

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA SPIVEY and U.S. POSTAL SERVICE,
NEW YORK MANAGEMENT SECTION CENTER, New York, N.Y.

*Docket No. 96-1154; Submitted on the Record;
Issued March 24, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits as of October 7, 1995.

On February 10, 1994 appellant, then a 31-year-old distribution clerk, filed a notice of traumatic injury as a result of traying mail with her left hand on February 3, 1994. Appellant stopped work on February 4, 1994 and has not returned.¹ The Office accepted appellant's claim for sprain of the left hand as being work related and paid appropriate compensation benefits.

Dr. Lacy G. Blair, a general practitioner and appellant's treating physician, examined appellant on February 3, 1994 for swelling at right hand "thenar eminence" and for pain at right and left hands. Dr. Blair recommended conservative treatment pending further tests. Dr. Blair submitted reports indicating that appellant could not perform her regular duties.

On April 14, 1994 Dr. Sana L. Bloch, a Board-certified neurologist, examined appellant. In a medical report of the same date, Dr. Bloch noted that appellant's electromyogram (EMG) performed on March 21, 1994 had no electrophysiological evidence of plexopathy or cervical radiculopathy. Dr. Bloch stated that since the March 26, 1993 surgery (which was for a right shoulder dysfunction), appellant has had persistent pain radiating down her shoulder and into the level of her wrist, making it impossible to use her right hand. Dr. Bloch stated that somehow with the actions of her left hand, appellant developed pain and discomfort. Dr. Bloch was not sure why appellant had swelling of her left arm. Dr. Bloch's impression was that it was possible, since the diagnosis that appellant had reflex sympathetic dystrophy involving her right arm was made, appellant might be progressing to a left-sided reflex sympathetic dystrophy. Dr. Bloch opined that appellant should be declared permanently and totally disabled.

¹ Appellant returned to work on February 3, 1994 after being out since September 29, 1992 apparently due to a right hand and arm injury. Any claim pertaining to the right arm is not before the Board in the present appeal.

The Office referred appellant to Dr. Jay A. Rosenblum, a neurologist, for a second opinion evaluation. In August 2 and August 26, 1994 medical reports, Dr. Rosenblum reviewed appellant's medical history and treatment, noted appellant's subjective complaints, and performed a neurological examination. Dr. Rosenblum found that the functional muscle testing did not reveal any evidence of muscle weakness and formal muscle testing of the proximal or distal muscle were normal; the muscle tone was of normal caliber throughout; and no radicular sensory abnormality was detected, although both pinprick and vibration sense was diminished over the entire right and left upper extremity to the shoulder regions including splitting a tuning fork sensation across bony prominences. Dr. Rosenblum opined that appellant's objective clinical neurological examination was normal and that the normalcy of the neurological examination mitigated against disability. Dr. Rosenblum stated that he felt appellant was able to return to full-duty work without restrictions. He further felt that appellant did not have an employment disability.

On September 9, 1994 Dr. Blair submitted a report challenging Dr. Rosenblum's findings. Dr. Blair indicated that appellant was "disabled by her past work and her right shoulder surgery." Dr. Blair further indicated that appellant's "acroparesthesias associated with pain, hyperesthesias, hyperalgesis and swelling of the fingers and hands was caused by insult to her autonomic nervous system (*i.e.*, her superficial reflexes) and her smallest nerve fibers ... which were injured by her former repetitive stress." Dr. Blair asserted that an EMG could not reveal all nerve injuries. Dr. Blair opined that Dr. Rosenblum's opinion was "hasty and cursory" and that appellant could not perform any mail processing job due to her neuro-vasomotor swelling and pain in her hands.

In medical reports dated November 4, 1994 and January 11, 1995, Dr. Bloch stated that appellant has chronic pain syndrome with reflex sympathetic dystrophy involving the left and right upper extremities. Dr. Bloch opined that appellant is permanently and totally disabled from being a typist and should be evaluated for another job position.

In a medical report dated May 8, 1995, Dr. Bloch stated that "appellant has chronic pain syndrome with reflex sympathetic dystrophy involving both her left and right hands. She has difficulty with fine manipulation of both hands as a result of two separate injuries -- one involving the left hand and one involving the right hand. The patient has tried alternate jobs and she was unable to do them because of bilateral manipulation of both hands and swelling of both hands." Dr. Bloch opined that appellant was totally disabled.

