

**United States Department of Labor
Employees' Compensation Appeals Board**

D.G., Appellant

and

**FEDERAL JUDICIARY, U.S. DISTRICT
COURT, Santa Ana, CA, Employer**

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**Docket No. 11-923
Issued: November 15, 2011**

Appearances:

Max Gest, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REVERSING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge

ALEC J. KOROMILAS, Judge

COLLEEN DUFFY KIKO, Judge

On March 2, 2011 appellant filed a timely appeal from a January 6, 2011 decision of an Office of Workers' Compensation Programs' (OWCP) hearing representative that affirmed a June 28, 2010 decision that terminated her compensation benefits effective July 4, 2010. The claim was docketed as No. 11-923.¹

The Board has duly considered the matter and finds this case must be reversed. OWCP issued a notice of proposed termination of compensation on May 19, 2010. In response, appellant submitted a June 24, 2010 report from Dr. Edward H. Bestard, a Board-certified orthopedic surgeon, that was scanned into the record on June 24, 2010. In his June 24, 2010 report, Dr. Bestard noted his history of treating appellant and advised that her symptoms were dependent on how many hours she worked. He noted findings, advised that appellant's prognosis was guarded, and opined that her condition and disability were precipitated/accelerated by factors of employment. Dr. Bestard also opined that the report of an OWCP referral

¹ On October 11, 2000 appellant, then a 40-year-old court reporter, filed an occupational disease claim for a right elbow condition. The claim was accepted for right elbow tendinitis. On October 30, 2002 appellant filed a recurrence claim, noting that she began part-time work of 20 hours each week on August 5, 2002. OWCP adjudicated the claim as a new injury under file number xxxxxx307 and accepted the conditions of tenosynovitis and enthesopathy of the right wrist/hand and right shoulder strain under this claim. The claims have now been doubled. Appellant began working 25 hours per week on March 16, 2009.

physician was contradictory regarding the hours appellant could work and her physical restrictions.

In the June 28, 2010 decision that terminated appellant's benefits effective July 4, 2010, OWCP stated that no medical evidence was received subsequent to the termination notice. A hearing was held on October 20, 2010. Appellant submitted reports dated September 28 and November 23, 2010 from Dr. Jacob E. Tauber, Board-certified in orthopedic surgery. In a January 6, 2011 decision affirming the June 28, 2010 termination decision, the OWCP hearing representative referenced Dr. Tauber's September 28, 2010 report but did not reference either Dr. Bestard's June 24, 2010 report or Dr. Tauber's November 23, 2010 report.

In the case of *William A. Couch*,² the Board held that when adjudicating a claim, OWCP is obligated to consider all relevant evidence properly submitted by a claimant and received by OWCP before the final decision is issued. Appellant submitted Dr. Bestard's June 24, 2010 report on June 24, 2010 when it was faxed to OWCP and scanned into the record. This report was not considered by either OWCP's claims examiner or OWCP's hearing representative in rendering their decisions. Thus, the termination must be reversed as OWCP did not consider all of the evidence properly before it when it terminated compensation.

IT IS HEREBY ORDERED THAT the January 6, 2011 decision of the Office of Workers' Compensation Programs be reversed.

Issued: November 15, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

² 41 ECAB 548 (1990); see *Willard McKennon*, 51 ECAB 145 (1999).