

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CELESTINE R. BROWN and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Atlanta, Ga.

*Docket No. 97-1507; Submitted on the Record;
Issued February 3, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant had any work-related disabilities after February 11, 1995.

On December 7, 1989 appellant, then a 37-year-old flat sorter machine operator, filed a claim for occupational disease, claiming that her duties keying mail caused carpal tunnel syndrome in her right wrist. The Office of Workers' Compensation Programs accepted the claim, and appellant returned to light-duty work, claiming various periods of wage loss in 1990 and 1993. Appellant stopped work altogether in December 1993 and submitted claims for wage loss commencing December 16, 1993.

Subsequently, the Office referred appellant for a second opinion evaluation to Dr. Sarveswar I. Naidu, a Board-certified orthopedic surgeon, who stated in a report dated November 14, 1994 that appellant had no symptoms of carpal tunnel syndrome and could return to her regular duties.

By decision dated February 21, 1995, the Office rejected appellant's claim for wage loss after February 11, 1995 and terminated benefits. Appellant requested an oral hearing, and the hearing representative remanded the claim for an impartial medical examination finding that Dr. Naidu's opinion conflicted with that of Dr. Lester L. Bullard, Board-certified in family practice and appellant's treating physician, who found her to be totally disabled for work.

On remand the Office referred appellant to Dr. Julio C. Banderas, a Board-certified orthopedic surgeon, who stated in a November 16, 1995 report that appellant did not have carpal tunnel syndrome. Based on his opinion, the Office denied appellant's claim for compensation on January 25, 1996. Appellant requested reconsideration, which the Office denied on June 24, 1996, noting that appellant had submitted no new medical evidence and her affidavit complaining about Dr. Banderas' examination was insufficient to modify its prior decision.

Appellant again requested reconsideration and submitted reports from Dr. Bullard and Dr. Maurice Jove, a Board-certified orthopedic surgeon, as well as disability forms. The Office denied appellant's request on February 27, 1997 on the grounds that the medical evidence was insufficient to warrant modification of its prior decision.

The Board finds that appellant did not have a work-related disability after February 21, 1995.

In this case, the Office accepted right carpal tunnel syndrome and paid appropriate benefits. Based on the medical evidence submitted, the Office properly found a conflict in medical opinion evidence between Dr. Bullard and Dr. Naidu and thus referred appellant to Dr. Banderas to resolve the conflict.¹ In his November 16, 1995 report, Dr. Banderas recorded appellant's history, noting that she had not worked since December 1993 but was wearing bilateral wrist splints. He found full range of motion of appellant's wrists, with complaints of pain, a negative Tinel's sign bilaterally, no decreased sensation of the median nerves, and no atrophy of the thenar muscles. Dr. Banderas noted that the results of nerve conduction studies and an electromyogram were within normal limits.

Dr. Banderas diagnosed chronic brachialgia² without evidence of any neurological deficits and no evidence of carpal tunnel syndrome or any radiculopathy in the upper extremities. In response to the Office's questions, he stated that clinically, appellant did not have carpal tunnel syndrome because there were no objective findings on physical examination -- what appellant had was "subjective complaints only." Dr. Banderas added that appellant's chronic pain was not work related because no objective findings supported her complaints.

As the Office noted, the opinion of a referee physician is accorded special weight in resolving a conflict between a treating physician and a second opinion physician.³ Dr. Bullard consistently indicated in completing disability forms that appellant was unable to work in 1994 yet Dr. Naidu found no evidence of carpal tunnel syndrome in his November 14, 1994 examination, based on negative nerve studies. In resolving the conflict, Dr. Banderas provided medical rationale for his conclusion that appellant did not have carpal tunnel syndrome namely, that he found no clinical signs or objective indications of this condition. Based on this evidence, the Office properly terminated appellant's compensation benefits.

By contrast, Dr. Jove diagnosed bilateral carpal tunnel syndrome causally related to appellant's job duties, based on appellant's continued symptoms and positive Phalen's test and

¹ See *Dallas E. Mopps*, 44 ECAB 454, 456 (1993) (finding that the Office properly referred the claim to an impartial medical examiner because of a conflict in the opinions of a psychiatrist and a psychologist).

² Brachialgia is defined as pain in the arm or arms, which can manifest itself as paresthesia (abnormal sensation such as burning or prickling) in the arm and hand during sleep due to the compression of the blood vessels. *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

³ See *Brady L. Fowler*, 44 ECAB 343, 352 (1992) (finding that the impartial medical examiner's opinion was sufficiently rationalized and based upon a proper factual background and therefore represented the weight of the medical evidence establishing that appellant had no continuing disability causally related to the accepted back injury).

Tinel's sign. However, he did not explain how these findings in September 1996 were caused by appellant's employment, which she ceased in 1993.⁴ Therefore, his report lacks sufficient probative value to detract from the weight of Dr. Banderas' opinion.⁵

The August 15, 1995 report from Dr. Bullard, as well as disability forms dated January 1 and October 16, 1996, are similarly insufficient. The Board has held that an additional report from a treating physician who was on one side of a medical conflict cannot overcome the probative value of the referee physician's opinion.⁶ The August 15, 1995 report was part of the original conflict of medical opinion, and the 1996 form reports cannot create a second conflict. Further, the latest form dated October 16, 1996 released appellant to return to light duty with restrictions similar to those she worked under in 1990 to 1993.

Appellant argues on appeal that she was not permitted to participate in the selection of Dr. Banderas as an impartial medical examiner. The record reveals that on October 31, 1995 the Office informed appellant of her appointment with Dr. Banderas and advised that if she objected to the selected physician she must notify the Office immediately. By letter dated November 1, 1995, appellant asked to participate in the selection process.

In its November 7, 1995 response, the Office stated that appellant could still participate in selecting the impartial specialist, but that would mean canceling the November 20, 1995 appointment and delaying the resolution of her claim. The Office added: "It [is] up to you, though. Just let us know." Nothing further was heard from appellant, and she kept the November 20, 1995 appointment with Dr. Banderas. Therefore, the Board rejects appellant's argument.

⁴ See *Jean Culliton*, 47 ECAB 728 (1996) (finding that a physician's opinion on causal relationship is not dispositive simply because it is rendered by a physician).

⁵ See *Thomas Bauer*, 46 ECAB 257, 265 (1994) (finding that the additional report from appellant's physician concerning his emotional condition was insufficient to overcome the special weight accorded to the impartial medical examiner's opinion).

⁶ *Virginia Davis-Banks*, 44 ECAB 389, 392 (1993).

The February 27, 1997 and June 24, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
February 3, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member