

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SONIA CENTENO and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 03-903; Submitted on the Record;
Issued July 18, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation and medical benefits effective October 18, 2001 on the basis that she no longer had a continuing medical condition causally related to her November 3, 1996 employment injury.

On April 9, 1997 appellant, then a 35-year-old letter carrier, filed an occupational disease claim for carpal tunnel syndrome. She identified November 3, 1996 as the date she became aware of her condition. The Office accepted appellant's claim for bilateral carpal tunnel syndrome with bilateral surgical releases. Appellant stopped work on July 14, 1997 and underwent a left carpal tunnel release on August 15, 1997, followed by a right carpal tunnel release on December 1, 1997. The Office paid appellant appropriate wage-loss compensation.

In a decision dated November 10, 1998, the Office terminated appellant's compensation and medical benefits.¹ The Office based its determination on the August 19, 1998 report of Dr. Alan R. Hirsch, a Board-certified neurologist and impartial medical examiner, who found positive evidence of malingering and advised that appellant could return to work without restrictions.

Appellant requested an oral hearing. By decision dated March 18, 1999, the Office hearing representative set aside the November 10, 1998 decision. The hearing representative found that the Office failed to meet its burden to terminate compensation and medical benefits because Dr. Hirsch, the impartial medical examiner, failed to provide sufficient medical rationale for his finding of malingering or for his assessment that appellant no longer had any work restrictions. The hearing representative instructed the Office to obtain a supplemental report from Dr. Hirsch.

¹ The Office issued a notice of proposed termination of compensation on October 7, 1998.

Appellant returned to work on February 8, 1999. Appellant requested a change of craft from a letter carrier to a window distribution clerk, which the employing establishment granted effective April 7, 1999. She later claimed a recurrence of disability on July 23, 1999. Appellant also filed a claim for a schedule award on September 8, 1999. Her treating physician, Dr. Daniel R. Wynn, a Board-certified neurologist, submitted an April 20, 2001 report in which he calculated a 38 percent impairment of both upper extremities, secondary to pain. Dr. Wynn diagnosed chronic pain syndrome (reflex sympathetic dystrophy).

On remand, the Office attempted to obtain clarification from Dr. Hirsch, however, he did not respond to the Office's request. Consequently, the Office referred appellant to another physician for an impartial medical examination. In a report dated August 10, 2001, Dr. David M. Shenker, a Board-certified neurologist and impartial medical examiner, stated that, despite appellant's ongoing subjective complaints, there was no evidence of any objective abnormalities.² Dr. Shenker opined that appellant did not suffer from any residual disabling conditions from her work or the surgeries she underwent. Additionally, he expressed doubt as to whether appellant ever suffered from reflex sympathetic dystrophy, as diagnosed by her treating physician. Dr. Shenker stated that, in any event, appellant certainly had no signs of this condition at the present time. He concluded that appellant had reached maximum medical improvement, had no evidence of any permanent impairment and she could work in her normal capacity without any restrictions.

In a decision dated October 18, 2001, the Office terminated appellant's compensation and medical benefits based on the impartial medical examiner's August 10, 2001 report.

Appellant requested an oral hearing, which was held on June 27, 2002. She testified that she currently worked as a window distribution clerk and could not resume her former duties as a letter carrier due to ongoing pain and weakness in her upper extremities. Appellant's counsel argued that Dr. Shenker's opinion should be disregarded because his notation of a positive Tinel's sign on the left contradicted his conclusion of the absence of objective findings. Additionally, appellant submitted an August 8, 2002 report from Dr. Wynn, who reviewed Dr. Shenker's August 10, 2001 report. Dr. Wynn stated that he stood by his diagnosis of chronic regional pain syndrome, status post carpal tunnel surgery. He described appellant's pain disorder as permanent and stated that she would require ongoing care as a result of intermittent episodes of increasing pain. Dr. Wynn also stated that appellant was unable to perform the repetitive activity of sorting mail as required by her previous position.

