

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH A. CUMMINGS and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Covington, Ky.

*Docket No. 97-1163; Submitted on the Record;
Issued February 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 23, 1994 on the grounds that she had no continuing disability due to her accepted September 14, 1990 employment injuries; and (2) whether appellant has met her burden of proof to establish wage loss after February 24, 1994 that is causally related to her accepted employment injury.

On September 14, 1990 appellant, then a 35-year-old clerk, filed a notice of traumatic injury and claim, alleging that she sustained injury to her left arm when she was pulling a large pack of work from the batch cart. Appellant stopped work on that day.¹ By decision dated January 29, 1991, the Office accepted appellant's claim for reflex sympathetic dystrophy of the left arm. In a letter dated January 20, 1994, the Office notified appellant that it proposed termination of her compensation benefits on the grounds that she had no continuing disability related to her accepted employment injuries. By decision dated February 23, 1994, the Office terminated appellant's compensation effective that date on the grounds that the medical evidence established that she had no residuals of her accepted September 14, 1990 employment injury. In a merit decision dated February 16, 1996, an Office hearing representative affirmed the Office's February 23, 1994 decision terminating compensation but remanded the case for further development of the evidence based on a subsequent report by Dr. John Kelly, appellant's treating physician and a Board-certified neurologist. In a merit decision dated November 14, 1996, the Office reaffirmed that appellant's compensation was properly terminated effective February 23, 1994 on the grounds that she had no continuing disability as a result of her accepted injury of reflex sympathetic dystrophy of the left arm and therefore appellant was not entitled to any additional compensation after this date.

¹ Appellant had several previous claims for work-related injuries. These included an injury to her right arm and middle back on May 12, 1986, a claim for recurrence of disability on November 24, 1986 and a second claim for injury to her right arm on April 12, 1988. The Office accepted these claims for right shoulder strain, cervical strain and right reflex sympathetic dystrophy.

The Board has duly reviewed the entire case record on appeal and finds that the Office properly terminated compensation effective February 23, 1994.²

Under the Federal Employees' Compensation Act,³ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.⁴ After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.⁵

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁶ Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after February 23, 1994, and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷

In the present case, the Office properly determined that there was a conflict in the medical evidence between the reports by Dr. Kelly and Dr. John C. Steiner, a Board-certified neurologist and office referral physician. Dr. Kelly indicated that appellant was suffering from bilateral upper extremity reflex sympathetic dystrophy and was disabled from work by these conditions whereas Dr. Steiner indicated that he did not believe appellant had reflex sympathetic dystrophy as this condition could not have been properly diagnosed within four hours of the accepted employment incident and she did not have proper affect, or normal organic patterns for the claimed condition. He believed that appellant's symptoms were due to a self-maintained impairment and were functional rather than organic in nature. Appellant's counsel urged that Dr. Steiner's report exhibited bias and should not have been used to create a conflict. The Office hearing representative permissibly found that although Dr. Steiner's opinion that appellant had never sustained reflex sympathetic dystrophy was biased, he nonetheless, provided a rationalized opinion concerning appellant's current state of health and lack of objective evidence of the accepted condition. Moreover, it would not be appropriate to completely disregard the thorough report provided by Dr. Steiner in relation to the brief opinions expressed by Dr. Kelly. Rather, a

² The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on February 11, 1997, the only decisions before the Board are the Office's February 16 and November 14, 1996 decisions; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ 5 U.S.C. §§ 8101-8193.

⁴ *William Kandel*, 43 ECAB 1011 (1992).

⁵ *Carl D. Johnson*, 46 ECAB 804 (1995).

⁶ *Dawn Sweazey*, 44 ECAB 824 (1993).

⁷ *Mary Lou Barragy*, 46 ECAB 781 (1995).

conclusion that these reports are of virtually equal weight is more than equitable. Thus, the Office's determination that there was a conflict in the medical evidence with respect to whether appellant was disabled due to her accepted reflex sympathetic dystrophy of the left arm was proper. In order to resolve the conflict, the Office referred appellant to Dr. Edward J. Kasarkis, a Board-certified neurologist for an impartial medical examination and opinion on the matter.

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of the resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸ The Board has carefully reviewed the opinion of Dr. Kasarkis and finds that it has sufficient probative value, regarding the relevant issue in the present case, to be accorded such special weight.

In his May 25, 1993 report and outpatient clinic notes, Dr. Kasarkis provided a complete history of injury and the results of his examination of appellant on May 13, 1993. He listed physical findings and responses that were not consistent with the claimed condition and indicated that appellant's pain responses were suspicious in view of anatomical impossibilities and the distribution of excruciating hyperpathic type pain. Dr. Kasarkis concluded that appellant exhibited nonphysiological sensory disturbance and hyperpathia, that there were no convincing neurologic deficits or objective findings of neurologic dysfunction and that this condition was not work related. As Dr. Kasarkis provided a thorough medical report in which he outlined the lack of objective evidence, inappropriate physical responses and medical rationale for his conclusions, his report is well reasoned and rationalized and entitled to special weight. Therefore, the Office properly terminated appellant's compensation effective February 23, 1994 on the grounds that she had no residuals of her accepted employment injury.

The Board also finds that appellant has not established entitlement to compensation after February 23, 1994 based on her claimed continuing disability.

An Office hearing representative remanded the case for further development of the evidence based on a February 21, 1994 report by Dr. Kelly in which he challenged the conclusions of Drs. Steiner and Kasarkis with respect to whether appellant had reflex sympathetic dystrophy. Specifically, he indicated that appellant met all of the accepted criteria for a diagnosis of reflex sympathetic dystrophy, reiterated that appellant had improved with sympathetic blocks and that the lack of patterns with respect to her nerve symptomatology was appropriate in light of medical texts on reflex sympathetic dystrophy. In a report dated October 3, 1996, Dr. Kasarkis responded to the Office's request for additional information. He reported that contrary to Dr. Kelly's statement that appellant demonstrated all standard criteria for a diagnosis of reflex sympathetic dystrophy, he did not see evidence of atrophic changes or edema nor did appellant demonstrate hypersensitivity to cold on his second examination. Dr. Kasarkis further noted that while hypersensitivity to cutaneous stimuli might spread with the condition of reflex sympathetic dystrophy, appellant's pattern of hypersensitivity in her shoulder, upper chest and back and no sensitivity over her breasts was not believable. He reiterated his conclusion that the claimed condition was psychogenic. Dr. Kasarkis specifically addressed the

⁸ *Jack R. Smith*, 41 ECAB 691 (1990); *James P. Roberts*, 31 ECAB 1010 (1980).

comments by Dr. Kelly as to the validity of his report and refuted his assertion that appellant met the standard medical criteria for a diagnosis of reflex sympathetic dystrophy, his report is insufficient to outweigh the special weight given the report by Dr. Kasarkis.⁹ Consequently, appellant did not establish that she was entitled to additional wage-loss compensation after February 23, 1994 or that there was any basis for modification of the termination of compensation.

The decisions of the Office of Workers' Compensation Programs dated November 14 and February 16, 1996 are hereby affirmed.

Dated, Washington, D.C.
February 12, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁹ See generally *Josephine L. Bass*, 43 ECAB 929 (1992); see *Dorothy Sidwell*, 41 ECAB 857 (1990).