

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELLA T. AUSTIN and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte, NC

*Docket No. 97-1493; Submitted on the Record;
Issued December 28, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant's disability on or after May 22, 1992 is causally related to the March 27, 1992 employment injury.

This case is on appeal to the Board for the second time.¹ In the first appeal, the Board reviewed an August 29, 1994 decision, by which the Office of Workers' Compensation Programs relied on the opinion of an impartial medical specialist, Dr. Surendrapal S. Mac, a Board-certified orthopedic surgeon, to resolve a conflict in medical opinion as to whether appellant's cervical condition and disability after May 22, 1992 was causally related to the March 27, 1992 employment injury. The Board found that Dr. Mac's reports did not contain sufficient rationale supporting his conclusions and therefore the case should be remanded for the Office to refer appellant, the case record and a statement of accepted facts to a second impartial medical specialist to resolve the conflict, and after any further development, to issue a *de novo* decision. The Board therefore set aside the Office's August 29, 1994 decision and remanded the case for further action consistent with the Board's decision.

The Office accepted appellant's claim for a sprain to the ribs and chest. Since the March 27, 1992 employment injury, appellant performed light-duty work from April 7 through April 15, 1992 but otherwise did not work. The conflict in the evidence arose between the opinion of Dr. Donald B. Goodman, a Board-certified family practitioner, that appellant's continuing disability was work related and of the district medical adviser that appellant's disability was not work related. To resolve the conflict in the evidence between these doctors' opinions, the Office referred appellant to an impartial medical specialist, Dr. Mac, who, in his reports dated September 24, November 3 and December 15, 1993, found appellant could return to her usual work, but provided no medical rationale for his conclusions.

¹ Docket No. 95-261 (issued December 6, 1995).

On remand, pursuant to the Board's decision, the Office referred appellant to another impartial medical specialist, Dr. Joseph J. Estwanik, a Board-certified orthopedic surgeon. In his report dated December 9, 1996, he considered appellant's history of injury, performed a physical examination, x-rays which were normal, a computerized axial tomography (CAT) scan and a myelogram. In the physical examination, Dr. Estwanik found some tenderness on palpation over the right levator scapulae area and along the upper thoracic spine. He stated that appellant's objective examination was "quite benign and in quite disparity to her subjective, multiple unrelated complaints and amounts of addictive medication." Dr. Estwanik stated that his primary diagnosis was chronic malingering with mild pain syndrome and his additional diagnosis was "a mild associated fibrositis is possible." He stated that appellant should be removed from her addictive medications and that her recovery would be hastened by her return to work. Dr. Estwanik opined that appellant required restrictions against heavy labor. He also stated that despite four or five years of claimed disability, appellant had no atrophy or "confirming physical findings."

Dr. Estwanik recommended that a magnetic resonance imaging (MRI) be performed. He stated that appellant's initial diagnosis of a costochondral sprain would have resolved some six to eight weeks following the March 27, 1992 employment injury. He stated:

"Her complaints of cervical dis[c] are of no substantive value in that her myelogram and [CAT scan] were of an extremely minor nature and compatible with her age and not at all obstructing her from returning to full employment. Her initial complaints, in fact, did not substantiate a cervical injury in the first place."

Dr. Estwanik stated that appellant could tolerate kneeling, standing, bending, twisting and reaching, but should limit the lifting to no greater than 30 pounds.

In a report of an MRI scan dated December 20, 1996, Dr. Estwanik found a mild bulging at C4-5 and C5-6 with no disk herniation. He stated that this was a "very benign report and quite in keeping with her age group." Dr. Estwanik also stated that the report "further confirmed that [appellant's] numerous inflated complaints did not have an anatomic basis." He reiterated that "in retrospect [appellant's injuries] most likely" would have had her back to work within six to eight weeks of the March 27, 1992 employment injury.

By decision dated January 24, 1997, the Office denied appellant's claim, stating that the evidence of record failed to demonstrate a causal relationship between the injury and the claimed condition or disability.

Since the Office paid appellant compensation based upon the ongoing submission of Office forms that she was disabled following the March 27, 1992 employment injury, appellant maintained the burden of establishing entitlement to continuing disability which was related to the employment injury.² Pursuant to the Board's December 6, 1995 decision, the Office referred appellant to a second impartial medical specialist, Dr. Estwanik, to resolve the conflict in the medical evidence between Dr. Goodman's and the district medical adviser's opinions as to

² *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

whether appellant had a work-related disability. In his December 9, 1996 report, relying in part on a December 1996 MRI scan showing no disc herniation and a predominantly normal physical examination, Dr. Estwanik opined that appellant could return to work but could not lift more than 30 pounds. He stated that appellant's costochondral sprain would have resolved within six to eight weeks following the March 27, 1992 employment injury. Dr. Estwanik noted prophylactic medical restrictions on appellant's return to work and found she recovered from her March 27, 1993 employment injury, stating that appellant's ribs and chest sprain resolved within six to eight weeks and found that the normal 1996 MRI scan supported his conclusion that there were no objective findings for her complaints. His opinion is sufficiently well rationalized to establish that appellant has no residuals resulting from the March 27, 1992 employment injury.

In situations 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.³ The Board finds that Dr. Estwanik's opinion, as presented above, is sufficiently well rationalized in establishing that appellant's disability on or after May 22, 1992 is not causally related to the March 27, 1992 employment injury. Therefore, as an impartial medical specialist, Dr. Estwanik's opinion constitutes the weight of the evidence.

The decision of the Office of Workers' Compensation Programs dated January 24, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 28, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member

³ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).