By decision dated October 16, 2002, the Office hearing representative vacated the October 18, 2001 decision terminating compensation and medical benefits. The hearing representative found that, while Dr. Shenker provided an otherwise thorough report, the apparent contradiction between the doctor's notation of a positive Tinel's sign over the left carpal tunnel and his conclusion that there was no evidence of any objective abnormalities warranted clarification.

In a supplemental report dated December 3, 2002, Dr. Shenker explained that a Tinel's sign is a subjective finding in that one has to rely on the patient's complaints. He further stated

² However, Dr. Shenker noted positive Tinel's sign over the left carpal tunnel.

that the finding is not under the control of the examining physician and that a positive Tinel's sign can be seen in individuals who do not have compression of a nerve. Dr. Shenker advised that "one should not put too much significance ever on such a finding."

In a decision dated December 11, 2002, the Office, relying on the impartial medical examiner's opinion, found that appellant no longer had a continuing medical condition or need for restrictions as a result of her November 3, 1996 employment injury. Accordingly, the Office terminated appellant's compensation and medical benefits effective October 18, 2001.

The Board finds that the Office met its burden of proof in terminating appellant's compensation and medical benefits effective October 18, 2001.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁶

The Office determined that a conflict of medical opinion existed based on the opinions of Dr. Wynn, appellant's neurologist, and Dr. Ira Kornblatt, a Board-certified orthopedic surgeon and Office referral physician.⁷ Therefore, the Office properly referred appellant to an impartial medical examiner, Dr. Shenker.⁸ As previously stated, the impartial medical examiner reported on August 10, 2001 that, despite appellant's ongoing subjective complaints, there was no evidence of any objective abnormalities. He opined that appellant did not suffer from any residual disabling conditions from her work or the surgeries she underwent. With respect to Dr. Wynn's earlier diagnosis of reflex sympathetic dystrophy, Dr. Shenker questioned whether appellant ever had this condition and noted that, in any event, appellant certainly had no present signs of this condition. He concluded that appellant had reached maximum medical

³ *Curtis Hall*, 45 ECAB 316 (1994).

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁶ *Calvin S. Mays*, 39 ECAB 993 (1988).

⁷ Dr. Kornblatt examined appellant on February 26, 1998, and found that there were no objective findings to substantiate appellant's subjective complaints. He concluded that appellant had fully recovered and was capable of returning to her previous duties without restriction. On July 30, 1998 Dr. Wynn found that appellant could return to part-time, limited duty. Appellant later returned to work in a full-time capacity as a window distribution clerk and Dr. Wynn maintained that she had permanent residuals from her accepted condition that precluded her from resuming her former duties as a letter carrier.

⁸ The Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

improvement, had no evidence of any permanent impairment and could work in her normal capacity without any restrictions. Although a question was raised as to the significance of Dr. Shenker's notation of a positive Tinel's sign on the left, he explained in his December 3, 2002 supplemental report that this was a subjective finding and that "one should not put too much significance ever on such a finding."

The Board finds that the Office properly relied on the impartial medical examiner's August 10, 2001 and December 3, 2002 reports as a basis for terminating benefits. Dr. Shenker's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed appellant's medical records. Dr. Shenker also reported accurate medical and employment histories. The Office properly accorded determinative weight to the impartial medical examiner's August 10, 2001 and December 3, 2002 findings.⁹ Accordingly, the Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits.¹⁰

The December 11, 2002 decision of the Office of Workers' Compensation Programs is, hereby, affirmed.

Dated, Washington, DC
July 18, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁹ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

¹⁰ As previously noted, Dr. Wynn's earlier reports represented one side of the medical conflict that Dr. Shenker later resolved. Dr. Wynn's most recent report essentially reiterates his earlier findings. Consequently, Dr. Wynn's August 8, 2002 report is insufficient to overcome the weight properly accorded to the impartial medical examiner's August 8, 2001 evaluation and subsequent findings. *Thomas Bauer*, 46 ECAB 257, 265 (1994).