

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARROLL A. DIGGS and U.S. POSTAL SERVICE,
POST OFFICE, Richmond, CA

*Docket No. 99-848; Submitted on the Record;
Issued January 18, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

On April 22, 1995 appellant, a distribution clerk, sustained an injury while in the performance of her duties when she lifted a mail tray from a hamper. The Office accepted her claim for right rotator cuff sprain with calcium deposit and approved surgery. Appellant received compensation for temporary total disability.

On February 13, 1997 the Office referred appellant to Dr. Charles R. Miller, an orthopedic surgeon, for a second opinion on the relationship of appellant's condition to her federal employment. In a report dated March 15, 1997, Dr. Miller stated that an evaluation that day revealed a nontender scar over the right shoulder and an otherwise normal orthopedic evaluation with no evidence of neurological abnormality. He found that appellant had no current objective evidence of abnormalities or residuals of a work-related injury and that she was capable of performing her usual and regular work without restrictions or limitations.

Appellant's attending orthopedic surgeon, Dr. Joseph Anthony Matan, disagreed. In a report dated May 2, 1997, Dr. Matan stated that he had reviewed Dr. Miller's report but still considered appellant disabled by her right shoulder condition: "At this point I have not returned [appellant] to work following her right shoulder surgery and, in fact, my letter of January 21, 1997 states, in the third paragraph, that the patient was off work because of her right shoulder surgery." Dr. Matan disagreed with Dr. Miller's findings on range of motion. He concluded: "If [appellant] only had her right shoulder problem, she probably would be able to return to work at this time. She does, however, have problems with bilateral carpal tunnel syndrome and with documented significant difficulty with her right knee. This combination of problems is keeping her off work."

Finding a conflict in medical opinion between appellant's treating physician and the Office second opinion physician, the Office referred appellant, together with the medical file and a statement of accepted facts, to Dr. Terence J. McDonnell, a Board-certified orthopedic surgeon, for a referee medical opinion. In a report dated August 4, 1997, Dr. McDonnell related the accepted facts of the case the specific conflict between Drs. Matan and Miller, appellant's history, complaints and findings on physical examination. He reviewed the medical records supplied to him by the Office. Dr. McDonnell diagnosed status postoperative Neer acromioplasty, acromioclavicular joint resection and excision of calcific bursitis. He also diagnosed chronic right shoulder pain, etiology undetermined. Dr. McDonnell commented that appellant had pain with fingertip percussion over the old incision site, which should not be the case in an organic disease. He expressed concern that there had been no follow-up studies on the shoulder. "To be totally fair," he stated, "it is necessary to have an imaging study on this shoulder. I would propose that this patient needs an MRI [magnetic resonance imaging] [scan] of her shoulder to rule out that she may have a rotator cuff type of problem that was unrecognized preoperatively."

Dr. McDonnell obtained an MRI scan on October 2, 1997 and submitted a supplemental report dated October 7, 1997. After reviewing the results of the MRI scan, he reported that appellant did not appear to have any residuals from the injury of April 22, 1995. Dr. McDonnell noted that she had subjective complaints of pain and popping in her shoulder, but her examination showed that she had essentially normal range of motion. The MRI scan, he stated, showed no injury to the rotator cuff with normal marrow signals in the humeral head and glenoid areas. Dr. McDonnell reported that no future medical treatment was recommended, that appellant's total disability would cease on October 15, 1997 after rereviewing the files and the MRI scan. He agreed with Dr. Miller that appellant should be able to perform her regular and usual work without restrictions or limitations. As a final note, Dr. McDonnell stated that, having looked at the MRI scan, he felt more secure about the fact that appellant had no orthopedic residuals after her surgery. Dr. McDonnell stated that her symptoms were totally subjective and that her response to fingertip percussion over the scar was not something that would be ordinarily seen. Finding her response to be inappropriate, he reported that appellant was able to resume her normal activities without limitations.

In a decision dated October 23, 1997, the Office terminated appellant's compensation benefits effective that day on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. McDonnell, established that appellant had recovered from her April 22, 1995 work injury.

In a decision dated September 8, 1988, an Office hearing representative affirmed the termination of appellant's compensation benefits.¹

The Board finds that the Office properly terminated appellant's compensation benefits.

¹ In an addendum decision also dated September 8, 1988, the hearing representative addressed concerns raised by the office of appellant's congressman but found no basis for changing his original decision.

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.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

A conflict in medical opinion developed between appellant's treating physician, Dr. Matan and the Office referral physician, Dr. Miller, on whether appellant continued to suffer residuals of her April 22, 1995 employment injury. Section 8123(a) of the Federal Employees' Compensation Act provides in 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."⁴

To resolve the conflict, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. McDonnell, a Board-certified orthopedic surgeon, for a referee medical opinion. He examined appellant on August 4, 1997 and reported his findings on physical examination. Dr. McDonnell related appellant's history and complaints and reviewed the medical file and the statement of accepted facts. After obtaining an MRI scan, he reported that appellant did not appear to have any residuals from the injury of April 22, 1995. Her physical examination showed that she had essentially normal range of motion and the MRI scan showed no injury to the rotator cuff, with normal marrow signals in the humeral head and glenoid areas. Dr. McDonnell reported that appellant's symptoms were totally subjective and that her response to fingertip percussion over the scar was inappropriate. He found that she was no longer disabled by her April 22, 1995 employment injury and had no need for further medical treatment.

When 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.⁵ The Board finds that the opinion of Dr. McDonnell is based on a proper factual background and is sufficiently well rationalized that it must be given such weight. He supported his opinion with findings on physical examination and a review of appellant's MRI scan. Dr. McDonnell reviewed the medical file in this case, and the statement of accepted facts and he directly addressed the conflict between Drs. Matan and Miller. The Board finds that Dr. McDonnell's opinion constitutes the weight of the medical evidence in this case, and is sufficient to justify the termination of appellant's compensation benefits.

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ 5 U.S.C. § 8123(a).

⁵ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

The September 8, 1998 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
January 18, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member