

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY H. FOLCK and DEPARTMENT OF THE AIR FORCE,
HEADQUARTERS, WRIGHT PATTERSON AIR FORCE BASE, Ohio

*Docket No. 98-2504; Submitted on the Record;
Issued April 6, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective September 15, 1997 on the grounds that she had no disability after that date due to her employment injuries.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation effective September 15, 1997 on the grounds that she had no disability after that date due to her employment injuries.

Under the Federal Employees' Compensation Act,¹ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.² However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.³ Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

³ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In the present case, the Office accepted that appellant sustained employment-related bilateral ulnar nerve neuropathy, cubital tunnel syndrome of the right elbow, mild right radial tunnel syndrome and aggravation of right shoulder impingement syndrome and paid appropriate compensation. The Office determined that there was a conflict in the medical opinion between Dr. Cleanne Cass, appellant's attending osteopath, and the government physician, Dr. Rudolph Hoffman, a Board-certified orthopedic surgeon acting as an Office referral physician, on the issue of whether appellant continued to have disabling residuals of her employment injuries. In reports dated between late 1996 and mid 1997, Dr. Cass indicated that appellant was totally disabled due to her employment injuries. In a report dated June 24, 1997, Dr. Hoffman noted that appellant continued to have residuals of her employment injuries but that she was only partially disabled from work. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Robert McLaurin, a Board-certified neurosurgeon, for an impartial medical examination and an opinion on the matter.⁷ By decision dated September 15, 1997, the Office terminated appellant's compensation effective that date based on the opinion of Dr. McLaurin and, by decision dated and finalized July 22, 1998, an Office hearing representative affirmed the Office's September 15, 1997 decision.

In situations where there exists 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.⁸

The Board finds that the July 24, 1997 opinion of Dr. McLaurin is not sufficiently well rationalized to resolve the conflict in the medical opinion. He concluded that appellant did not have any nerve damage in either arm and hence had no residuals of her employment injuries. Dr. McLaurin did not, however, adequately explain this finding or otherwise provide sufficient medical rationale to explain how and when appellant's multiple employment-related upper extremity conditions would have resolved.⁹ As noted above, the Office accepted that appellant sustained employment-related bilateral ulnar nerve neuropathy, cubital tunnel syndrome of the right elbow, mild right radial tunnel syndrome and aggravation of right shoulder impingement syndrome. For example, Dr. McLaurin did not adequately explain his conclusion regarding the resolution of appellant's employment injuries given the fact that he acknowledged appellant continued to display some abnormal results upon diagnostic testing, particularly with regard to her ulnar neuropathy and radial tunnel syndrome. He suggested that appellant's ulnar neuropathy was not employment related, but the statement of facts provided to him specifically indicated that appellant's ulnar neuropathy was accepted as employment related. Moreover, Dr. McLaurin did not adequately address the causes of appellant's continuing upper extremity problems.

⁷ Section 8123(a) of the Act provides 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." 5 U.S.C. § 8123(a).

⁸ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

The Board notes that since the Office relied on the opinion of Dr. McLaurin to terminate appellant's compensation benefits effective September 15, 1997 without having resolved the existing conflict, the Office has failed to meet its burden of proof in terminating appellant's benefits.¹⁰

The decisions of the Office of Workers' Compensation Programs dated and finalized July 22, 1998 and dated September 15, 1997 are reversed.

Dated, Washington, D.C.
April 6, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

¹⁰ See *Gail D. Painton*, 41 ECAB 492, 498 (1990); *Craig M. Crenshaw, Jr.*, 40 ECAB 919, 922-23 (1989).