

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BONNYE MATTHEWS and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Seattle, Wash.

*Docket No. 95-2524; Submitted on the Record;
Issued October 13, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant's employment-related disability ceased by September 22, 1991.

This case has previously been before the Board on appeal. By decision and order dated May 24, 1994, the Board found that the Office of Workers' Compensation Programs, by its December 18, 1991 decision, did not abuse its discretion by refusing to reopen appellant's case for further review of the merits of her claim. The Board further found that the Office, by its September 30, 1992 decision, erred in finding that appellant did not file a request for reconsideration of its September 9, 1991 decision within one year; the Board set aside the September 30, 1992 Office decision and remanded the case to the Office for a determination of whether appellant may obtain a review of the merits of her claim under the Office's regulations.¹

By decision dated February 1, 1995, the Office found that the evidence submitted since the Office's December 18, 1991 decision was not sufficient to warrant modification of its September 9, 1991 decision terminating appellant's compensation. By letter dated April 25, 1995, appellant requested reconsideration, and submitted additional medical evidence. By decision dated June 22, 1995, the Office found that the additional evidence was not sufficient to warrant review of its prior decisions.

The Board finds that the weight of the evidence establishes that appellant's employment-related disability ceased by September 22, 1991.

The basis of the Office's termination of appellant's compensation was a February 14, 1991 medical report from Dr. Patricia J. Sparks, who is Board-certified in preventive medicine and in occupational medicine. Dr. Sparks was selected by the Office to resolve a conflict of medical opinion. In situations where there are opposing medical reports of virtually equal

¹ Docket No. 93-337.

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.² On the prior appeal, the Board addressed the objections of appellant's attorney to the selection of Dr. Sparks as the impartial medical specialist and to the Office's statement of accepted facts that was provided to Dr. Sparks, and found that they did not warrant review of the merits of appellant's claim.

Subsequent to the Office's termination of her compensation, appellant submitted numerous articles on multiple chemical sensitivity syndrome from the medical literature and elsewhere. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.³

Appellant also submitted additional medical reports. Most of these were from physicians who were on one side of the conflict of medical opinion that was resolved by Dr. Sparks. The Board has held that additional reports from physicians on one side of a resolved conflict are insufficient to overcome the weight accorded to the impartial medical specialist's report or to create a new conflict with that report.⁴ Thus the reports of Dr. George C. Zerr, a psychiatrist, Dr. Rena Hamburger, an osteopath, Dr. Richard A. Nelson, a Board-certified neurologist, and Dr. Gordon P. Baker, who is Board-certified in allergy and immunology, are not sufficient to overcome the weight of Dr. Sparks' report or to create a new conflict of medical opinion, as they are similar to the reports submitted by these same doctors that gave rise to the conflict resolved by Dr. Sparks.

The remaining medical reports, that is, those from physicians not involved in the creation of the conflict of medical opinion resolved by Dr. Sparks also are not sufficient to overcome the weight of Dr. Sparks' report or to create a new conflict of medical opinion. Dr. Donald L. Dudley, a Board-certified physiatrist, stated that the findings on an electroencephalogram after he exposed appellant to carpet glue "fully substantiate [appellant's] symptomatic problems with intellect, emotions, muscular weakness and behavior. The findings are similar to those found in people with problems that are similar during exposure to chemical fumes." Dr. Dudley concluded that appellant was "100 percent disabled for any employment" and that "the damage she has experienced and the increased damage from acute exposure are the cause of her disability." Dr. Dudley's report does not show awareness of what appellant was exposed to at work, nor does it contain a rationalized medical opinion that appellant's condition is causally related to her employment. The April 20, 1992 report from Dr. Stephen A. Schacher, who is Board-certified in preventive medicine, suffers from similar defects. Although this report notes the installation of new carpet in appellant's work area and appellant's exposure to perfume, it does not show any awareness of the report of the industrial hygienist who surveyed appellant's

² *James P. Roberts*, 31 ECAB 1010 (1980).

³ *Joe E. Hendricks*, 43 ECAB 850 (1992).

⁴ *Dorothy Sidwell*, 41 ECAB 857 (1990).

work area. Although Dr. Schacher concludes that appellant's "symptoms and brain abnormalities are actually most consistent ... with styrene poisoning," it does not give any basis for his conclusion that "the toxin she was exposed to in the workplace was undoubtedly styrene butadiene." The report of the industrial hygienist does not indicate this substance was found. The report of Dr. Sparks continues to constitute the weight of the medical evidence in this case.

The decisions of the Office of Workers' Compensation Programs dated June 22 and February 1, 1995 are affirmed.

Dated, Washington, D.C.
October 13, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member