

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EDNA L. SMITH and DEPARTMENT OF AGRICULTURE,  
FOOD SAFETY INSPECTION SERVICE, Dallas, Tex.

*Docket No. 96-2311; Submitted on the Record;  
Issued March 19, 1999*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective September 19, 1993 on the grounds that she had no disability due to her employment injury after that date.

The Board finds that the Office properly terminated appellant's compensation effective September 19, 1993 on the grounds that she had no disability due to her employment injury after that date.

Under the Federal Employees' Compensation Act,<sup>1</sup> when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>2</sup> However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.<sup>3</sup> Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>4</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>5</sup> After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

<sup>3</sup> *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

<sup>4</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>5</sup> *Id.*

that she had an employment-related disability which continued after termination of compensation benefits.<sup>6</sup>

In the present case, the Office accepted that appellant sustained employment-related carpal tunnel syndrome of her right wrist and paid appropriate compensation benefits. Appellant underwent a right carpal tunnel release in December 1985 which was authorized by the Office. By decision dated September 22, 1993, the Office terminated appellant's compensation effective September 19, 1993 on the grounds that she no longer had disability due to her employment injury after that date. The Office based its termination on the opinions of Dr. Leopold H. Garbutt, an attending Board-certified orthopedic surgeon and Dr. David A. Davis, an attending Board-certified neurologist. By decisions dated September 29, 1994, March 29, 1995 and February 23, 1996, the Office denied modification of its September 22, 1993 decision.

The Board notes that the Office met its burden of proof to terminate appellant's compensation effective September 19, 1993 by determining that the weight of the medical evidence rested with the opinions of Drs. Garbutt and Davis. The Board has carefully reviewed the opinions of Drs. Garbutt and Davis and notes that they have the reliability, probative value and convincing quality with respect to their conclusions regarding the relevant issue of the present case. The opinions of Drs. Garbutt and Davis are based on a proper factual and medical history, provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.<sup>7</sup> Drs. Garbutt and Davis provided medical rationale for their opinions by explaining that appellant no longer exhibited objective residuals of her employment injury.

In a report dated January 24, 1993, Dr. Garbutt stated that by the time he examined appellant on January 13, 1993 her symptoms had essentially resolved and the effects of her work injury had probably ceased. In a reports dated July 23, 1993, Dr. Davis detailed appellant's factual and medical history and reported the findings of his examination on that date. He stated that appellant exhibited atypical features suggestive of symptom magnification and indicated that further diagnostic testing should be performed. In a report dated July 27, 1993, he noted that right median and ulnar nerve conduction studies revealed normal results and noted that electromyogram testing was not possible because appellant would not give good muscle contraction.

After the Office's September 22, 1993 decision terminating appellant's compensation effective September 19, 1993, appellant submitted additional medical evidence which she felt showed that she was entitled to compensation after September 19, 1993 due to residuals of her employment injury. Given that the Board has found that the Office properly relied on the opinions of Drs. Garbutt and Davis in terminating appellant's compensation effective September 19, 1993, the burden shifts to appellant to establish that she is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by

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<sup>6</sup> *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

<sup>7</sup> *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

appellant and notes that it is not of sufficient probative value to establish that she had residuals of her employment injury after September 19, 1993.

Appellant submitted an October 20, 1993 report in which Dr. James Moore, an attending orthopedic surgeon, indicated that she had right hand pain and a “neurological pain syndrome.” This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.<sup>8</sup> In a report dated July 18, 1994, Dr. Douglas Stevens, an attending clinical psychologist, indicated that appellant had a disabling emotional condition related to her employment injury. The Office has not accepted that appellant sustained an employment-related emotional condition and Dr. Stevens’ report does not contain adequate medical rationale explaining how appellant could have sustained such an injury.<sup>9</sup> In reports dated August 30, 1994 and January 10, 1995, Dr. Alfred B. Hathcock, an attending Board-certified orthopedic surgeon, noted that appellant’s diagnostic testing revealed essentially normal results and indicated that he tended to agree with Dr. Garbutt that appellant’s continuing right hand problems were not employment related. In a report dated October 27, 1995, Dr. Kenneth M. Rosenzweig, an attending orthopedic surgeon, indicated that appellant had “cumulative trauma disorder after 17 years of working at a chicken plant with residual myofascial syndrome and some residual carpal tunnel syndrome.” Dr. Rosenzweig did not, however, provide a clear opinion that appellant’s right hand condition was employment related; nor did he provide medical rationale explaining how appellant could have continued to have employment-related carpal tunnel syndrome, particularly given the fact that she had not worked in many years.

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<sup>8</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

<sup>9</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

The decision of the Office of Workers' Compensation Programs dated February 23, 1996 is affirmed.

Dated, Washington, D.C.  
March 19, 1999

Michael J. Walsh  
Chairman

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member