

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CALDONIA T. RIVERS and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, AUSTIN SERVICE CENTER, Austin, Tex.

*Docket No. 96-1222; Submitted on the Record;  
Issued May 1, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective February 4, 1996.

The Board has duly reviewed the case on appeal and finds that the Office met its burden of proof to terminate appellant's compensation benefits effective February 4, 1996.

Appellant filed a claim on September 28, 1992 alleging that she developed carpal tunnel syndrome due to factors of her federal employment. On September 17, 1993 the Office accepted that appellant sustained bilateral carpal tunnel syndrome, median neuritis and left ulnar neuritis. The Office authorized surgeries. Appellant alleged that she sustained a recurrence of disability on November 16, 1994. The Office reentered appellant on the periodic rolls. On January 4, 1996 the Office proposed to terminate appellant's compensation benefits as the weight of the medical evidence established that she was no longer disabled nor had medical residuals due to her accepted employment injuries. The Office finalized this proposal by decision dated February 16, 1996 finding that appellant's disability ceased by February 4, 1996.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>3</sup> To

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<sup>1</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>2</sup> *Id.*

<sup>3</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>4</sup>

In this case, appellant's attending physician, Dr. David F. Henges, a Board-certified orthopedic surgeon, diagnosed reflex sympathetic dystrophy as a consequence of her accepted employment injuries and surgeries. The Office referred appellant for a second opinion evaluation with Dr. William R. Turpin, a Board-certified neurosurgeon, on December 29, 1994. Dr. Turpin provided a history of injury, his physical findings and concluded in his January 19, 1995 report that appellant had an emotional condition and that she had not developed reflex sympathetic dystrophy due to her accepted employment injuries. Section 8123(a) of the Federal Employees' Compensation Act,<sup>5</sup> provides, "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." The Office properly found a conflict of medical opinion between Drs. Henges and Turpin on the issue of whether appellant had a continuing medical condition causally related to her accepted employment injury and referred appellant for an impartial medical evaluation.<sup>6</sup>

The Office referred appellant, a statement of accepted facts and a list of specific questions to Dr. David F. Dean, a Board-certified neurosurgeon, for an impartial medical examination. In a report dated November 28, 1995, Dr. Dean noted appellant's history of injury and prior medical treatment including her test results. He found that appellant's most recent electromyograms were normal and that appellant did not have evidence of bilateral carpal tunnel syndrome. Dr. Dean noted appellant's complaints of excessive sweating below her breasts and found no evidence of this condition on examination. He found rapid alternating movement in both upper extremities and reasonable motor strength in both upper extremities and concluded that there was no objective medical evidence that would prevent appellant from returning to her date-of-injury position and that she was medically able to return to work. Dr. Dean further found that appellant did not require additional surgery and did not have true reflex sympathetic dystrophy as she did not fit the criteria described in the medical literature. Dr. Dean concluded that the effects of appellant's work-related incident ceased by November 28, 1995.

Dr. Dean's report provided an extensive review of appellant's medical history and physical findings on examination. He concluded that appellant's symptoms did not fall within the accepted perimeters for reflex sympathetic dystrophy and reported no abnormal findings. Dr. Dean provided his reasoning for concluding that appellant was not physically disabled, was capable of returning to her date-of-injury position and did not require further medical treatment

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

<sup>5</sup> 5 U.S.C. §§ 8101-8193, 8123(a).

<sup>6</sup> The Office initially referred appellant to Dr. Edwin R. Buster, a Board-certified neurosurgeon, to resolve the conflict of medical opinion evidence. The Office found that Dr. Buster's initial report failed to address the salient issues and requested a supplemental report. Dr. Buster failed to respond to this request and the Office properly referred appellant to a second impartial medical examiner. *Nathan L. Harrell*, 41 ECAB 402 (1990).

for her accepted employment injuries. The Office properly relied upon this report in terminating appellant's compensation benefits.

Following the Office's January 4, 1996 proposal to terminate appellant's compensation benefits, appellant submitted additional medical evidence. In a report dated January 10, 1996, Dr. Henges noted that appellant had undergone additional surgeries resulting in pain relief and that her present complaints were of lack of temperature control below the belt and increased hyperhydrosis. He disagreed with Dr. Dean's finding regarding this condition and found hyper-reflexia in the lower extremities. As Dr. Henges was on one side of the conflict that Dr. Dean resolved, the additional report from Dr. Henges is insufficient to overcome the weight accorded Dr. Dean's report as the impartial medical specialist or to create a new conflict with it.<sup>7</sup>

Therefore, the Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective February 4, 1996.

The decision of the Office of Workers' Compensation Programs dated February 16, 1996 is hereby affirmed.

Dated, Washington, D.C.  
May 1, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>7</sup> *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).