

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GLORIA A. SWANSON and U.S. POSTAL SERVICE,  
POST OFFICE , Phoenix, Ariz.

*Docket No. 96-1194; Submitted on the Record;  
Issued July 8, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective October 17, 1993 on the grounds that appellant's disability due to her accepted right elbow tendinitis and left wrist and left elbow sprains had ceased by that date; and (2) whether the Office properly terminated appellant's authorization for medical treatment on October 17, 1993.

On April 29, 1987 appellant, then a 30-year-old machine clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on April 11, 1987 she first realized that her left arm spasm or strain was caused or aggravated by her employment. The Office accepted the claim for right elbow tendinitis on February 19, 1987. On April 27, 1988 the Office expanded the claim to include left wrist and left elbow sprains. Appellant was placed on light duty on the periodic rolls for temporary total disability effective September 23, 1989.

In a June 19, 1991 report, Dr. David M. Creech, a Board-certified surgeon and plastic surgeon, based upon a physical examination and history, noted that Tinel's examination was negative and that the muscle tone in appellant's upper extremities appeared normal and equal bilaterally. Dr. Creech diagnosed "1. bilateral upper extremity tendinitis. 2. possible flexion contracture of the right arm due to the biceps muscle spasm, perhaps there is some other etiologic factor. 3. Questionable exercise induced radial tunnel syndrome, right arm." Dr. Creech opined that he did not "foresee that she has any possibility of returning to repetitious work or work that would require heavy lifting greater than 10 lbs." Dr. Creech also opined that appellant's "inability to sustain any activities greater than brief movements of the upper extremities due to pain" precludes work requiring letter sorting or using a keyboard.

In a report dated July 15, 1991, Dr. Robert L. Wilson, a Board-certified orthopedic surgeon, opined that appellant had a 10 percent permanent impairment of the right upper extremity based upon her limitation of motion. Dr. Wilson further noted:

“I do not have any suggestions for further treatment and specifically advised the patient that I do not believe that surgery by me would have any reasonable chance of improving her condition. The patient has been seen by the therapists in this office and myself for a sufficiently long period of time for me to become convinced that I have nothing further to offer the patient.”

In a letter dated September 18, 1992, Dr. Wilson again reiterated that he had no further treatment to offer appellant and recommended she “see another hand surgeon closer to her home for consultation and treatment.”

In a report dated July 29, 1992, Dr. Creech noted that his “impression at that time was that there seemed to be other factors involved than just the complaint that the patient had.” Dr. Creech stated that at the time of his evaluation he was of the opinion that appellant would benefit from another medical examination due to “the difficulty I had in evaluating this patient, and her inability to cooperate with my instructions during the examination.” The physician stated he had seen appellant once and that “there was essentially not a very adequate examination.” Dr. Creech stated that basically appellant gave no cooperation during the examination and “[s]he complained of extreme sensitivity during the examination.”

By letter dated August 3, 1993, the Office referred appellant along with her medical records, a position description and a statement of accepted facts to Dr. Ralph V. Wilson, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated August 23, 1993, Dr. Ralph Wilson, based upon a physical examination, review of the medical records and statement of accepted facts, opined that there was no objective evidence to support any limitation. On physical examination, Dr. Ralph Wilson noted no sensory loss or any “evidence of any nerve root compromise on Tinel’s testing or wrist flexion testing.” He also noted that appellant’s range of motion was within normal limits for her shoulders, elbow, fingers and wrists. Under impression, Dr. Ralph Wilson noted:

“When one is trying to judge the functional ability in someone that has obvious inconsistencies in the examination there is no way that the veracity of her symptoms can be recognized as fact. The patient in essence demonstrates no consistent objective abnormalities. I therefore have no other option than to consider her functionally equipped to perform in any job capacity.”

Dr. Ralph Wilson opined that he had “never seen tendinitis and sprains linger to this degree with the apparent subjective profound limitations that she describes.” Dr. Ralph Wilson suggested there could be a psychological reason for appellant’s self-imposed limitations, but he did not believe any psychiatric component would be due to appellant’s accepted employment injury.

A notice of proposed termination of benefits was issued on September 15, 1993. The Office found, based upon Dr. Wilson's second opinion evaluation, that appellant had no continuing disability or need for medical treatment due to her accepted employment injury of April 15, 1987.

By decision dated October 15, 1993, the Office terminated appellant's continuing compensation benefits based upon the opinion of Dr. Ralph Wilson which showed that appellant was no longer totally disabled due to her accepted employment injury. The Office terminated compensation and medical benefits effective October 17, 1993.

In a report dated December 14, 1993, Dr. Walter L. O'Hayre, Board-certified in occupational medicine, noted that appellant gave a history of multiple musculoskeletal problems dating to 1987. Dr. O'Hayre noted that there were inconsistencies on physical examination and opined that he "would assess her risk for incurring a job related injury or illness as moderate" and listed restrictions as including "lifting, pulling, pushing or carrying more than twenty-five (25) pounds; from frequent or repetitive use of her upper extremities and from any above shoulder level use of her upper extremities."

