

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELLA M. STOKES and U.S. POSTAL SERVICE,
POST OFFICE, Fort Lauderdale, FL

*Docket No. 98-56; Submitted on the Record;
Issued September 2, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation.

In the present case, the Office accepted that appellant sustained cervical strain, right ulnar neuropathy, recurrent cervical strain and right arm myofascial pain causally related to her federal employment duties as a distribution clerk.¹ Appellant returned to a full-time light-duty position and in June 1996 she began working four hours per day in a light-duty position, based on the recommendation of the attending physician, Dr. Paul Wand, a neurologist.

In a letter dated May 29, 1997, the Office notified appellant that it proposed to terminate her compensation on the grounds that the weight of the medical evidence established that her employment injury had resolved. By decision dated July 3, 1997, the Office terminated appellant's compensation.

The Board has reviewed the record and finds that the Office met its burden in terminating appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.²

¹ Appellant indicated in a narrative statement that she began having neck and right arm symptoms at work on February 7, 1991.

² *Patricia A. Keller*, 45 ECAB 278 (1993).

In this case, the Office determined that there was a conflict in the medical evidence regarding appellant's continuing employment-related disability. Dr. Wand, the attending physician, had continued to indicate that appellant had an employment-related disability. The Office referred appellant to Dr. Hubert A. Aronson, a neurosurgeon serving as a second opinion referral physician. In a report dated November 14, 1996, Dr. Aronson opined that appellant was capable of performing the duties of distribution clerk and had no need for further therapy.

Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.³ In this case, the Office referred appellant, together with her medical records and a statement of accepted facts to Dr. Gerald S. Goldberg, a Board-certified neurologist. In a report dated March 5, 1997, Dr. Goldberg provided a history and results on examination. He stated that he found no clinical or physical evidence of ulnar neuropathy or other entrapment syndrome. Dr. Goldberg further stated in pertinent part:

“Based on my current examination which indicates a variety of nonphysiologic findings suggestive of functional overlay or malingering. Based on the patient's functional overlay and desire to maintain her symptoms and which have been iatrogenically maintained by the gross over treatment by Dr. Wand, it is almost impossible to say that there is any residual cervical strain or even myofascial pain. Certainly any myofascial pain syndrome that she had developed at the time of the reaching injury in 1991 should have resolved long ago. There is absolutely no way a minor stretch type injury that she might have sustained in 1991 would persist and maintain these kind of symptoms into 1997.

“From a purely neurological perspective the patient could perform any and all duties of her job as a distribution clerk for eight hours and any limitations would be self imposed.”

The Board finds that Dr. Goldberg provided a reasoned medical opinion that appellant's employment injury had resolved. It is well established that when 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.⁴ The Board finds that Dr. Goldberg's opinion is entitled to special weight and represents the weight of the medical evidence. The Office, therefore, met its burden of proof in terminating appellant's compensation in this case.

³ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁴ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

The decision of the Office of Workers' Compensation Programs dated July 3, 1997 is affirmed.

Dated, Washington, D.C.
September 2, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member