

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of PAULA M. WEDGE and DEPARTMENT OF THE TREASURY,  
GOVERNMENT PRINTING OFFICE, Washington, DC

*Docket No. 99-56; Submitted on the Record;  
Issued July 13, 1999*

---

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation on the grounds that she had no continuing disability resulting from the accepted work injuries.

The Board has carefully reviewed the case record and finds that the Office has failed to meet its burden of proof in terminating appellant's compensation because there is an unresolved conflict in the medical opinion evidence.

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

---

<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, 809 (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 this case, appellant, then a 41-year-old printing plant clerk, filed a notice of traumatic injury, claiming that the elevator doors closed on her right shoulder as she was exiting on June 25, 1993, causing pain and swelling. Appellant stopped work and was treated by Dr. I Phillips Frohman, Board-certified in family practice, who diagnosed a traumatic contusion of appellant's right shoulder with pain radiating down the right arm, swelling of the right hand and abduction decreased to 40 percent.

The Office accepted the claim for right shoulder contusion and impingement/tendinitis and, after referral to a second opinion physician, Dr. Robert A. Smith, a Board-certified orthopedic surgeon, authorized arthroscopic decompression surgery on appellant's right shoulder.<sup>6</sup> However, the February 27, 1996 procedure was unsuccessful "due primarily to the patient's girth," and Dr. William Dorn, a Board-certified orthopedic surgeon who diagnosed internal derangement of the right shoulder with impingement syndrome and recommended an open arthrotomy.

Appellant's notice of occupational disease, filed on January 25, 1994, was accepted for bilateral carpal tunnel syndrome, based on the reports of Dr. Hampton J. Jackson, Jr., a Board-certified orthopedic surgeon. Appellant underwent release surgery on her right hand on October 26, 1994 and on her left hand on February 1, 1995. Subsequently, appellant developed tenosynovitis in both thumbs and underwent release surgery on May 28 and November 19, 1997, according to the February 14, 1997 report of Dr. Melinda M. Gardner, a Board-certified orthopedic surgeon to whom the Office had referred appellant.

On February 19, 1998 the Office referred appellant, along with the medical records, a statement of accepted facts, and a list of questions regarding appellant's ability to work, to Dr. Thomas R. Shepler, a Board-certified orthopedic surgeon for a second opinion evaluation. The Office also requested a rationalized medical report from Dr. Hampton as appellant's treating physician and asked him to respond to specific questions.

Based on Dr. Shepler's April 13 and March 18, 1998 reports, the Office issued a notice of proposed termination of compensation on June 2, 1998. On July 22, 1998 the Office terminated appellant's wage-loss benefits on the grounds that the weight of the medical evidence established that appellant had no disabling residuals of the accepted work injuries.

The Board finds that a conflict between the opinion of Dr. Shepler that appellant could return to work and the reports of Drs. Dorn and Hampton that she was still not capable of gainful employment and that her condition had not resolved. All three physicians are Board-certified in

---

<sup>5</sup> *Mary Lou Barragy*, 46 ECAB 781, 787 (1995).

<sup>6</sup> Dr. Dorn, appellant's long-time treating physician for her shoulder condition, stated on April 19, 1995 that the Office should authorize not only the arthroscopic procedure, but also a possible arthrotomy in case the shoulder problems could not be corrected with only the diagnostic procedure. The Office agreed on October 3, 1995.

orthopedic surgery. In addition, Dr. Shepler is a specialist in hand surgery and holds professorial rank.

Dr. Shepler stated in his March 18, 1998 report that “unequivocally” appellant could go back to her regular work duties from an orthopedic standpoint. He reasoned that his clinical and radiographic findings showed no “major problem” with appellant’s rotator cuff and that the residuals of her carpal tunnel syndrome were mild; therefore, appellant would be able to work, although he was “doubtful” of her motivation to return to work after five years of disability.

By contrast, Dr. Jackson stated on April 7, 1998 that appellant had significant residual carpal tunnel impairment in both hands and, when added to her need for right shoulder surgery, rendered appellant unfit for gainful employment because she could not use her upper extremities.

Dr. Jackson also disagreed with Dr. Shepler over the causal relationship of appellant’s bilateral carpal tunnel syndrome and subsequent tenosynovitis, known colloquially as trigger thumb. Dr. Shepler stated that “traumatic” carpal tunnel syndrome did not exist absent a Colles’ fracture, and that appellant’s systemic disease was not caused by her work but simply occurred coincidentally about a month after the shoulder injury.

Dr. Jackson stated in a February 25, 1994 report that appellant’s “early” carpal tunnel syndrome was related to her work duties involving repeated use of her hands in binding publications and entering data. He added that the June 25, 1993 injury aggravated appellant’s right hand and significantly changed her symptoms from intermittent to constant continuing pain.

Dr. Dorn’s opinion that appellant required decompression surgery on her right shoulder before she could resume work conflicted with that of Dr. Shepler that appellant was “best served” by not having surgery because there was no hard evidence of rotator cuff arthropathy. The Office stated that Dr. Dorn never explained why appellant needed additional surgery on her right shoulder. However, the record shows that Dr. Dorn did explain why the February 27, 1996 procedure had to be abandoned -- the arthroscopic examination failed to reveal the problem, the decompression did not fully relieve her symptoms and a full arthrotomy was necessary to correct the impingement.

Further, Drs. Jackson and Shepler disagreed over appellant’s complaints and motivation. Dr. Shepler found a “vast difference between her subjective complaints and my objective physical findings,” noting that the chances of returning appellant to work after five years’ absence were “almost negligible.” Dr. Jackson stated in his March 3, 1998 report that appellant complained more of weakness with mild pain and monthly physical examinations revealed continued signs of weakness in both hands in grip, pinch, hook and grasp. He added: “There is no evidence whatsoever that this patient is malingering or exhibiting pain amplification.”

Finally, the Board notes that on April 21, 1998 the Office asked Dr. Jackson to review Dr. Shepler’s report in which he disagreed “with you on a great many issues.” The Office indicated that appellant would be referred to an orthopedic specialist “to resolve an outstanding issue.” Unfortunately, appellant was not referred to an impartial medical examiner to resolve the conflict. Therefore, inasmuch as a conflict in medical opinion evidence remains unresolved, the Office has failed to meet its burden of proof.

The July 22, 1998 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, D.C.  
July 13, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member