

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL J. DAVIS and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Boston, MA

*Docket No. 98-1178; Submitted on the Record;
Issued October 6, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits and properly denied authorization for surgery.

On February 9, 1994 appellant, a staff nurse, sustained an injury while in the performance of her duties when she tripped over an electrical cord and fell into a coemployee. The Office accepted her claim for the conditions of left wrist sprain, left hand contusion and for left ulnar and median neuropathy.

On January 28, 1997 appellant's attending physician, Dr. Andrew L. Terrono, diagnosed carpal tunnel syndrome and reported that appellant was in need of surgery for treatment of her February 9, 1994 injury.¹ An Office referral physician, Dr. Robert Pennell, reported that appellant was fully recovered from her injuries of February 9, 1994 and that surgery was not indicated. Finding a conflict in medical opinion, the Office referred appellant, together with a copy of the medical record and a statement of accepted facts, to Dr. Nicholas A. Cappello, a Board-certified orthopedic surgeon.

On March 31, 1997 Dr. Cappello reported that appellant's current problems with her left hand were, to a reasonable medical certainty, causally related to her injury of February 9, 1994, but that surgery was not the best course of treatment at that point. He explained: "I would wait until things quiet down somewhat since that patient is in a 'light-duty' fashion. I would keep her in this modality for approximately another 3 [to] 6 months and see if there is any improvement and reevaluate her."

On May 14, 1997 the Office wrote to Dr. Cappello to inform him that his report did not contain a complete history of injury or address appellant's preexisting left wrist condition. The Office requested Dr. Cappello to address all of the questions posed and to submit an addendum

¹ The record reflects that appellant had previously had surgery in 1982 for a left wrist fusion.

report specifically addressing several points. When it received no response, the Office made a second request for an addendum report on September 25, 1997.

On February 17, 1998 having received no response from the impartial medical specialist, the Office issued a decision denying authorization for surgery on the grounds that the evidence of record was insufficient to establish the relationship between the surgery and appellant's medical condition. Noting that the second-opinion physician, Dr. Pennell, had reported that appellant was fully recovered from the February 9, 1994 injury, the Office found that medical treatment at the Office's expense was not authorized and that any prior authorization was terminated.

The Board finds that the Office improperly terminated appellant's medical benefits and denied authorization for surgery.

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative, or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical opinion on the issue in question.² Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Federal Employees' Compensation Act³ will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.⁴

In the present case, the Office found that the opinion of the impartial medical specialist was insufficient to resolve the conflict. After the Office was unable to get a response from Dr. Cappello, it should have followed the procedure described above and referred appellant to a second impartial medical specialist when the requested addendum report was not forthcoming. As Dr. Cappello was not able to resolve the conflict between Dr. Terrono and Dr. Pennell as to whether appellant required surgery due to her accepted injury, the case should have been submitted to a second impartial medical specialist rather than find that Dr. Pennell's opinion

² See *Nathan L. Harrell*, 41 ECAB 402 (1990).

³ 5 U.S.C. § 8123(a) provides the following: "An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by [her] present to participate in the examination. 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."

⁴ *Harold Travis*, 30 ECAB 1071 (1979).

constituted the weight of medical opinion. The Office improperly terminated appellant's continuing medical benefits⁵ and improperly developed the medical evidence on the issue of authorization for surgery. The Board will reverse the Office's February 17, 1998 decision on the issue of entitlement to continuing medical benefits and will set aside that decision on the issue of authorization for surgery. On remand, the Office shall further develop the medical evidence as necessary and shall thereafter issue an appropriate final decision on the issue of authorization for surgery.

The February 17, 1998 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further action consistent with this opinion.

Dated, Washington, D.C.
October 6, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ It is well established that once the Office accepts a claim it has the burden of proof to justify termination or modification of compensation benefits. *Harold S. McGough*, 36 ECAB 332 (1984). The Office cannot meet this burden when a conflict in medical opinion remains unresolved or when an impartial medical specialist supports continuing entitlement to benefits.