

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTHA A. THOMPSON and DEPARTMENT OF THE ARMY,
RED RIVER ARMY DEPOT, Texarkana, TX

*Docket No. 01-1715; Submitted on the Record;
Issued September 26, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers Compensation Programs met its burden of proof in terminating appellant's compensation.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.¹

On March 31, 1987 appellant, then a 41-year-old mechanic, sustained right elbow tendinitis while in the performance of duty. She subsequently developed left elbow epicondylitis as a consequential injury secondary to overuse. In 1989 appellant received a schedule award based on a 17 percent permanent impairment of each upper extremity.

Effective August 9, 1990, appellant was placed on the periodic compensation rolls to receive compensation for temporary total disability.

By letter dated July 12, 2000, the Office advised appellant that it proposed to terminate her compensation on the grounds that the weight of the medical evidence established that she had no remaining disability or medical condition causally related to her March 31, 1987 employment injury.

In a letter dated July 31, 2000, appellant stated her disagreement with the Office's proposed termination of her compensation.

¹ See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

By final decision dated August 21, 2000, the Office terminated appellant's compensation.

In a report dated April 27, 1998, Dr. Christopher D. Burda, appellant's attending rheumatologist, stated that when he last saw her on January 6, 1998 she continued to have pain and stiffness in her elbows with periodic parasthesias and chronic medial and lateral epicondylitis. He indicated that the effects of her March 31, 1987 employment injury had not ceased and that she could not perform her regular job or even light work.

In a report dated July 21, 1998, Dr. Norris C. Knight, Jr., a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition, findings on examination and diagnosed bilateral medial and lateral epicondylitis based only on subjective complaints. He stated that there were no objective findings of bilateral epicondylitis. Dr. Knight stated that appellant's bilateral epicondylitis was related to her employment injury, her age and use of her arms. He indicated that appellant could not perform any work requiring grasping. Dr. Knight completed a work-capacity evaluation form and indicated that appellant could work for eight hours a day with restrictions on the use of a motor vehicle and repetitive wrist and elbow movements.

In a supplemental report dated March 1, 1999, Dr. Knight stated that appellant's incapacity was confined to her upper extremities and her epicondylitis was related to grasping or gripping with the hands or repetitious use of the hands. He stated that she could not perform any work requiring use of the hands.

In a report dated May 22, 1999, Dr. Burda stated that he had reviewed Dr. Knight's report and disagreed with his finding that there was no objective evidence of epicondylitis. He stated that objective findings included tender points in the medial and lateral epicondylar areas of both elbows with slight diminished range of motion. Dr. Burda stated that appellant's disability was due to her March 31, 1987 employment injury and prevented her from performing even light-duty work as she had marked restrictions against pushing, pulling, pronation and supination. He indicated that, although she had chronic bilateral and medial epicondylitis, she might attempt some type of vocational rehabilitative program involving voice-activated technology.

In a report dated July 12, 1999, Dr. Burda stated that appellant had pain and tenderness in the medial and lateral epicondylar areas. He noted that she had been offered a job involving voice dictation but his impression was that her speech was unintelligible because of slurring and occasional confusion due to the analgesics she took for chronic pain. Dr. Burda indicated that appellant's activities were limited to self-care only.

In a letter dated September 13, 1999, the Office noted that appellant was having difficulty in her vocational rehabilitation programs because her medication caused her to slur her speech and prevented her from training on a voice-activated computer system. The Office asked Dr. Burda whether there was any medication appellant could take that would not cause her speech to be impaired.

In a report dated September 27, 1999, Dr. Burda stated that appellant continued to have pain and stiffness with limitation in range of motion and tenderness in and about the medial-epicondylar areas with diminished grip strength and rotation of the forearm. He noted that she

had severe degenerative disc disease in her cervical spine, that, with her chronic bilateral elbow problems, compounded the situation to such an extent that she was unable to return to any job or rehabilitative measures. Dr. Burda advised the Office that appellant had tried various analgesic agents and there were no substitutes for her current medications.

By letter dated November 10, 1999, the Office referred appellant to Dr. Carey C. Alkire, a Board-certified orthopedic surgeon, together with the case record, a statement of accepted facts and a list of questions, for an examination and evaluation in order to resolve the conflict in the medical opinion evidence between Drs. Burda and Knight as to whether appellant had any disability or medical condition causally related to her March 31, 1987 employment injury.

Section 8123(a) of the Federal Employees' Compensation 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."²

In this case, the Board finds that the Office properly found a conflict in the medical opinion evidence between Dr. Burda, appellant's attending rheumatologist and Dr. Knight, the Office referral physician, on the issue of whether appellant had any continuing disability or medical condition causally related to her March 31, 1987 employment injury and properly referred appellant to an impartial medical specialist to resolve the conflict.

Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.³

In a report dated January 10, 2000, Dr. Alkire provided a history of appellant's condition and findings on examination and noted that x-rays of the elbows were normal. He diagnosed chronic bilateral medial and lateral epicondylitis, by history, Klippel-Feil syndrome of the cervical spine and degenerative disc disease secondary to the second diagnosis. Dr. Alkire indicated that there were no objective findings of bilateral epicondylitis and tendinitis to the medial side of the right elbow. He indicated that there was no medical basis for concluding that appellant still suffered from epicondylitis due to her March 31, 1987 employment injury. Dr. Alkire stated:

"[I]t is my personal opinion that [appellant] is exaggerating the symptoms of pain in her elbows. In my 19 years of treating patients for musculoskeletal pathology including numerous cases of epicondylitis, I have never had a patient to have persistent symptoms of epicondylitis that lasted for 12 years such that they were incapable of doing any work activity whatsoever. I personally believe that [appellant] is exaggerating the complaints of pain in order to allow continued collection of financial remuneration. As corroboration of this, [appellant] has refused to cooperate to learn even the most simple task such as working with a

² 5 U.S.C. § 8123(a).

³ See *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986).

voice-activated computer processor. If [appellant] were at all interested in gainful employment, I would have expected at least some cooperation with attempts to return her to work.”

* * *

“[Appellant] has been taking narcotic pain medicine; *i.e.*, Vicodin for so many years I am sure she has at least a partial addiction to this medicine. I suspect she would have withdrawal symptoms if the Vicodin was withdrawn completely.”

Dr. Alkire completed a work-capacity evaluation and indicated that appellant could work for eight hours a day with restrictions against operating a motor vehicle, reaching above the shoulder, repetitive movements of the elbow, pushing, pulling, lifting and climbing. He indicated that the work restrictions were necessary for the reason that appellant might injure herself or others because of the effects of her pain medication.

The Board finds that the opinion of Dr. Alkire, the impartial medical specialist selected to resolve the conflict in the medical opinion evidence, is sufficiently well rationalized and based on a proper factual and medical background and is entitled to special weight on the issue of appellant’s disability. Therefore, the Office properly based its termination of appellant’s compensation on the opinion of Dr. Alkire that appellant had no continuing disability or medical condition causally related to her March 31, 1987 employment injury.

The decision of the Office of Workers’ Compensation Programs dated August 21, 2000 is affirmed.

Dated, Washington, DC
September 26, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member