

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAROL A. MACZKO and U.S. POSTAL SERVICE,  
POST OFFICE, Akron, Ohio

*Docket No. 95-2938; Submitted on the Record;  
Issued March 27, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury in the performance of duty on or about October 27, 1988.

On the prior appeal of this case<sup>1</sup> the Board found that the factual evidence was insufficient to establish that appellant was struck in the legs by a mailbag on April 12, 1979, as alleged and that the Office of Workers' Compensation Programs did not meet its burden of proof to justify termination of compensation after February 8, 1980. The Board found that appellant was entitled to compensation for partial wage loss beginning February 9, 1980, the date she returned to limited duty four hours a day. The Board also found that the case was not in posture for a determination of the following issues: (1) whether appellant's work activities from February to June 1980 further aggravated her condition; (2) whether her hospitalization in June 1980 was work related; (3) whether her work restrictions on June 11, 1981 were needed for a work-related condition; and (4) whether she sustained an injury in the performance of duty on October 27, 1988. The Board remanded the case for further development and directed the Office to obtain a supplemental report on the first three issues from Dr. J. Jeffrey Alexander, a Board-certified vascular surgeon and impartial medical specialist, and a supplemental report on the fourth issue from Dr. Charles J. Farrell, a Board-certified vascular surgeon and impartial medical specialist. The facts of this case as set forth in prior Board decisions are hereby incorporated by reference.

The Office obtained a supplemental report from Dr. Alexander, who stated that it was his personal feeling that appellant's work-related diagnosis was that of chronic venous insufficiency due to an "initial evious" (sic) deep vein thrombosis. Dr. Alexander qualified his opinion, however, because there was no objective evidence of chronic venous insufficiency, given the

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<sup>1</sup> Docket No. 93-326 (issued July 19, 1994), *petition for recon. denied*, issued February 7, 1995. The Board also issued decisions in 1987 and 1992. Docket No. 87-1263 (issued September 30, 1987); Docket No. 91-1387 (issued January 31, 1992).

limitations of the now-outdated diagnostic techniques available at the time and appellant's unwillingness to undergo more invasive procedures. He suggested that further evaluation of the venous system using newer techniques might prove helpful, as the issues to be resolved depended on the correctness of the tentative diagnosis of chronic venous insufficiency.

The record on appeal shows that the Office issued no final decision on the three issues submitted to Dr. Alexander. The Board has no jurisdiction on this appeal to rule on these outstanding issues<sup>2</sup> but notes that the Office should further develop the evidence as necessary<sup>3</sup> and issue an appropriate final decision.

The Office obtained a supplemental report from Dr. Farrell, who stated it was "highly unlikely that this examination [Dr. Alexander's noninvasive vascular study on September 23, 1988] contributed in any way to the patient's disability, either by virtue of damage to the venous system or soft tissue of the extremity." Dr. Farrell did not explain the reason he thought this was highly unlikely. Noting that appellant returned to work for a very short period of time, from October 23 through 26, 1988, Dr. Farrell stated that appellant's normal work activities "as described in that period would not have aggravated her disability at that time." He offered no further explanation.

In a decision dated July 7, 1995, the Office denied appellant's claim for an injury on October 27, 1988 on the grounds that the evidence failed to demonstrate the element of causal relationship.

The Board finds that this case is not in posture for a determination of whether appellant sustained an injury in the performance of duty on or about October 27, 1988.

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.<sup>4</sup> Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Federal Employees' Compensation Act<sup>5</sup> will be

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<sup>2</sup> The Board's jurisdiction is limited to appeals from final decisions of the Office. 20 C.F.R. § 501.2(c).

<sup>3</sup> The Office accepted appellant's claim for aggravation of her underlying venous insufficiency. As the Board found in its prior decision, the medical evidence fails to establish that this aggravation was temporary; rather, the evidence supports that appellant's condition was permanently aggravated by prolonged standing and sitting (the statement of accepted facts submitted to Dr. Alexander misleadingly states that the claim was accepted for only a temporary aggravation). The Office should have instructed Dr. Alexander to work within the framework of the accepted aggravation when addressing the questions posed.

<sup>4</sup> See *Nathan L. Harrell*, 41 ECAB 402 (1990).

<sup>5</sup> 5 U.S.C. § 8123(a) provides the following: "An employee shall submit to examination by a medical officer of

circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.<sup>6</sup>

The Board finds that Dr. Farrell's June 20, 1995 report is insufficient to resolve whether the vascular study performed by Dr. Alexander on September 23, 1988 or appellant's increased work load upon returning to an eight-hour day on October 23, 1988 contributed to her disability beginning October 27, 1988. Dr. Farrell offered no medical reasoning to support his opinion that it was highly unlikely that the vascular study contributed to appellant's disability and the only explanation he offered to support his opinion that appellant's normal work activities would not have aggravated her disability was the observation that her return to work was for a very short period of time. Dr. Farrell's opinions are too brief and unexplained to resolve these outstanding issues. It is well established that medical conclusions unsupported by rationale are of little probative value.<sup>7</sup> Because Dr. Farrell failed to explain how his conclusions were sound, rational and logical, the Board finds that further development is required. The Board will set aside the Office's July 7, 1995 decision and remand the case for a supplemental report from Dr. Farrell<sup>8</sup> and, following such further development of the evidence as may be necessary, for an appropriate final decision.

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the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by him present to participate in the examination. 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."

<sup>6</sup> *Harold Travis*, 30 ECAB 1071 (1979).

<sup>7</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

<sup>8</sup> Because Dr. Farrell first addressed the questions raised by the conflict in his June 20, 1995 report, the Office may properly request a supplemental report clarifying his opinions.

The July 7, 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.  
March 27, 1998

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member