

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAISY M. JENNINGS and DEPARTMENT OF HEALTH & HUMAN
SERVICES, SOCIAL SECURITY ADMINISTRATION, Birmingham, Ala.

*Docket No. 97-2666; Submitted on the Record;
Issued June 24, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she had no continuing disability resulting from the accepted work injury.

The Board has carefully reviewed the record evidence and finds that the Office met its burden of proof in terminating appellant's compensation.

Under the Federal Employees' Compensation Act,¹ the Office has the burden of justifying modification or termination of compensation once a claim is accepted and compensation paid.² Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.³

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁴ The Office's burden

¹ 5 U.S.C. § 8101 *et seq.*

² *William Kandel*, 43 ECAB 1011, 1020 (1992).

³ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁴ *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for, and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

In this case, appellant's notice of occupational disease, filed on October 7, 1994 after she experienced pain in her hands and wrists, was accepted for bilateral carpal tunnel syndrome, based on the report of Dr. Theodis Buggs, Jr., a Board-certified orthopedic surgeon and a November 13, 1994 electromyogram.

Because Dr. Buggs recommended surgical release and Dr. Richard A. Sanders, a Board-certified orthopedic surgeon, to whom the Office had referred appellant for a second opinion evaluation, opined that physical therapy was indicated, the Office referred appellant to Dr. Sharon L. Colgin, a plastic surgeon, to resolve the issue. Based on her reports the Office authorized bilateral surgery, which Dr. Colgin performed on September 11, 1995 on appellant's right hand and on November 16, 1995 on her left hand.

On March 15, 1996 Dr. Colgin stated that appellant had reached maximum medical improvement and could return to gainful employment. Based on her report, the Office issued a notice of proposed termination of compensation on July 9, 1996. Appellant responded that she continued to have problems with her hands but submitted no medical evidence showing continuing disability.

On August 28, 1996 the Office terminated appellant's compensation, effective that date.

Appellant requested an oral hearing, which was held on April 1, 1997. On May 8, 1997 the hearing representative affirmed the termination of compensation as of August 28, 1996 but remanded the case for the Office to develop the record regarding appellant's diagnosed tendinitis, based on the two 1997 reports from Dr. Colgin.

The Board finds that Dr. Colgin's March 15, 1996 report, is sufficient to establish that appellant's work-related disability resulting from bilateral carpal tunnel syndrome had resolved. Dr. Colgin stated that while appellant still had some complaints of occasional numbness and pain, these would improve with time. Dr. Colgin added that appellant's decreased grip strength would also improve as she continued working with her hands and increasing her activities. Dr. Colgin concluded that appellant had reached maximum medical improvement, had no

⁵ *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

⁶ *Connie Johns*, 44 ECAB 560, 570 (1993).

permanent impairment rating from the carpal tunnel syndrome and could return to gainful employment.

Dr. Colgin's next report, dated January 13, 1997, indicated that appellant had returned to her for treatment in November 1996 for problems with tendinitis in her wrists and elbows. Dr. Colgin stated that while appellant did have an element of tendinitis when she was treated for carpal tunnel syndrome, the tendinitis had resolved, along with the carpal tunnel syndrome. Inasmuch as Dr. Colgin, who had treated appellant for almost two years, concluded that appellant had no continuing disability from the accepted work injury, the Board finds that the Office met its burden of proof in terminating appellant's compensation.

The May 8, 1997 and August 28, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
June 24, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member