

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY BOUNDS and VETERANS ADMINISTRATION,
NEW ORLEANS VETERANS HOSPITAL, New Orleans, La.

*Docket No. 95-2113; Submitted on the Record;
Issued January 27, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant's employment injury of June 13, 1983 resolved without residuals by no later than May 1, 1994.

The Board has duly reviewed the record on appeal and finds that this case is not in posture for a determination of the issue presented. An unresolved conflict in medical opinion exists necessitating referral to an impartial medical specialist pursuant to 5 U.S.C. § 8123(a).

In a decision dated April 28, 1994, the Office terminated appellant's compensation benefits effective May 1, 1994. The Office found that the weight of the medical evidence rested with the opinion of Dr. Arthur D. Schiff, the Board-certified neurologist selected to resolve whether appellant continues to suffer from his accepted condition of right foot trauma and right foot Morton's neuroma. Dr. Schiff reported on February 7, 1994 that appellant had no evidence of reflex sympathetic dystrophy or peripheral neuropathy or radiculopathy on neurologic examination, and that she had no restrictions in function from a neurological standpoint. Dr. Schiff's opinion was based on an accurate history and was sufficiently well rationalized that it constituted the weight of the medical evidence and justified the Office's termination of compensation benefits.¹

Appellant subsequently submitted, however, a November 16, 1994 report from Dr. Stanley R. Kalish, a Board-certified podiatric surgeon, who explained that appellant in fact had a chronic reflex sympathetic dystrophy. Dr. Kalish is an appropriate Board-certified specialist with an accurate history of injury. He reported that he reviewed appellant's complete medical record, and he provided a sound and forceful opinion that appellant has a full-blown

¹ When there exist 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 upon a proper factual background, must be given special weight. *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

causalgia reflex dystrophy, which he explained was a serious condition that could lead to amputation of the limb if it persists without treatment.

In a decision dated February 13, 1995, the Office affirmed the termination of appellant's compensation benefits. The Board finds, however, that Dr. Kalish's opinion is based on an accurate background and is sufficiently well rationalized that it creates a conflict with the opinion provided by Dr. Schiff. Section 8123(a) of the Federal Employees' Compensation Act provides in 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." Accordingly, the Board will set aside the Office's February 13, 1995 decision and remand the case for resolution of the conflict pursuant to 5 U.S.C. § 8123(a). After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision on appellant's entitlement to compensation benefits.

The February 13, 1995 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
January 27, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member