

On July 14, 1999 appellant, then a 39-year-old retail clerk, injured her left arm in the performance of duty: “Door was shut on my arm by Supervisor Russell Boone.” The Office accepted her claim for left elbow contusion and paid compensation for disability on the periodic rolls.

On September 24, 2003 Dr. Philip H. Lewis, a Board-certified orthopedic surgeon and Office referral physician, reported that appellant had an unresolved left ulnar neuropathy resulting from the July 14, 1999 incident at work. He found, however, that she “can do her regular duties as a retail clerk” within specified restrictions.

Dr. Ganga R. Sharma, the attending physician, examined appellant on January 16, 2004. He released her to return to work with restrictions for four hours a day for the first two weeks.

The Office found a conflict and referred appellant, together with the medical record and a statement of accepted facts, to Dr. Robert Dennis, a Board-certified orthopedic surgeon, for resolution. On September 2, 2004 Dr. Dennis related appellant’s history, medical treatment and current complaints. He detailed his findings on physical examination and reviewed medical records. Dr. Dennis responded to Office questions as follows:

“In my opinion, this condition [the accepted left elbow contusion] should have totally resolved by this time. Soft tissue contusions of an arm do not give rise to the type of long-term disability that has been identified in this case. After evaluating [appellant] carefully, I have found no exception to this impression. In other words, [appellant] has, in my opinion based on today’s examination and the information I have reviewed, resolved her orthopedic condition at this point.”

* * *

“There is a wide gap between her current subjective complaints and her physical findings. I do not comment on what has happened before, but I do feel based on the information that is contained in this report, that [appellant] has at this point fully recovered. The conditions accepted regard to contusion of the elbow, radiculopathy and even the transient neuropathy of the ulnar nerve of the left arm, I can understand were related to the July 14, 1999 injury. I do not argue with that finding. I do feel that this soft tissue contusion and whatever other complaints and findings that were previously identified have now resolved.

“In my opinion the patient can return to full duty. I went over some of the details of her job. I find no reason that she could not perform such duties. I have no doubt that she will have continuing subjective complaints. I cannot and though I have tried, to substantiate such vague diffuse nonorganic complaints to any current ongoing condition or exacerbation or aggravation of any prior condition that may have existed in the past.

“The patient can, in my opinion, based on her current examination, return to her former duties. I can find no justification or indication for further treatment nor do I believe that any treatment would resolve her subjective complaints. I find no objective organic complaints that require further treatment at this time.”

On December 14, 2004 Dr. Sharma reported that he followed appellant on a regular basis and that she remained under the care of a neurologist. He stated that pain in the left elbow and shoulder persisted with radiation to the arm and hand. Dr. Sharma diagnosed post-traumatic cervical radiculopathy, left; post-traumatic ulnar neuropathy, left and secondary depression. He

described her prognosis as guarded. Dr. Sharma completed a work capacity evaluation showing physical restrictions.

In a decision dated September 28, 2005, the Office terminated appellant's compensation effective October 2, 2005. The Office found that Dr. Dennis' opinion represented the weight of the medical opinion evidence.

In a decision dated April 3, 2006, an Office hearing representative affirmed the termination of compensation for wage loss, finding that the weight of the medical evidence established that appellant was no longer disabled from her date-of-injury position due to residuals of the July 14, 1999 work injury. The hearing representative reversed the termination of medical benefits, however, because appellant had an unresolved left ulnar neuropathy directly related to the accepted employment injury that required surgical intervention.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ 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.²

When there exist 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 upon a proper factual background, must be given special weight.³

ANALYSIS

A conflict arose between appellant's physician, Dr. Sharma, and the Office referral physician, Dr. Lewis, on the nature and extent of the restrictions appellant required to return to her date-of-injury position as a retail clerk. Both physicians agreed that appellant could return to work with restrictions, although Dr. Lewis reported that she "can do her regular duties as a retail clerk" with restrictions.

The Office properly referred the case to an impartial medical specialist, Dr. Dennis. The Office provided Dr. Dennis with the case record and a statement of accepted facts so he could base his opinion on a proper factual and medical history. Dr. Dennis offered a comprehensive and detailed report, and he supported his opinion with medical rationale. He noted that soft-

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980); see 5 U.S.C. § 8123(a) (if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination).

tissue contusions of an arm do not give rise to the type of long-term disability identified in this case. After evaluating appellant carefully, Dr. Dennis reported unequivocally, and to a reasonable degree of medical certainty, that appellant had fully recovered from her July 14, 1999 injury. He also reported that appellant could return to full duty. Dr. Dennis tried but could not medically substantiate her vague, diffuse and nonorganic complaints.

The Board finds that Dr. Dennis' opinion is based on a proper background and is sufficiently well reasoned that it constitutes the weight of the medical evidence, justifying the termination of compensation for disability causally related to the July 14, 1999 employment injury. The Board notes that Dr. Sharma submitted a later report on appellant's restrictions, but because he was on one side of the conflict that Dr. Dennis resolved, this later report does not create a second conflict.⁴ The Board will affirm the Office's April 3, 2006 decision.

Appellant argues on appeal that the hearing representative illogically found that she could return to work without restrictions while having an active medical condition directly related to her accepted employment injury requiring surgery. The Board agrees that the hearing representative's finding of continuing residuals appears at odds with the opinion of the impartial medical specialist, but this is not the issue on appeal. The only adverse decision on appeal is the denial of compensation for wage loss. The Office met its burden of proof to terminate compensation for disability.

Appellant also argues that, for Dr. Dennis' opinion to carry the weight of the evidence, the position of retail clerk must be described in sufficient detail. But where the impartial medical specialist can find no residuals of the accepted employment injury, the details of the date-of-injury position become moot. There is no basis for seeking a supplemental report from Dr. Dennis addressing whether appellant's July 14, 1999 employment injury disables her in any way from performing the duties of her date-of-injury position. He has already explained that the July 14, 1999 employment injury has resolved.

CONCLUSION

The Board finds that the Office has met its burden of proof to establish that disability causally related to the July 14, 1999 employment injury ceased by October 2, 2005.

⁴ *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 28, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board