In a report dated December 28, 1993, Dr. O'Hayre, Board-certified in occupational medicine, based upon a review of the medical records and physical examination, agreed with Dr. Ralph Wilson's opinion.

In a form dated March 5, 1994, Dr. O'Hayre diagnosed tenderness in left forearm and right elbow. Dr. O'Hayre listed restrictions of no lifting over a pound, "no repetitious hand, wrist, forearm work, no grasping, no reaching above shoulder, no keyboard work, no climbing with arm use, no motor vehicle operation" and no working with others.

By letter dated November 22, 1994, the employing establishment referred appellant to Dr. John Ricker, a Board-certified orthopedic surgeon, for a fitness-for-duty examination. In his fitness for duty report, Dr. Ricker opined, based upon a review of the medical records and a physical examination, that appellant had "no evidence of disability, objective findings, or subjective complaints." However, Dr. Ricker opined that [p]rognosis is good provided she does not return to the type of work she does not like, particularly the repetitive type of work required working in a Post Office." Dr. Ricker then opined that appellant was not capable of performing her prior position of "machine clerk without an increased risk of making her problem worse."

A hearing was held on October 24, 1995 at which appellant was represented by counsel and appellant was allowed to present testimony.

By decision dated January 29, 1996, the Office hearing representative affirmed the Office's October 15, 1993 decision on the grounds that the weight of the medical evidence established that there was no objective evidence of any continuing condition or disability causally related to appellant's employment.

The Board finds that the Office has met its burden of proof in terminating appellant's compensation for wage loss.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.<sup>1</sup>

The weight of the medical evidence of record, as represented by the opinion of Dr. Ralph Wilson, the second opinion specialist and Board-certified orthopedic surgeon, supports that appellant has no disability due to her accepted employment injury of right elbow tendinitis and left wrist and left elbow sprains. In a report dated August 23, 1993, Dr. Ralph Wilson opined that there was no objective findings to support appellant's subjective complaints. He also noted that he had never seen sprains and tendinitis linger to this degree and with the limitations appellant described. Dr. Ralph Wilson opined that appellant was capable of performing her job based upon the lack of objective findings to support any limitation. Dr. O'Hayre, in his December 28, 1993 report, agreed with Dr. Ralph Wilson's opinion.

Dr. Creech, in a letter dated July 29, 1993 stated that his examination of appellant was inadequate due to a complete lack of cooperation from appellant so that his June 19, 1991 report is of diminished probative value. Dr. Robert Wilson's report provides no objective evidence in support of his finding that appellant was disabled. In finding appellant totally disabled, Dr. Robert Wilson bases his opinion of disability on the basis that appellant's symptoms would recur if she returned to work. As the Board has frequently held, the fear of a recurrence of disability is not a basis for the payment of compensation.<sup>2</sup> As these reports fail to provide a rationalized medical opinion explaining how appellant's accepted employment injury causes her to be totally disabled, they are insufficient to support a finding that appellant has any continuing disability due to her accepted employment injury.<sup>3</sup>

Dr. Ricker, in his November 22, 1994 report, found no objective evidence of disability and that a diagnosis could not be established based upon his current physical findings. Dr. Ricker opined that appellant's symptoms would probably recur if she resumed repetitive work, such as sorting mail. In this regard, his opinion is speculative in nature and thus is entitled to diminished probative value.<sup>4</sup> Medical conclusions unsupported by rationale are of little probative value.<sup>5</sup> Dr. Ricker's opinion is unrationalized as he fails to support his medical findings with rationale.

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<sup>1</sup> See *Alfonso G. Montoya*, 44 ECAB 193 (1992); *Gail D. Painton*, 41 ECAB 492 (1990); *Leona Z. Blair*, 37 ECAB 615 (1986).

<sup>2</sup> Disability compensation is payable only for an employment injury which causes disability for work; fear of a recurrence of disability if the employee returns to work is not a basis for compensation. *William A. Kandel*, 43 ECAB 1011 (1991); see *Mary A. Geary*, 43 ECAB 300 (1991).

<sup>3</sup> *Arlonia B. Taylor*, 44 ECAB 591 (1993).

<sup>4</sup> *Id.*

<sup>5</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

The Board finds that Dr. Ralph Wilson's conclusion is rationalized and is based on an accurate factual and medical background following testing. There is no rationalized medical opinion supporting a continuing medical condition that is causally related to the accepted employment injury.

The Board further finds that the Office properly terminated appellant's authorization for medical treatment on October 17, 1993.

The Office, in order to terminate authorization for medical treatment, has the burden of establishing that the employee no longer has residuals of the employment-related condition that requires further medical treatment.<sup>6</sup> The Office met this burden through the report of Dr. Ralph Wilson, who concluded that appellant no longer had any disability related to her accepted employment injury and provided rationale in support of that conclusion.

The decision of the Office of Workers' Compensation Programs dated January 29, 1996 is hereby affirmed.

Dated, Washington, D.C.  
July 8, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> *Furman G. Peake*, 41 ECAB 361 (1990).