

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of IRIS D. TUCKER-BERRY and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Cleveland, OH

*Docket No. 00-1206; Submitted on the Record;  
Issued March 9, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,  
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 May 26, 1999.

The Office accepted appellant's claim for aggravation of bilateral wrist strains and de Quervain's tenosynovitis. On December 1, 1996 she retired from the employing establishment. In a report dated November 18, 1996, a referral physician, Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and considered that Tinel's and Phalen's tests were negative but Finkelstein's sign was positive. He opined that there was no objective evidence that appellant continued to suffer from bilateral wrist sprain but she still suffered from de Quervain's tenosynovitis of the right wrist. Dr. Kaffen opined that appellant continued to require restrictions.

In a report dated November 25, 1997, appellant's treating physician, Dr. Ashok S. Patil, a Board-certified physiatrist with a specialty in internal medicine, stated that he treated appellant for her work-related condition since April 18, 1996 and that her bilateral wrist strain and de Quervain's tenosynovitis had not yet resolved. In a report dated December 15, 1998, Dr. Patil considered appellant's history of injury, performed a physical examination and opined that, using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1994), appellant had a seven percent impairment of the right upper extremity.

In a report dated February 2, 1999, a referral physician, Dr. Alan H. Wilde, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed x-rays of the right wrist dated January 26, 1996 and an electromyogram (EMG) which were normal. He found no objective evidence of disease in appellant's wrists. Dr. Wilde stated that he found no objective evidence of residuals of de Quervain's tenosynovitis as Finkelstein's test was negative.

On February 8, 1999 the Office issued a notice of proposed termination.

To resolve the conflict between Drs. Patil's and Wilde's opinions as to whether appellant continued to be disabled due to her work-related wrist condition, the Office referred appellant to an impartial medical specialist, Dr. Ralph J. Kovach, a Board-certified orthopedic surgeon. In a report dated March 11, 1999, he considered appellant's history of injury, performed a physical examination and reviewed the EMG and the January 26, 1996 x-rays. Dr. Kovach considered that Phalen's and Finkelstein's tests were negative. He concluded that there was no objective evidence to substantiate any ongoing complaints, that there was no disease present and that appellant no longer had de Quervain's tenosynovitis or wrist strain. Dr. Kovach opined that appellant did not have any residual partial impairment in her right hand or wrist.

By decision dated May 26, 1999, the Office terminated appellant's compensation benefits, stating that the weight of the medical evidence established that appellant's work-related condition had resolved.

On June 18, 1999 appellant requested an oral hearing before an Office hearing representative which was held on November 17, 1999. At the hearing, appellant described her work history, her history of injury and her medical treatment for her wrists. She stated that she continued to feel pain in her wrist which at times felt like a pin pricking her and that when she used her right hand, it started throbbing. Appellant gave an example of how just turning chicken for frying caused her wrist to throb for a week. She stated that because she had retired she was seeking compensation only for medical benefits when necessary. Appellant stated that both wrists bothered her and that she sought medical coverage for both of them.

By decision dated February 3, 2000, the Office hearing representative affirmed the Office's May 26, 1999 decision.

The Board finds that the Office met its burden of proof to terminate compensation benefits effective May 26, 1996.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. 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.<sup>1</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.<sup>2</sup>

In situations where there are 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 on a proper factual background, must be given special weight.<sup>3</sup>

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<sup>1</sup> *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

<sup>2</sup> *Larry Warner*, 43 ECAB 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-296 (1988).

<sup>3</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

In the present case, appellant's treating physician, Dr. Patel, opined that appellant had a seven percent impairment to her right wrist as a result of her work-related wrist condition. The referral physician, Dr. Wilde, opined that appellant had no objective evidence of bilateral wrist strain or de Quervain's tenosynovitis. To resolve the conflict between Drs. Patel's and Wilde's opinion as to whether appellant continued to be disabled due to her accepted work conditions, the Office referred appellant to an impartial medical specialist, Dr. Kovach. In his March 11, 1999 report, based on appellant's history of injury, an EMG, x-rays and Phalen's and Finkelstein's tests, Dr. Kovach concluded that there was no objective evidence that appellant continued to have a bilateral wrist strain or de Quervain's tenosynovitis. He found no residuals of any work-related wrist condition. As the impartial medical specialist, Dr. Kovach's opinion which is complete and well rationalized constitutes the weight of the evidence.<sup>4</sup>

The decisions of the Office of Workers' Compensation Programs dated February 3, 2000 and May 26, 1999 are hereby affirmed.

Dated, Washington, DC  
March 9, 2001

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> Although appellant contended that in obtaining a second referral opinion from Dr. Wilde the Office was "forum shopping" in an effort to establish that appellant was not disabled, the Office is authorized to obtain the opinion of referral physicians at reasonable intervals of time to determine the status of appellant's disability. See 20 C.F.R. § 10.320.