

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WENDY KING and DEPARTMENT OF DEFENSE,
DEFENSE LOGISTICS AGENCY, Philadelphia, Pa.

*Docket No. 96-755; Submitted on the Record;
Issued January 30, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits on the basis that her employment-related residuals and disability had ceased.

In April 1992 appellant, then a 41-year-old sewing machine operator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she first realized on April 9, 1991 that her carpal tunnel syndrome with trigger fingers was due to her petting pockets and collars every day for eight hours per day. The Office of Workers' Compensation Programs accepted the claim for bilateral carpal tunnel syndrome on June 28, 1993. Appellant returned to light-duty work on July 1, 1994.

In a report dated July 5, 1994, Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, based upon an examination of appellant and a review of medical records, opined that appellant is capable of performing gainful employment. Dr. Didizian specifically stated that appellant had "recovered from her work related injury." On physical examination, Dr. Didizian noted:

"[N]eck, shoulder, elbow, wrist and finger movements are full. The surgical scars are well healed and not sensitive. Tinel's, Phalen's and Addson's tests are negative. Two point discrimination is at 4-5 mm. for the right side and 4.0 mm. on the left side.

Power grip right to left with Jamar I - 40/50, Jamar III - 40/60, Jamar V - 15/35. Pinch grip is 4/10. Skin color and texture and sweat pattern are normal. Abductor pollicis brevis strength is 5/5 and there is no atrophy of the intrinsic muscles. There is no evidence of pillar pain post surgery."

On October 19, 1994 appellant filed a claim for a recurrence of disability alleging that she stopped work on October 1, 1994 due to the elimination of her light-duty job and reduction-in-force. The Office accepted appellant's claim for a recurrence on December 14, 1994. On December 19, 1994, the Office placed appellant on the short-term periodic rolls for payment of wage-loss compensation benefits.

In a report dated October 25, 1994, Dr. John D. Webber, a Board-certified orthopedic surgeon, noted that appellant's "problem is related to trigger finger involvement of her right dominant thumb." In an attending physician's supplemental report (Form CA-20a) dated November 23, 1994, Dr. Webber checked "yes" that appellant is totally disabled to perform her usual work.

In a letter dated February 8, 1995, the Office referred appellant to Dr. Bong S. Lee, a Board-certified orthopedic surgeon, to resolve the conflict in the medical evidence.

In a letter dated May 22, 1995, Dr. Webber, opined that subsequent to her surgery for her carpal tunnel syndrome, appellant "began having symptoms that were diagnosed as trigger finger involvements of her thumb, tendinitis involving principally her left shoulder, and various other complaints related to activities that she attempted to resume." Dr. Webber noted that appellant "has some residual soft tissue changes in the hand that will continue to limit some of her prolonged activities."

In a report dated June 6, 1995, Dr. Lee, based upon a review of the medical evidence, a statement of accepted facts and physical examination, opined that appellant is not totally disabled and is capable of performing "any kind of modified job." Dr. Lee noted the following upon physical examination:

"Both hands reveal no intrinsic atrophy or noticeable swelling. There was full active flexion and extension, but she reported that the right thumb was painful with active flexion of the IP joint. There was tenderness over the volar aspect of the base of both thumbs on compression. The flexor pollicis longus was slightly swollen. There was no evidence of triggering or locking. None of the other fingers have any triggering or locking or tenderness over the flexor tendon sheaths or extensor compartments. Phalen's test and Tinel's sign were negative over the median and ulnar nerve at the wrist. Finkelstein's test was also negative.

"Both wrists have full range of motion in all directions with no complaint of pain, no palpable mass, no local tenderness on palpation."

On August 2, 1995 the Office issued a notice of proposed termination of compensation. The Office credited the opinion of Dr. Lee, the impartial medical examiner, to find that appellant did not have any continuing employment-related disability.

In a decision dated September 26, 1995, the Office terminated appellant's compensation benefits on the basis that the effects of the April 9, 1991 work injury had ceased.

The Board finds that the Office properly terminated appellant's compensation benefits on the basis that her employment-related residuals and disability had ceased.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits by establishing that the accepted condition has ceased or that it is no longer related to the employment.¹

In the instant case, the Office accepted appellant's claim for bilateral carpal tunnel syndrome. Appellant's attending physician, Dr. Webber, a Board-certified orthopedic surgeon, opined that appellant was totally disabled while Dr. Didizian opined that appellant was not totally disabled. The Office found a conflict in the medical opinion evidence between Drs. Didizian and Webber and referred appellant to Dr. Lee to resolve the conflict.

Section 8123(a) of the Federal Employees' Compensation Act provides: "[I]f 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 Because of the conflict in the medical opinion between Drs. Didizian and Webber, the Office referred appellant to an impartial medical examiner, Dr. Lee, a Board-certified orthopedic surgeon. In his June 6, 1995 report, Dr. Lee opined that appellant was capable of performing "any kind of modified job" and that she is not totally disabled.

It is well established that in situations where opposing medical reports of virtually equal weight and rationale exist, and the case is referred to an impartial medical examiner 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.³ As Dr. Lee's report was well rationalized and was based on a complete factual and medical background, it represents the weight of the medical evidence and establishes that appellant's work-related residuals had ceased.

¹ *David W. Green*, 43 ECAB 883 (1992); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *Harold S. McGough*, 36 ECAB 332 (1984); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

² 5 U.S.C. § 8123(a).

³ *James P. Roberts*, 31 ECAB 1010 (1980).

The decision of the Office of Workers' Compensation Programs dated September 26, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 30, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member