

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KATHERINE VEGA and U.S. POSTAL SERVICE,  
POSTAL FACILITY, New York, N.Y.

*Docket No. 96-2091; Submitted on the Record;  
Issued January 26, 1999*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective February 19, 1987 on the grounds that she had no continuing disability from her accepted orthopedic condition.

The Board has duly reviewed the case record and finds that the Office met its burden of proof in establishing that appellant had no continuing disability stemming from her accepted orthopedic condition sustained on December 1, 1980 and, therefore, properly terminated her compensation for her orthopedic condition effective February 19, 1987.

Under the Federal Employees' Compensation Act,<sup>1</sup> once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.<sup>2</sup> Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.<sup>3</sup>

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.<sup>4</sup> The Office burden

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> *William Kandel*, 43 ECAB 1011, 1020 (1992).

<sup>3</sup> *Carl D. Johnson*, 46 ECAB 804 (1995).

<sup>4</sup> *Dawn Sweazey*, 44 ECAB 824, 832 (1993).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for, and the thoroughness of, physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

Section 8123(a) of the Act provides, in pertinent part, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."<sup>7</sup> In this case, the Office properly referred appellant to an impartial medical specialist in order to resolve the conflict in medical opinion. Where 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>8</sup>

In this case, appellant, then a 55-year-old clerk, filed a notice of traumatic injury on December 1, 1980, claiming that she fell backwards over a carton on the floor and injured her back. The Office accepted the claim for lumbosacral and cervical sprain. Subsequently, the Office expanded its acceptance to include atypical paranoid disorder and psychogenic pain disorder.<sup>9</sup> Appellant returned to limited duty on December 11, 1992, stopped work on December 14, 1992 and returned to limited duty on February 28, 1983. Appellant was placed on the periodic rolls for temporary disability effective February 11, 1984.

Appellant was treated by Dr. Donald Forman, who opined that appellant was totally disabled due to her acute sprain lumbosacral spine and acute sprain cervical spine. Appellant continued to receive compensation and was referred on May 19, 1982 to Dr. Julius Schneiderman, for a second opinion. Dr. Schneiderman, in a report dated July 2, 1982, found that appellant had no continuing orthopedic disability due to her accepted employment injury.

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<sup>5</sup> *Mary Lou Barragy*, 46 ECAB 781 (1995).

<sup>6</sup> *Connie Johns*, 44 ECAB 560, 570 (1993).

<sup>7</sup> 5 U.S.C. § 8123(a); *see James P. Roberts*, 31 ECAB 1010 (1980).

<sup>8</sup> *Connie Johns*, *supra* note 6; *Juanita H. Christoph*, 40 ECAB 354, 360 (1988); *Nathaniel Milton*, 37 ECAB 712, 723-24 (1986); *James P. Roberts*, *supra* note 7.

<sup>9</sup> The Board notes that on January 4, 1996 the Office issued a decision denying further entitlement to benefits for appellant's atypical paranoid disorder. Appellant is still receiving compensation benefits for the condition of psychogenic pain disorder. On appeal, appellant's counsel notes that the Office terminated compensation benefits for appellant's psychogenic pain disorder, but does not appeal this decision.

Because Dr. Schneiderman's opinion regarding appellant's continuing disability reflected a conflict with that of her treating physician, Dr. Forman, the Office sent appellant, a statement of accepted facts and the case to Dr. Victor Mayer, a Board-certified orthopedic surgeon, to resolve the conflict in the medical evidence between appellant's treating physician, Dr. Forman, and the second opinion physician, Dr. Schneiderman, regarding whether appellant had any continuing orthopedic disability due to her accepted employment injury.

Appellant submitted a report dated April 5, 1983, Dr. Luis Mizray, appellant's attending Board-certified radiologist, noted that appellant's condition had deteriorated and that she is permanently disabled.

In a report dated July 28, 1983, Dr. Mayer, based upon a review of the medical evidence, a statement of accepted facts and physical examination, diagnosed lumbosacral sprain and cervical sprain. Dr. Mayer opined that there was no objective evidence which supported that appellant had any continuing orthopedic disability due to her accepted employment injury.

On January 29, 1987 the Office referred appellant to Dr. Leon Sultan, a Board-certified orthopedic surgeon, to resolve the conflict in the medical evidence between appellant's treating physician, Dr. Forman, and the second opinion physician, Dr. Schneiderman, regarding any continuing orthopedic disability to her accepted employment injury. Dr. Sultan, in his February 19, 1987 report, based upon a statement of accepted facts, a review of the medical record, and a physical examination, opined that appellant had no continuing orthopedic disability causally related to her accepted December 1, 1980 employment injury. He noted that appellant appeared to be totally disabled due to her accepted psychogenic overlay.

By decision dated March 31, 1987, the Office found the medical evidence, based upon the opinion of Dr. Sultan, the impartial medical specialist, sufficient to establish that appellant's job-related orthopedic disability had ceased and that she was capable from an orthopedic standpoint of performing her usual employment. The Office thus terminated any further medical treatment for her orthopedic condition.

In a letter dated February 8, 1996, appellant's counsel requested reconsideration of the termination and submitted reports dated January 11, 1996 and May 1, 1987 from Dr. Forman,<sup>10</sup> a March 16, 1981 report from Dr. Robert J. Mones,<sup>11</sup> a January 19, 1983 report from Dr. Richard J. Rovit,<sup>12</sup> a March 18, 1983 report from Dr. Morton Finkel,<sup>13</sup> reports dated April 5, 1983 and April 13, 1987 from Dr. Mizray.<sup>14</sup> Appellant also argued the Office erred in failing to refer appellant for an impartial medical examination due to the conflict in the medical opinion evidence between appellant's treating physicians and the Office physicians.

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<sup>10</sup> A Board-certified orthopedic surgeon.

<sup>11</sup> A Board-certified neurologist.

<sup>12</sup> A Board-certified neurological surgeon.

<sup>13</sup> A Board-certified neurologist.

<sup>14</sup> A Board-certified radiologist.

In a merit decision dated April 25, 1996, the Office denied appellant's request for modification of the March 31, 1987 decision terminated her compensation for her orthopedic condition. The Office noted that the weight of the evidence remained with the impartial medical specialist and the subsequent second opinion physician.

The Board finds that the thorough and well-rationalized opinion of the impartial medical specialist Drs. Mayer and Sultan, which was based upon a complete and accurate factual background, are entitled to be accorded special weight and that the Office properly determined, based upon the reports of Drs. Mayer and Sultan, that appellant had no continuing orthopedic disability causally related to her December 1, 1980 employment injury. The Board also finds that the evidence submitted by appellant, as the Office found, is insufficient to establish a new conflict as all the evidence, except Dr. Forman's January 11, 1996 report, was contained in the record and previously considered by the Office. His January 11, 1996 report is insufficient to overcome the reports of Drs. Mayer and Sultan as he was one of the medical opinions which originally caused the conflict in the evidence. The Board, thus, finds that the Office properly found that appellant no longer had any continuing orthopedic disability due to her accepted employment injury.

The decision of the Office of Workers' Compensation Programs dated April 25, 1996 is hereby affirmed.

Dated, Washington, D.C.  
January 26, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member