

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AMY ABEL and LIBRARY OF CONGRESS,
Washington, DC

*Docket No. 99-2488; Submitted on the Record;
Issued March 19, 2001*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation on January 12, 1998.

The Board has duly reviewed the case on appeal and finds that the Office met its burden to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.¹ Furthermore, 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.²

On January 3, 1996 appellant, then a 34-year-old specialist in energy policy, filed an occupational disease claim, alleging that employment factors caused carpal tunnel syndrome and tenderness in the fifth finger on the right. In an attached statement, she indicated that the pain extended from her thumb and small finger into her lower arm. On April 23, 1996 appellant filed a second occupational disease claim, alleging that employment factors caused tendinitis on the left. The Office accepted that she had sustained employment-related bilateral de Quervain's tenosynovitis and right extensor pollicis longus tendinitis. Appellant missed intermittent periods of work and stopped completely on July 16, 1996. She underwent authorized surgical release on the right on July 25, 1996 and on the left on February 6, 1997. Appellant was placed on the periodic rolls and underwent physical therapy and work conditioning.

¹ See *Patricia A. Keller*, 45 ECAB 278 (1993).

² See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

The Office continued to develop the claim and on August 20, 1997 referred appellant to Dr. Virgil Balint, a Board-certified physiatrist, for a second-opinion evaluation. Finding that a conflict in the medical opinion existed between the opinions of Dr. Balint and that of Dr. Laura Welch, appellant's treating Board-certified internist, by letter dated November 4, 1997, the Office referred appellant to Dr. Gabriel Gluck, a Board-certified orthopedic surgeon, for an impartial medical evaluation.³ By letter dated December 10, 1997, the Office informed appellant that it proposed to terminate her compensation, based on the opinion of Dr. Gluck. In response, appellant submitted a December 31, 1997 report from Dr. Welch. By decision dated January 12, 1998, the Office terminated appellant's benefits, effective that day, on the grounds that the work-related disability had ceased. She returned to modified duty that day and timely requested a hearing that was held on February 17, 1999. At the hearing, appellant's counsel argued that the claim should be expanded to include bilateral epicondylitis and bilateral forearm pain. She also submitted additional medical evidence.

In a May 28, 1999 decision, an Office hearing representative affirmed the prior decision. The hearing representative noted that bilateral elbow conditions had not been accepted by the Office as employment related and; therefore, the burden of proof to establish these conditions remained with appellant. He recommended that she file an additional claim regarding these conditions. The instant appeal follows.

The relevant medical evidence⁴ includes reports dated April 10, September 12 and 15, 1997 in which Dr. Welch noted that appellant continued to have limitations to physical activity due to her employment injury. She opined that, while appellant could perform sedentary work, she could not return to her previous job without significant accommodations. In a work capacity evaluation dated September 19, 1997, Dr. Welch advised that appellant could work eight hours per day with restrictions. By report dated December 31, 1997, the physician advised that appellant's diagnoses included bilateral epicondylitis and pain in the extensor muscle system in the proximal forearm.

Dr. Balint, who completed a second-opinion evaluation for the Office, submitted a work capacity evaluation dated September 3, 1997 in which he advised that appellant could work eight hours per day with the restriction that she limit repetitive movements of the wrists and elbows and recommended that she utilize a voice-activated system with headphones. In a report dated September 8, 1997, he noted appellant's history and complaints of pain in the shoulders and elbows but found no objective findings regarding tendinitis in those areas. He concluded that she had no "clear-cut" residuals of the employment injury and that she could return to her previous employment with the modifications outlined in the work capacity evaluation.

The referee examiner, Dr. Gluck, submitted a work capacity evaluation dated November 20, 1997 in which he advised that appellant could return to sedentary work with a 10-pound lifting restriction. In a report dated November 25, 1997, Dr. Gluck advised that appellant had no residuals of the accepted conditions.

³ Drs. Balint and Gluck were furnished with the medical record, a statement of accepted facts and a set of questions.

⁴ The record also numerous medical reports that are distant in time to appellant's termination of benefits.

Appellant also submitted a report dated June 11, 1998 in which Dr. Melinda M. Gardner, a Board-certified orthopedic surgeon, noted examining appellant in January and May 1998 and that appellant had returned to work. Dr. Gardner stated that appellant's release surgeries appeared to be permanently successful. She noted findings on examination with regard to appellant's elbows and diagnosed bilateral lateral epicondylitis. Dr. Gardner also submitted deposition testimony dated November 9, 1998 in which she explained the physical mechanism of bilateral epicondylitis. She advised that she had reviewed appellant's medical records and noted consistent findings of pain in her forearms that originated in the lateral epicondyle. Dr. Gardner stated that this was not a residual of de Quervain's tendinitis or extensor pollicis longus tendinitis, noting that, while appellant had excellent recovery of these conditions, she continued to have problems with lateral epicondylitis. He concluded that all appellant's upper extremity problems were related and caused by employment factors.

In this case, the Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Gluck, the referee examiner, who advised that appellant had no residuals of her accepted wrist and hand conditions. The Office, therefore, properly terminated appellant's compensation on January 12, 1998. While the record contains medical evidence indicating that her bilateral elbow conditions are employment related, the record indicates that she has filed an occupational disease claim regarding this which is being adjudicated by the Office separately.

The decision of the Office of Workers' Compensation Programs dated May 28, 1999 is hereby affirmed.

Dated, Washington, DC
March 19, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member