

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY A. McMILLER and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 98-1153; Submitted on the Record;
Issued November 3, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective December 7, 1997 on the grounds that she had no disability due to her August 24, 1996 employment injury after that date.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective December 7, 1997 on the grounds that she had no disability due to her August 24, 1996 employment injury after that date.

Under the Federal Employees' Compensation Act,¹ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

On August 24, 1996 appellant, then a 42-year-old letter carrier, sustained a back strain and left wrist strain when a customer on her mail route grabbed and pushed her. By decision dated December 5, 1997, the Office terminated appellant's compensation effective December 7, 1997 on the grounds that she had no disability due to her August 24, 1996 employment injury after that date. The Office based its termination on the opinion of Dr. Sharukin Yelda, a

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

Board-certified orthopedic surgeon to whom it referred appellant for an impartial medical examination.

The Office had determined that there was a conflict in the medical opinion between Dr. William Granado, appellant's attending Board-certified internist, and the government physician, Dr. Marshall Matz, a Board-certified neurosurgeon acting as an Office referral physician, regarding whether appellant continued to have residuals of her August 24, 1996 employment injury. In a report dated August 12, 1997, Dr. Granado indicated that appellant continued to have employment-related back pain with radiculopathy and left foot drop and noted that she was disabled for an indefinite period. In a report dated May 2, 1997, Dr. Matz determined that appellant did not exhibit any objective abnormality and could return to her regular work. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Yelda for an impartial medical examination and an opinion on the matter.⁵

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁶

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Yelda, the impartial medical specialist selected to resolve the conflict in the medical opinion. Dr. Yelda's September 18 and October 9, 1997 reports establish that appellant had no disability due to her August 24, 1996 employment injury after December 7, 1997.

In his report dated September 18, 1997, Dr. Yelda stated that his physical examination of appellant was entirely normal with no evidence of any objective radiculopathy. He indicated that there was no clinical evidence of any radiculopathy in that a magnetic resonance imaging test only showed a bulging lumbar disc and the two electromyogram tests were normal. Dr. Yelda stated that appellant displayed strong symptom magnification on examination and noted that he felt she was pretending to have low back pain with radiation to both lower limbs. In his report dated October 9, 1997, he indicated that appellant had full muscle power in her lower extremities and exhibited full range of motion of her hips, knees, ankles and toes. Dr. Yelda noted that appellant showed positive results upon symptom magnification testing, including the fact that she reported back pain during ankle flexion. He stated that appellant's subjective complaints were not confirmed by objective findings and recommended that she return to her regular work.

The Board has carefully reviewed the opinion of Dr. Yelda and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the

⁵ 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." 5 U.S.C. § 8123(a).

⁶ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

relevant issue of the present case. His opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Yelda 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.⁷ Dr. Yelda provided medical rationale for his opinion that appellant no longer had residuals of her August 24, 1996 employment injury by explaining that appellant did not exhibit any objective findings of disability upon examination or diagnostic testing. He explained appellant's continuing problems by noting that she displayed symptom magnification as evidence by inconsistent testing results.⁸

The decision of the Office of Workers' Compensation Programs dated December 5, 1997 is affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

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

⁸ In additional reports dated October 27 and 30, 1997, Dr. Granado indicated that appellant continued to have employment-related back pain and noted that she was disabled for an indefinite period. These reports are of limited probative value because they do not contain medical rationale in support of their opinions on causal relationship and they do not create a new conflict in the medical evidence.