The Office found a conflict in medical opinion between Drs. Blair, Bloch and Rosenblum as to appellant's capacity for work. By letter dated May 17, 1995, the Office referred appellant, along with a statement of accepted facts and the case record, to Dr. Martin Barschi, a Board-certified orthopedic surgeon, selected as the impartial medical specialist.

In a June 9, 1995 report, Dr. Barschi reviewed appellant's medical history and noted that appellant's EMG and nerve conduction studies had been reported as normal and there were no significant findings to account for these symptoms. Dr. Barschi noted appellant's current complaints concerned the right hand and shoulder. He reported findings on examination and did not note any objective abnormalities. Dr. Barschi further noted that appellant's current medical findings did not establish any ongoing residual of the left hand sprain and indicated that no condition could be attributed to her work injury of February 3, 1994. He also reviewed

appellant's job description. Dr. Barschi opined that there were no objective findings that would indicate that appellant was not currently capable of performing the normal duties of her position of a postal distributor. He further stated that there was no evidence that appellant had not fully recovered from her left hand sprain, although a work-hardening program might assist her in returning to work. In an accompanying June 10, 1995 work capacity evaluation, Dr. Barschi opined that appellant had no objective findings warranting any work restrictions.

On August 15, 1995 the Office issued a notice of proposed termination of compensation finding that appellant had no continuing disability and that the basis of this finding was represented by Dr. Barschi's medical report.

By decision dated September 22, 1995, the Office terminated appellant's compensation benefits effective October 7, 1995.²

The Board finds that the Office met its burden of proof to terminate appellant's compensation on October 7, 1995.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits.³ 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.⁴

In the present case, the Office accepted that appellant sustained a left hand sprain due to factors of her federal employment. A conflict in medical opinion was created between Drs. Blair and Bloch, appellant's treating physicians, who opined that appellant's work injury rendered her disabled from her date-of-injury position, and Dr. Rosenblum, an Office referral physician, who advised that appellant could return to full-time work without limitations. Section 8123(a) of the Federal Employees' Compensation Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician will be appointed to make an examination.⁵ Based on the conflict in medical opinion, the Office referred appellant for examination to Dr. Barschi.

Where there exists a conflict of medical opinion and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist is entitled to special weight if sufficiently well rationalized and based upon a proper factual review of the case.⁶ The Board finds that Dr. Barschi's June 9, 1995 report is sufficiently rationalized

² The Office's decision also indicates that compensation is suspended. However, this appears to be an inadvertent or typographical error as the context of the decision makes clear that the Office intended to terminate compensation benefits and there is no discussion pursuant to 5 U.S.C. § 8123(d) regarding a suspension of benefits.

³ *Robert C. Fay*, 39 ECAB 163 (1987).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁵ 5 U.S.C. § 8123(a).

⁶ *Glenn C. Chasteen*, 42 ECAB 493 (1991).

and responsive to the Office's inquiries to be entitled to special weight. In his June 9, 1995 medical report, Dr. Barschi related appellant's complaints, her history and course of treatment, and his findings on examination. He found that appellant presented purely subjective complaints to her upper extremities with most of her complaints involving the right upper extremity. Dr. Barschi noted that appellant's EMG and nerve conduction studies were normal and there were no significant findings to account for her symptoms. Dr. Barschi reviewed appellant's job description and reported that there were no objective findings that would indicate that appellant was not currently capable of performing the normal job duties of her position of a postal distributor. Dr. Barschi found no basis to attribute any continuing disability or condition to the February 3, 1994 work injury. Dr. Barschi's conclusion is supported by medical rationale and is fully responsive to the inquiries of the Office. The Board finds that the report of Dr. Barschi is entitled to special weight and is sufficient to support the termination of appellant's wage-loss benefits.⁷

The September 21, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
March 24, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁷ The record contains a subsequent filing of a recurrence claim, which appellant later requested to be considered a new traumatic injury. This claim, apparently pertaining to the left and right upper extremities, was being developed by the Office at the time this appeal was filed. As the Office did not issue a final decision on this aspect of the claim prior to the filing of this appeal, the Board has no jurisdiction over this matter; *see* 20 C.F.R. § 501.2(c).