

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHERINE NEISES and U.S. POSTAL SERVICE,
POST OFFICE, Wichita, KS

*Docket No. 98-579; Submitted on the Record;
Issued January 3, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof in establishing that she had any disability after September 30, 1993 that was causally related to her accepted employment injury of cervical and right shoulder strains.

On September 20, 1993 appellant, then a 44-year-old letter carrier, filed an occupational disease claim, alleging that she sustained an acute cervical strain of which she first became aware on September 15, 1993 and which she realized was causally related to factors of her federal employment on September 17, 1993. In a decision dated March 31, 1994, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence failed to establish that she sustained injury as alleged. By decision dated January 4, 1995, an Office hearing representative set aside the March 31, 1994 decision of the Office and remanded the case for further development of the evidence. In a decision dated May 1, 1995, the Office again denied appellant's claim on the grounds that a causal relationship between the claimed disability and factors of her federal employment was not established. By decision dated May 1, 1997, an Office hearing representative set aside the May 1, 1995 decision of the Office and remanded the case for referral of appellant to an impartial medical examiner for examination and report to resolve a conflict in the medical evidence. In a decision dated November 4, 1997, the Office rescinded its earlier decision and determined that the medical evidence did establish that the claimed conditions of cervical and right shoulder strain were related to factors of appellant's federal employment. The Office further found, however, that the evidence established that the accepted injury was a minor soft tissue injury, and appellant should have been able to return to work several weeks after the condition appeared. The Office concluded that compensation was payable for the period September 15 to 30, 1993.

The Board has duly reviewed the entire case record on appeal and finds that this case is not in posture for decision with respect to the period of disability.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹ The term "disability" as used under the Act means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of injury.²

In the present case, the Office properly declared a conflict in the medical evidence between the reports of Drs. Terry L. Summerhouse and Michael P. Estivo, appellant's treating physicians and osteopaths, and the report of Dr. Satish Bansal, a Board-certified orthopedic surgeon and Office referral physician, regarding when appellant's accepted employment injury resolved. The Office referred appellant, together with her medical record and a statement of accepted facts, to Dr. Larry F. Glaser, a Board-certified orthopedic surgeon, for an impartial medical examination and report.

In a report dated October 14, 1997, Dr. Glaser diagnosed multilevel degenerative disc disease most severely affecting the C5 to C6 levels and chronic complaints of right-sided neck and trapezius pain without objective findings and Parkinson's disease by history. He reported that appellant may have been seen legitimately for a cervical or right trapezius strain from 1993 to 1994, but that episodic treatment had no medical basis in her current complaints. Dr. Glaser found that appellant's degenerative changes preexisted her accepted September 1993 injury and that her strains had resolved. In a follow-up report dated October 28, 1997, Dr. Glaser noted that it was extremely difficult to assess whether appellant should have been off work for a period of time following her cervical strain in September 1993. He indicated that appellant should not have been off work for several months but should have been off several weeks. Dr. Glaser noted that "keeping [appellant] completely off work up to two to three months for this reported soft tissue injury would not make sense...."

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 the resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.³ The Board has carefully reviewed the opinion of Dr. Glaser and finds that it does not have sufficient probative value, regarding the relevant issue in the present case, to be accorded such special weight.

The reports by Dr. Glaser are not precise regarding the period of disability. A review of these reports indicates that Dr. Glaser initially indicated that appellant could have legitimately been seen for her accepted injury from 1993 to 1994. He later indicated that appellant's

¹ *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

² *See Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

³ *Jack R. Smith*, 41 ECAB 691 (1990); *James P. Roberts*, 31 ECAB 1010 (1980).

disability lasted several weeks and that her absence from work for over two months was not appropriate. The Office concluded that appellant had a two-week period of temporary total disability from September 15 to 30, 1993 based on these reports. However, Dr. Glaser has not provided sufficient rationale or medical reasoning to arrive at such a finite period of temporary total disability. Under these circumstances, the Board finds that Dr. Glaser's report cannot be accorded the special weight given to a report by an impartial medical examiner as his opinion is not well rationalized with respect to the issue or period of temporary total disability. In view of the foregoing, the Office must resubmit this case to Dr. Glaser for a fully-rationalized opinion with a proper explanation that resolves the existing conflict between Drs. Estivo and Summerhouse and Dr. Bansal concerning appellant's period of temporary total disability.

The decisions of the Office of Workers' Compensation Programs dated November 4 and May 1, 1997 are affirmed in part and set aside with respect to the period of disability. The case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
January 3, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member