



## **FACTUAL HISTORY**

This case has been before the Board on two prior occasions. By decision dated September 25, 1996, the Board reversed an Office decision reducing appellant's wage-loss compensation due to an unresolved conflict in medical opinion regarding her ability to perform receptionist duties.<sup>2</sup> In a decision dated July 16, 2003, the Board reversed an Office decision terminating appellant's compensation benefits. The Board noted that the opinion of the impartial examiner, dated March 26, 1998, was of diminished probative value and insufficient to justify the termination of appellant's compensation benefits in June 2002. The Board concluded that a conflict in the medical evidence remained regarding whether appellant had any residuals or disability of her accepted right wrist tenosynovitis.<sup>3</sup> The law and the facts as set forth in the Board decisions are incorporated herein by reference.

Subsequent to the Board's July 16, 2003 decision, appellant was returned to the periodic rolls. On October 2, 2003 the Office referred appellant, the medical record, a statement of accepted facts and a set of questions, to Dr. Charles R. Kershner, a Board-certified orthopedic surgeon. In a report dated October 20, 2003, he noted the history of injury, appellant's complaints of a burning sensation over the dorsal aspect of her wrist and his review of the medical evidence. Dr. Kershner reported that she did housework and helped care for her disabled husband. Physical examination revealed full range of motion in both upper extremities with a negative Finkelstein's test of her right wrist, a negative grinding test about the distal radial ulnar joint and radial carpal joint and normal scaphoid motion. Dr. Kershner obtained x-rays and opined that these demonstrated benign cysts in the lunate bone with no sign of collapse of the lunate and no loss of joint space to suggest any problem with the lunate bone. The x-rays further demonstrated that she had no evidence of arthritis in the wrist joint or carpal bones. Dr. Kershner's impression was long-standing benign cysts of the lunate bones. He felt that the cysts were totally benign, based on the history of her having had the cysts for 12 years with no current x-ray evidence of Keinboch's disease or other significant pathology about the wrist joints. Dr. Kershner stated that he found no evidence of significant pathology regarding appellant's right upper extremity and opined that she could return to her former job without restrictions. In answer to specific Office questions, he found no evidence to suggest that appellant's job accelerated or aggravated the benign cysts, noting that any employment injury would have been temporary and not permanent. Dr. Kershner repeated that she did not have significant Keinboch's disease, stating that, if she ever had it, "it certainly is arrested at this time and has left no residual" and also advised that she had no residuals of any work-related wrist condition. After review of her job description, he advised that appellant could perform the duties described, noting that she was not undergoing any treatment for her wrist condition and that he did not feel any treatment was appropriate.

On November 3, 2003 the Office notified appellant that it proposed to terminate her compensation benefits on the grounds that her employment-related wrist condition had resolved. In a response dated November 26, 2003, appellant, through her attorney, disagreed with the

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<sup>2</sup> Docket No. 94-2277. The Office accepted that appellant, a keyboard operator, sustained employment-related right tenosynovitis and she began receiving wage-loss compensation in 1991.

<sup>3</sup> Docket No. 02-2281.

proposed termination, arguing that the impartial examiner should be certified as a hand surgeon, that his report was nonresponsive regarding Keinboch's disease and that he was given an outdated statement of accepted facts. Appellant submitted no additional medical evidence. The record reflects that she relocated from Indiana to Bradenton, Florida.

On March 2, 2005 the Office reissued the pretermination notice, noting that appellant had submitted no additional medical evidence. Appellant's attorney responded, reiterating the arguments raised on November 26, 2003. By decision dated April 22, 2005, the Office terminated appellant's compensation benefits, effective that day, on the grounds that the medical evidence established that she had no residuals of her employment-related wrist condition.

### **LEGAL PRECEDENT**

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup> The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</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>6</sup>

### **ANALYSIS**

The Board finds that Dr. Kershner, the referee physician, provided a comprehensive, responsive report in which he noted the history of injury, his review of the medical record, and physical findings which were essentially normal. His impression was long-standing benign cysts of the lunate bones which he felt were totally benign, based on the history of appellant's having had the cysts for 12 years with no current x-ray evidence of Keinboch's disease or other significant pathology about the wrist joints. In answer to specific Office questions, Dr. Kershner found no evidence to suggest that appellant's job accelerated or aggravated the benign cysts, noting that any employment injury would have been temporary and not permanent. He repeated that she did not have significant Keinboch's disease and advised that she had no residuals of any work-related wrist condition. After review of her job description, the physician concluded that appellant could perform the duties described, noting that she was not undergoing any treatment for her wrist condition and that he did not feel any treatment was appropriate.

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<sup>4</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>5</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>6</sup> *Manuel Gill*, 52 ECAB 282 (2001).

Appellant has submitted no medical evidence since a May 13, 2002 report in which an attending Board-certified orthopedic surgeon, Dr. Daniel T. Maurer, advised that she was totally disabled due to her employment injury. The Board reviewed this report in its July 16, 2003 decision, noting that Dr. Maurer was on one side of the conflict in medical evidence.

The Board finds that Dr. Kershner provided a thorough, well-rationalized report in which he explained his findings and concluded that appellant's work-related wrist condition had ceased. The Office properly credited the impartial specialist's report with special weight and met its burden of proof to terminate appellant's compensation benefits effective April 22, 2005.

**CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective April 22, 2005.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 22, 2005 be affirmed.

Issued: February 1, 2006  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board