

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY L. GREEN and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Englewood, CO

*Docket No. 99-586; Submitted on the Record;
Issued December 4, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective July 19, 1997; (2) whether appellant has established a neck or left arm condition as causally related to her federal employment; and (3) whether the Office properly determined that appellant's request for reconsideration was insufficient to warrant merit review of the claim.

The Office accepted that appellant sustained a median nerve compression in the right arm causally related to factors of her federal employment as a tax examiner assistant. Appellant stopped working as of May 1, 1990. By letter dated May 12, 1997, the Office notified appellant that it proposed to terminate her compensation on the grounds that the weight of the medical evidence, represented by Dr. Thomas G. Mordick II, a neurologist serving as a second opinion physician, established that her employment-related condition had ceased. In a decision dated June 13, 1997, the Office terminated appellant's compensation effective July 19, 1997. By decision dated April 20, 1998, finalized April 21, 1998, an Office hearing representative affirmed the termination decision. The hearing representative also found that appellant had not established a neck or left arm condition as causally related to her federal employment. In a decision dated July 29, 1998, the Office determined that appellant's request for reconsideration was not sufficient to warrant reopening the claim for merit review.

The Board has reviewed the record and finds that the Office met its burden to terminate 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.¹

In a report dated March 5, 1997, Dr. Mordick, the second opinion referral neurologist, provided a history and results on examination. He indicated that an electromyogram (EMG) and a functional capacity evaluation (FCE) would be performed and then he would submit a supplemental report. In a report dated March 26, 1997, Dr. Mordick noted that the EMG showed no evidence of nerve compression or myopathic disorder. He also noted that the functional capacity evaluation demonstrated a lack of effort by appellant and recommendations for work restrictions could not be made based on the FCE. Dr. Mordick stated that, while appellant complained of bilateral hand pain, there were no objective findings to provide a diagnosis. He recommended that, based on the lack of objective findings and failure to comply with the FCE, appellant be returned to regular duty.

The reports of Dr. Mordick support a finding that the employment-related condition had ceased. He found no objective evidence of any continuing nerve compression. On the other hand, appellant did not submit probative medical evidence demonstrating a continuing employment-related condition. In a treatment note dated April 25, 1997, Dr. Kasiel Steinhardt, an orthopedic surgeon, provided results on examination, noting some tenderness on the left lateral epicondyle, left suprascapular region and volar aspect of both forearms. Dr. Steinhardt did not discuss the accepted employment injury of right median nerve compression or provide an opinion as to causal relationship between a diagnosed condition and federal employment. The Office advised appellant in the May 12, 1997 letter that she could submit relevant medical evidence, but appellant did not submit contemporaneous medical evidence containing an opinion supporting a continuing employment-related condition.

The weight of the medical evidence, therefore, rests with Dr. Mordick. It is the Office's burden of proof to terminate compensation and the Board finds that the Office met its burden of proof to terminate compensation as of July 19, 1997.

After termination or modification of 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 that she had an employment-related disability which continued after termination of compensation benefits.²

In a report dated July 9, 1997, Dr. Steinhardt stated that appellant's "symptoms have been consistent. Your findings have been consistent. It is consistent with your condition for you to develop pain with increased use of your fingers and forearm muscles." He opined that appellant was unable to perform her normal job duties, thereby rendering her disabled. Dr. Steinhardt did not provide a diagnosis, nor did he provide an opinion that appellant's condition was causally related to her federal employment, with supporting rationale. In the

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

absence of a reasoned medical opinion, the Board finds that appellant has not established a continuing employment-related condition in this case.

The Board further finds that appellant has not established a neck or left arm condition as causally related to her federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.³ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the claimed conditions and her federal employment.⁴ Neither the fact that the condition became manifest during a period of federal employment, nor the belief of appellant that the condition was caused or aggravated by her federal employment, is sufficient to establish causal relation.⁵

As noted by the hearing representative, appellant submitted a July 12, 1990 note from Dr. Robert L. Horner, an orthopedic surgeon, diagnosing fibromyositis with cervical strain and stating that this was a “work-related” problem. Dr. Horner provides no medical rationale or factual background to explain his statement. Medical opinions that are speculative and not supported by medical rationale are generally entitled to little probative value and are insufficient to meet appellant’s burden of proof.⁶ The Board finds that the record does not contain a reasoned medical opinion, based on a complete and accurate background, establishing a neck or left arm condition causally related to her federal employment.

The Board further finds that the Office properly determined that appellant’s request for reconsideration was insufficient to warrant merit review of the claim.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,⁷ the Office’s regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or fact not previously considered by

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See Walter D. Morehead*, 31 ECAB 188 (1979).

⁵ *Manuel Garcia*, 37 ECAB 767 (1986).

⁶ *Carolyn F. Allen*, 47 ECAB 240 (1995).

⁷ 5 U.S.C. § 8128(a) (providing that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application).”

the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁸ Section 10.138(b)(2) states that any application for review that does not meet at least one of the requirements listed in section 10.138(b)(1) will be denied by the Office without review of the merits of the claim.⁹

In the present case, appellant did not meet any of the above requirements. She argues that she submitted new and relevant medical evidence, but the evidence submitted cannot be considered relevant medical evidence. For example, in a report dated June 9, 1989, Dr. Charles Boynton did not provide an opinion as to an employment-related condition. An August 1, 1989 report is not signed and does not appear to have been written by a “physician” under the Act.¹⁰ None of the evidence submitted constitutes new and relevant evidence with respect to the issues presented. Appellant’s request for reconsideration did not meet any of the requirements of section 10.138 and, therefore, the Office properly denied her request without merit review of the claim.

The decisions of the Office of Workers’ Compensation Programs dated July 29 and April 20, 1998, finalized April 21, 1998, are hereby affirmed.

Dated, Washington, DC
December 4, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁸ 20 C.F.R. § 10.138(b)(1).

⁹ 20 C.F.R. § 10.138(b)(2); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

¹⁰ Physical therapists are not physicians under the Act and their reports are of no probative value; *see Barbara J. Williams*, 40 ECAB 649 (1989); 5 U.S.C. § 8101(2).