

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONNA CROCKER and DEPARTMENT OF COMMERCE,  
BUREAU OF CENSUS, Jeffersonville, IN

*Docket No. 02-2281; Submitted on the Record;  
Issued July 16, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits, effective June 15, 2002.

This case has been before the Board previously. By decision dated September 25, 1996, the Board reversed an Office decision reducing appellant's wage-loss compensation due to an unresolved conflict in medical opinion regarding appellant's ability to perform receptionist duties.<sup>1</sup> The law and facts as set forth in the previous Board decision are incorporated herein by reference.

Subsequent to the Board's September 25, 1996 decision, on March 21, 1997 the Office referred appellant, along with a statement of accepted facts, a set of questions and the medical record to Dr. Richard Idler, Board-certified in orthopedic surgery, with a subspeciality in hand surgery. In a letter dated April 29, 2002, the Office informed appellant that it proposed to terminate her compensation based on the opinion of Dr. Idler. In response, she submitted additional medical evidence. By decision dated June 14, 2002, the Office terminated appellant's benefits, effective June 15, 2002 on the grounds that she no longer had residuals of the employment injury. The instant appeal follows.

Initially, the Board notes that appellant is challenging the process used in the selection of the impartial medical examiner, Dr. Idler, specifically stating that as his zip code differs from that of appellant, he was not chosen by proper Office procedure.

A physician selected by the Office to serve as an impartial medical examiner should be one wholly free to make a completely independent evaluation and judgment. To achieve this, the Office has developed specific procedures for selecting impartial medical examiners designed to

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<sup>1</sup> Docket No. 94-2277. The Office had accepted that appellant, a keyboard operator, sustained employment-related right tenosynovitis and she began receiving wage-loss compensation in 1991.

provide adequate safeguards against any possible appearance that the selected physician's opinion was biased or prejudiced. Office procedures provide that, unlike selection of second opinion examining physicians, selection of referee physicians is made by a strict rotational system using appropriate medical directories. The services of all available and qualified Board-certified specialists will be used as far as possible to eliminate any inference of bias or partiality. This is accomplished by selecting specialists in alphabetical order as listed in the roster chosen under the specialty and/or subspecialty heading in the appropriate geographic area and repeating the process when the list is exhausted.<sup>2</sup>

Office procedures further provide that the selection of referee physicians are made by a strict rotational system using appropriate medical directories and specifically states that the Physicians' Directory System (PDS) should be used for this purpose. The procedures explain that the PDS is a set of stand-alone software programs designed to support the scheduling of second opinion and referee examinations and states that the database of physicians for referee examinations is obtained from the MARQUIS Directory of Medical Specialists.<sup>3</sup>

In the instant case, the record does not indicate that appellant objected at the time of the scheduled examination.<sup>4</sup> The record, however, demonstrates that the Office sought referral with a hand specialist and Dr. Idler's credentials show that he is Board-certified in orthopedic surgery with a subspecialty in hand surgery. The March 21, 1997 referral letter from the Office to Dr. Idler, states that he was selected "by a rotation system from all eligible medical specialists in your field of expertise to resolve a conflict in medical opinion in this case."

The Board finds that the area of expertise necessary for the complete evaluation of appellant's employment-related condition required that a hand surgeon be consulted as an impartial medical examiner. While the record does not contain certification that proper Office procedures were followed, the Board deems this error harmless. A search of the MARQUIS Directory of Medical Specialists indicates that there are no hand surgeons located in Logansport, Indiana, where appellant resides. There is, therefore, nothing to indicate that Dr. Idler was not a properly selected impartial medical examiner and the Board finds that the Office did not err in his selection.

The Board, however, finds that the Office did not meet its burden to terminate appellant's compensation benefits.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without

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<sup>2</sup> *Charles M. David*, 48 ECAB 543 (1997).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.7 (October 1995); *Albert Cremato*, 50 ECAB 550 (1999).

