinion, the Office, pursuant to section 8123(a) of the Federal Employees' Compensation Act,[2] referred appellant, the case record and a statement of accepted facts to Dr. John T. Williams, a Board-certified orthopedic surgeon. In a report dated July 12, 2000, Dr. Williams reviewed appellant's history, complaints, findings on examination, and prior medical reports. He stated that appellant incurred "an acute lumbosacral sprain/strain, contusion on the left side, by history, resolved," and that she sustained only soft tissue injuries on April 24, 2000, as there was no history of fracture, dislocation or subluxation. Dr. Williams stated that the findings on a December 12, 1991 MRI were compatible with appellant's age, which told him that he was dealing with degenerative changes in appellant's lumbar spine. He also stated that appellant had "mechanical problems referable to her back, secondary to degenerative joint and disc changes, which are not secondary to her slip and fall." Dr. Williams concluded:

> "Soft tissue injuries are self-resolving, anywhere from a few days to a couple months. In the absence of any positive objective findings, it's my medical opinion that she is completely recovered from her slip and fall of April 24, 1990 and is able to resume her normal preaccident activities and duties, without any restrictions.
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> "I think it is of paramount importance to point out, when the patient slipped and fell [she] was between 59 and 60 years of age and, she obviously had degenerative processes compatible with her age in her major joints, *i.e.*, her knee, hips and her spine. Again, these entities were not caused by the accident.

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

[2] 5 U.S.C. § 8123(a) states in pertinent part, "If there is 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."

Whatever complaints she may have now are most likely on the basis of her medical problems."

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.[3] Dr. Williams' July 12, 2000 opinion meets these criteria, and is thus sufficient to establish that appellant's disability related to her April 24, 1990 employment injury ended by October 8, 2000.

The decision of the Office of Workers' Compensation Programs dated October 5, 2000 is affirmed.

Dated, Washington, DC
October 3, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[3] *James P. Roberts*, 31 ECAB 1010 (1980).