

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANCES M. McLAUGHLIN and DEPARTMENT OF THE ARMY,  
MATERIAL COMMAND, Sacramento, CA

*Docket No. 98-1016; Submitted on the Record;  
Issued November 24, 1999*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits for an accepted left knee and right elbow contusion causally related to her employment injury on June 19, 1986.

The Board has duly reviewed the case on appeal and finds that the Office properly terminated appellant's compensation.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup>

This case has been before the Board on three prior appeals.<sup>3</sup> Those decisions are incorporated by reference in this decision. Most recently, the Board affirmed an Office decision dated April 11, 1995, which determined that all residuals of appellant's accepted low back strain causally related to the June 18, 1986 work injury had ceased.<sup>4</sup> The Board also found that appellant failed to establish that she sustained a cervical condition causally related to the

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<sup>1</sup> *Patricia A. Keller*, 45 ECAB 278 (1993); *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

<sup>3</sup> Docket No. 95-2328 (issued October 3, 1997), Docket 90-733 (issued September 19, 1990) and Docket No. 88-1390 (issued December 16, 1988).

<sup>4</sup> The Office accepted that appellant sustained a contusion to the left knee and right elbow and a lumbosacral strain as a result of a June 19, 1986 work injury.

accepted injury.<sup>5</sup> The Board, however, reversed the Office's April 11, 1995 decision, finding that the Office failed to meet its burden of proof in establishing that appellant no longer suffered residuals of her accepted right elbow and left knee contusions.

A review of the medical record reveals that at the time of the Board's last decision, a conflict existed in the record with regard to appellant's disability related to her left knee and right elbow conditions. In a December 28, 1994 report, appellant's treating physician, Dr. Roscoe B. Martin, a Board-certified orthopedic surgeon, noted that appellant had been under his care since September 1986 for injuries related to a fall at work whereby appellant twisted her back and landed face down. Dr. Martin also noted that appellant had previously been involved in a car accident, in which she was rear-ended and her right knee struck the steering column of her car. According to him, appellant suffered from chronic low back pain with sciatica, bilateral leg pain, bilateral shoulder pain, chronic neck and upper back pain, right elbow and bilateral knee pain syndrome and multiple joint arthralgia/arthritis. Although Dr. Martin acknowledged that appellant suffered from a preexisting degenerative condition in the spine and arthritis of the knees, he opined that appellant would not have been totally disabled but for her employment injury.

In a January 25, 1995 report, Dr. Martin further noted that appellant suffered from chronic neck and low back pain, as well as multiple joint pain and stiffness, including in the knees. He reported that appellant had lack of strength in the upper extremities. Dr. Martin opined that appellant was unable to perform her usual employment duties.

In a report dated April 11, 1994, Dr. John L. Branseum, a Board-certified orthopedic surgeon and an Office referral physician, noted physical findings with respect to appellant's upper and lower extremities which he stated were normal for appellant's age. Dr. Branseum diagnosed that appellant suffered from degenerative disc disease of the cervical and lumbar spine and arthritis of the knee joints. According to the doctor, appellant's degenerative spine condition preexisted her employment injury and precluded her from performing heavy work. He explained that appellant sustained a soft tissue twisting injury when she fell at work in June 1986, but opined that she should have been able to return to her customary work by December 19, 1986. Dr. Branseum concluded that appellant was disabled due to the normal aging process and specifically opined that appellant had no residuals related to her employment injury. He suggested that appellant would have suffered from the same disability had she not sustained her work injury.

Following the Board's October 3, 1997 decision remanding the case, the Office referred appellant to Dr. Frank P. Maldonado, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated December 19, 1997, Dr. Maldonado noted that on June 19, 1986 appellant tripped and fell on a sidewalk outside of her office building, thereby striking her flexed right elbow and left knee and wrenching her back. He noted normal physical findings in both the upper and lower extremities. Dr. Maldonado also reported that x-rays of the right elbow and left knee were essentially normal for appellant's age. He concluded that appellant's contusion to the right elbow and left knee caused by the June 19, 1986 work injury

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<sup>5</sup> Docket No. 95-2328 (issued October 3, 1997).

had long since resolved, probably within a month of the injury. Dr. Maldonado further stated that he found no evidence that the June 19, 1986 work injury caused any residual problems with appellant's right elbow or left knee. He concluded that some of appellant's medical complaints may be related to her age in general.

By letter dated January 9, 1998, the Office issued a notice of proposed termination of compensation, which provided appellant with 30 days to submit additional evidence or argument to show that she was still disabled due to her work injury.

By letter dated January 19, 1998, appellant notified the Office that she disagreed with the proposed notice of termination and took issue with the medical reports of record stating that she was not totally disabled. She specifically requested that Dr. Maldonado's opinion be considered disregarded as unfair, unjust, and unethical as the doctor found her to be "in perfect health with the exception of asthma and diabetes."

In a decision dated February 8, 1998, the Office terminated appellant's compensation effective February 28, 1998.

Initially, the Board notes that appellant argues on appeal that the Board's prior decision reversing the Office's April 11, 1995 decision, with respect to the termination of appellant's benefits was final as it related to her left knee and right elbow conditions. Appellant contends that the Office should not be permitted to later terminate her compensation benefits on remand with respect to those same conditions. Contrary to appellant's arguments, the Office is not precluded from terminating appellant's compensation benefits if the Office properly notifies appellant of its proposed termination and if the Office obtains sufficient medical evidence to meet its burden of proof

The Board finds that the Office met its burden of proof in terminating appellant's compensation related to appellant's right elbow and left knee contusions.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>6</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>7</sup>

The Board notes that the Office properly determined that there was a conflict in the record between appellant's treating physician, Dr. Martin and the Office second referral physician, Dr. Branseum, with regard to whether appellant had continuing residuals related to

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<sup>6</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>7</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

her accepted right elbow and left knee conditions. Due to the conflict, the Office also properly sent appellant to Dr. Maldonado for an impartial medical examination.<sup>8</sup>

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>9</sup>

In his December 19, 1997 report, Dr. Maldonado provides a well rationalized opinion, supported by objective testing and physical findings, and based on a correct factual and medical background, which states that appellant's right elbow and left knee contusions related to the June 19, 1986 work injury have resolved and that appellant has no continuing residual disability related to his employment injury. Inasmuch as Dr. Maldonado is an impartial medical specialist and a Board-certified physician, the Board finds that his opinion is entitled to special weight. The Board, therefore, concludes that the Office met its burden of proof in terminating appellant's compensation.<sup>10</sup>

The decision of the Office of Workers' Compensation Programs dated February 8, 1998 is hereby affirmed.

Dated, Washington, D.C.  
November 24, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>8</sup> Section 8123(a) of the Federal Employees' Compensation 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." 5 U.S.C. § 8123(a).

<sup>9</sup> *Gary R. Seiber*, 46 ECAB 215 (1994); *Juanita H. Christoph*, 40 ECAB 354 (1988).

<sup>10</sup> The Board notes that in conjunction with the instant appeal, appellant submitted copies of evidence which was already made part of the record before the Office.