<sup>4</sup> The Office Form CA-110 contained in the record merely provides information regarding the time of appellant's scheduled appointment with Dr. Idler. The record further indicates that she telephoned the Office on April 7, 1997 questioning the reasoning behind the need for the impartial medical examination. This was fully explained to her by an Office claims examiner.

establishing that the disability has ceased or that it was no longer related to the employment.<sup>5</sup> Furthermore, in situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner 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>6</sup>

The medical evidence relevant to the June 15, 2002 termination includes a July 9, 1997 report, in which Dr. Idler advised that he found no evidence of extensor tenosynovitis or intersection syndrome on examination. He noted slight tenderness over the right scapholunate interval and a vague fullness, suggestive of an occult dorsal carpal ganglion. X-rays of both wrists demonstrated cystic lesions in the lunate. Dr. Idler recommended that appellant undergo a functional capacity evaluation and concluded that, with the use of wrist splints, she could return to work with a 5-pound weight restriction and that repetitive use of the hands for nonforceful activities should be limited to 20 minutes an hour. In a September 29, 1997 report, the physician reiterated his findings and conclusions.

A February 26, 1998 functional capacity examination demonstrated that appellant could return to work with weight restrictions and that no more than 20 percent of her daily work should be spent performing repetitive gripping, pinching or twisting of the forearms, wrists or hands. A February 26, 1998 magnetic resonance imaging (MRI) scan of the right and left wrists revealed bilateral Kienbock's disease<sup>7</sup> and a probable partial tear of triangular fibrocartilage on the left.

Dr. Idler again examined appellant on March 26, 1998. At that time, he noted the MRI scan findings of bilateral Kienbock's disease and that the functional capacity evaluation demonstrated that appellant could return to work with restrictions. In a June 16, 1998 report, he advised that it was not possible to say "with any degree of medical certainty" that appellant's previous work activities aggravated her Kienbock's disease to any greater extent than her activities of daily living.

Following the notice of proposed termination, in a treatment note dated May 13, 2002, Dr. Daniel T. Maurer, appellant's treating Board-certified orthopedic surgeon, noted diagnoses of work aggravated overuse syndrome with chronic tenosynovitis and underlying Kienbock's disease. Dr. Maurer stated that he had treated appellant from 1986 to 1993 and opined that her work activities "were causing a significant increase in symptoms for her, to the point that she had intolerable pain with day-to-day work activities." Dr. Maurer advised that appellant continued to be totally disabled and "that attempts at returning to the work force will be met with a flare-up." He provided no findings on examination.

In reports dated June 3 and 4, 2002, Dr. Thomas W. Wolff, a Board-certified orthopedic surgeon, stated that he had seen appellant in 1991, at which time he diagnosed bilateral lunate cysts aggravated by repetitive wrist motions at work. He noted that on June 3, 2002 she

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<sup>5</sup> See Patricia A. Keller, 45 ECAB 278 (1993).

<sup>6</sup> See Kathryn Haggerty, 45 ECAB 383 (1994); Edward E. Wright, 43 ECAB 702 (1992).

<sup>7</sup> Kienbock's disease is defined as a slowly progressive osteochondritis of the semilunar (carpal lunate) bone that may affect other bones of the wrist. *Dorland's Illustrated Medical Dictionary*, 29<sup>th</sup> edition (2000).

complained of pain, numbness and tingling in both hands and bilateral wrist pain with burning in the forearms. On examination abductor pollicis brevis was 5/5 bilaterally with no atrophy. X-rays demonstrated bilateral lunate bone cysts. Dr. Wolff advised that appellant could return to work on June 4, 2002 with the limitation that she avoid constant repetitive use of the hands, to include pushing/pulling, pinching/gripping and flexion/extension of the wrists.

The Board finds that the Office failed to meet its burden to terminate appellant's compensation benefits effective June 15, 2002. While Dr. Idler, the impartial medical examiner, submitted an opinion advising that appellant had no residuals of her accepted condition of right tenosynovitis in March 1998, the record does not contain probative, contemporaneous medical evidence regarding appellant's employment-related wrist condition in June 2002, when her compensation benefits were terminated. Her treating physician, Dr. Maurer, who had been on one side of the conflict in medical opinion, provided a treatment note dated May 13, 2002 in which he continued to advise that appellant was totally disabled due to chronic tenosynovitis. The Board finds that the passage of time has lessened the relevance of Dr. Idler's March 26, 1998 report and finds it insufficient to justify the termination of compensation benefits in June 2002.<sup>8</sup> Thus, a conflict in the medical evidence remains with respect to whether appellant suffers from any residuals or disability of her employment-related right wrist tenosynovitis.

The decision of the Office of Workers' Compensation Programs dated June 14, 2002 is hereby reversed.

Dated, Washington, DC  
July 16, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> See generally *Keith Hanselman*, 42 ECAB 680 (1991).