

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VERDIE M. STAGGERS and DEPARTMENT OF VETERANS AFFAIRS,  
MEDICAL CENTER, Little Rock, Ark.

*Docket No. 96-2521; Submitted on the Record;  
Issued November 12, 1998*

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DECISION and ORDER

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

The issue is whether appellant has any disability after October 17, 1992 causally related to her accepted employment injuries.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a head contusion and cervical, shoulder, and lumbosacral sprains in the performance of duty on September 6, 1991. By decision dated October 14, 1992, the Office terminated appellant's compensation effective October 17, 1992 on the grounds that she no longer had a continuing disability causally related to the September 6, 1991 employment injury. In a decision dated May 27, 1994, an Office hearing representative affirmed the termination of benefits, but found that additional evidence submitted required further development of the record. The hearing representative found that a conflict existed between an attending physician, Dr. Yvette K. Baker, a neurologist, and Dr. William F. Blankenship, an orthopedic surgeon, selected as a second opinion referral physician. The case was remanded for referral to an impartial medical specialist to resolve the conflict. The hearing representative also made a finding that appellant had not established carpal tunnel syndrome, seizures, or memory loss as causally related to the employment injury.

In a decision dated October 21, 1994, the Office found that appellant did not have any continuing disability causally related to a September 6, 1991 back injury. The Office found that the weight of the medical evidence was represented by a September 6, 1994 report from Dr. Earl Peeples, an orthopedic surgeon, selected as an impartial medical specialist. In a decision dated May 8, 1996, an Office hearing representative affirmed the October 21, 1994 decision.

The Board finds that appellant has not established that she continued to have disability after October 17, 1992 causally related to her accepted employment injuries.

The Board notes that the Office initially had the burden of proof to terminate appellant's compensation on October 17, 1992.<sup>1</sup> At that time the probative evidence of record was represented by Dr. Blankenship, who opined in an August 14, 1992 report that appellant had recovered from her September 1991 injury, and there was no objective evidence of disability from an orthopedic standpoint. The Office therefore met its burden to terminate, and the burden shifts to appellant to establish continuing entitlement to compensation.<sup>2</sup> Based on the submission of a November 2, 1992 report from Dr. Baker, the Office hearing representative found a conflict in the medical evidence as to whether appellant continued have any disability causally related to her employment injury.

The physician selected to resolve the conflict, Dr. Peeples, submitted a September 6, 1994 report who provided a history and results on examination. Dr. Peeples further stated:

“This patient has a number of symptomatic complaints which she contributes solely to the accident of September 1991. Her physical testing, however, does not show clear-cut evidence of specific trauma. The cervical spine shows only a bulge which would be considered normal by many physicians including this one. The compression of ulnar nerves would generally be a chronic gradually occurring phenomenon and not acute. The facet abnormalities which are the only findings in the lumbar spine would be normal for a lady in her late 40's who has been active. The patient's evaluation suggest that there is a substantial psychological basis and psychiatric basis to her symptoms and her perceived inability to work. The patient has previously been found by a very competent examining orthopedic surgeon, Dr. Blankenship, able to return to work from an orthopedic point of view. This was about two years ago. At the present time there are no major objective findings for continued cervical sprain, lumbosacral sprain or left shoulder sprain.... My opinion agrees with Dr. Blankenship, that the patient has recovered from her musculoskeletal injury of September 1991 from an orthopedic point of view and that I do not see any orthopedic abnormalities at present which would prevent gainful employment.”

It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>3</sup> The Board finds that Dr. Peeples submitted a thorough report containing a reasoned opinion that appellant's employment injury had resolved. It is entitled to special weight and it represents the weight of the evidence with regard to the accepted employment injuries.

The Board notes that appellant submitted a report dated October 10, 1995 from Dr. Baker, who discussed such conditions as memory lapses, partial complex seizures, and post-traumatic syndrome. She opined that these conditions were causally related to head trauma

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<sup>1</sup> *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>2</sup> *See George Servetas*, 43 ECAB 424, 430 (1992).

<sup>3</sup> *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

sustained in the September 6, 1991 employment injury. With respect to these conditions, it is noted that the accepted injuries in this case were limited to head contusion, and cervical, shoulder and lumbosacral sprains. It is appellant's burden to establish any additional conditions as causally related to the employment incident.<sup>4</sup> With respect to memory loss, seizures, and carpal tunnel syndrome, an Office hearing representative specifically found in the May 27, 1994 decision that appellant had not established these conditions as causally related to employment.

Neither the October 21, 1994 or May 8, 1996 decisions, however, made any findings with regard to any claim for additional injuries resulting from the employment incident. Since appellant has submitted relevant and probative evidence with regard to whether she sustained additional injuries causally related to the September 6, 1991 employment incident, the Office should issue an appropriate decision on this aspect of the claim.

The issue on this appeal is whether appellant has established any continuing disability beyond October 17, 1992 causally related to the accepted employment injuries. The referral physician, Dr. Blankenship and the impartial specialist, Dr. Peebles, were both orthopedic surgeons and limited their opinions to the accepted orthopedic injuries. On this issue, Dr. Baker's October 10, 1995 report provides little information and it is not sufficient to overcome the weight given to Dr. Peeple's September 6, 1994 report.

The decision of the Office of Workers' Compensation Programs dated May 8, 1996 is affirmed.

Dated, Washington, D.C.  
November 12, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> A claimant has the burden to establish that a specific condition for which compensation is claimed is causally related to the employment injury. *Elaine Pendleton*, 40 ECAB 1143 (1989).