

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN M. RILEY and DEPARTMENT OF THE NAVY,
PORTSMOUTH NAVAL SHIPYARD, Portsmouth, N.H.

*Docket No. 96-468; Submitted on the Record;
Issued May 7, 1998*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant continued to be disabled from employment-related right axillary neuropathy after December 1988.

On June 29, 1988 appellant, then a 27-year-old shipfitter helper, filed a claim, alleging that she injured her right arm, shoulder, hip and lower back when she fell from a bicycle at the employing establishment. She did not stop work and resigned from her federal employment effective July 1, 1988.¹ By letter dated November 29, 1988, the Office of Workers' Compensation Programs accepted that she sustained an employment-related right axillary neuropathy. In an undated letter, appellant alleged that the June 28, 1988 employment injury caused a disc herniation and submitted a magnetic resonance imaging dated January 2, 1989 that demonstrated a very small disc herniation at C5-6. Following further development of the record, on June 16, 1993, the Office determined that a conflict of medical opinion had arisen between appellant's treating physician, Dr. Hal Cohen, an osteopathic physician, and Dr. Robert E. Eberhart, a Board-certified orthopedic surgeon, who had furnished a second opinion evaluation for the Office. The Office referred appellant, along with a statement of accepted facts, the medical record and a set of questions, to Dr. John W. Barrett, a Board-certified orthopedic surgeon, to provide a referee examination.

By decision dated March 7, 1994, the Office found the opinion of Dr. Barrett, who advised that appellant had degenerative disc disease of the cervical spine that was not caused or aggravated by the June 28, 1988 employment injury, constituted the weight of medical opinion. The Office found that appellant's work-related condition had resolved by December 1988. Appellant, through counsel, requested a hearing, that was held on July 22, 1994. In a November 25, 1994 decision, an Office hearing representative affirmed the March 7, 1994

¹ Appellant submitted her resignation on June 27, 1988, stating that she was "not cut out for the job" and was "seeking other employment."

decision. The facts of this case, as set forth in the November 25, 1994 decision of the Office hearing representative are hereby incorporated by reference.

By letter dated August 2, 1995 appellant, through counsel, requested reconsideration and submitted additional evidence. In a May 10, 1995 report, Dr. David J. Goodenough, a Board-certified neurologist, described the 1988 injury and noted symptoms of right neck, shoulder and arm pain with intermittent numbness and tingling down the arm. A May 30, 1995 electromyographic study (EMG) of the right upper extremity was normal. In a July 13, 1995 report, Dr. Goodenough advised that, in light of the normal EMG, appellant's findings "would be consistent with" the cervical disc at C5-6. He continued:

"Because of this and because of [appellant's] symptoms, I feel very strongly that [the] continued problems with her right neck and right arm are still causally related to the work-related injury in 1988. Further, the C5-6 disc herniation discovered on scanning ... also historically seems to be causally related to the original injury as well."

In reports dated August 8 and 9, 1995, Dr. Francois J. Geoffroy, a Board-certified internist, indicated that references to the left upper extremity in his treatment notes dated August 9 and September 1, 1988 and January 9, 1989 were in error and, in fact, referred to the right but that on March 12, 1990 appellant reported transient discomfort on the left.

By decision dated October 19, 1995, the Office found the evidence insufficient to warrant modification of the prior decision.

The Board finds that appellant did not establish that she continued to be disabled from her employment-related right axillary neuropathy.

Causal relationship is a medical issue,² and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³ Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁴

² *Mary J. Briggs*, 37 ECAB 578 (1986).

³ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (182).

In situations, as here, where there are 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 on a proper factual background, must be given special weight.⁵ In his comprehensive August 12, 1993 report, Dr. Barrett advised that appellant had degenerative disc disease of the cervical spine that was not caused or aggravated by the June 28, 1988 employment injury. In an attached work restriction evaluation, he advised that appellant could work eight hours per day with lifting restricted to twenty pounds. The Board, therefore, finds that the Office hearing representative properly found that appellant's work-related right axillary neuropathy had resolved by December 1988. Furthermore, the evidence submitted with her reconsideration request is insufficient to outweigh Dr. Barrett's comprehensive and well-rationalized report. While Dr. Goodenough advised that appellant's continued problems with her right neck and right arm were causally related to the work-related injury in 1988 and that her cervical disc herniation "seemed" to be causally related to the original injury, the mere belief that a condition was caused by employment factors or incidents is insufficient to establish a causal relationship between the two.⁶ Moreover, Dr. Goodenough did not discuss with specificity the nature of the relationship between the diagnosed condition and the June 29, 1988 employment injury, and he couched his opinion that appellant's disc herniation was employment related in equivocal terms.⁷ As appellant failed to present sufficient rationalized medical evidence to establish that her current condition or disability is causally related to her employment injury, she failed to meet her burden of proof.

The decisions of the Office of Workers' Compensation Programs dated October 19, 1995 and November 25, 1994 are hereby affirmed.

Dated, Washington, D.C.
May 7, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

⁶ See *Alfredo Rodriguez*, 47 ECAB ____ (Docket No. 94-1357, issued March 11, 1996).

⁷ See *Ern Reynolds*, 45 ECAB 690 (1994).