

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HARRIET C. WASHINGTON and U.S. POSTAL SERVICE,  
POST OFFICE, Philadelphia, PA

*Docket No. 99-1695; Submitted on the Record;  
Issued June 14, 2000*

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DECISION and ORDER

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

The issue is whether appellant had disability after June 21, 1998 due to her accepted employment injury.

The Board finds that appellant had no disability after June 21, 1998 due to her accepted employment injury.

Once the Office of Workers' Compensation Programs has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>2</sup> After termination or modification of compensation 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 the termination of compensation benefits.<sup>3</sup>

In June 1988 appellant, then a 41-year-old keying clerk, filed an occupational disease claim alleging that she sustained an overuse syndrome due to her work. The Office accepted that she sustained overuse of her right wrist and left shoulder, impingement of her left shoulder and adhesive capsulitis of her left shoulder. Appellant underwent an acromioplasty and arthroscopic debridement of her left shoulder which were authorized by the Office. She received compensation for various periods of disability; she stopped working for the employing establishment in mid 1992. By decision dated June 9, 1998, the Office terminated appellant's

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<sup>1</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>2</sup> *Id.*

<sup>3</sup> *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

compensation effective June 21, 1998. The Office based its termination on the opinion of Dr. Leonard Klinghoffer, a Board-certified orthopedic surgeon to whom it referred appellant for an impartial medical examination. By decision dated and finalized February 8, 1999, the Office denied modification of its June 9, 1998 decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective June 21, 1998 by determining that the weight of the medical evidence rested with the well-rationalized opinion of the impartial medical examiner, Dr. Klinghoffer.

The Office properly determined that there was a conflict in the medical opinion between Dr. Norma Johanson, appellant's attending Board-certified orthopedic surgeon and the government physician, Dr. Stephen Horowitz, a Board-certified orthopedic surgeon acting as an Office referral physician, on the issue of whether appellant continued to have residuals from the accepted employment injury.<sup>4</sup> In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Federal Employees' Compensation Act, to Dr. Klinghoffer, for an impartial medical examination and an opinion on the matter.<sup>5</sup>

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 resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>6</sup>

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Klinghoffer, the impartial medical specialist selected to resolve the conflict in the medical opinion. The April 8, 1996 report of his establishes that appellant had no disability due to her employment injury after June 21, 1998.

In his April 8, 1996 report, Dr. Klinghoffer provided an extensive description of appellant's factual and medical history. He reported the findings of his examination and described the relevant diagnostic reports, noting that the x-rays he obtained revealed normal bony structures and normal bony relationships of appellant's left shoulder. Dr. Klinghoffer stated:

“[Appellant's] physical examination does not reveal any abnormality now other than her operative scars, her x-rays of both her cervical spine and left shoulder are normal and I cannot explain the complaints that she described to me.... Some degenerative arthritis of a degree compatible with her age was identified, but her x-rays now, several years later, fail to reflect any degenerative findings and her examination reveals objectively normal findings including a full range of shoulder

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<sup>4</sup> In connection with his June 1995 evaluation, Dr. Horowitz indicated that appellant did not have employment-related disability; in several reports, Dr. Johanson continued to find employment-related disability.

<sup>5</sup> Section 8123(a) of the Act provides in pertinent 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.” 5 U.S.C. 8123(a).

<sup>6</sup> *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

motion. I cannot make any diagnosis and I cannot define any physical basis for placing any restrictions upon [appellant].”

Dr. Klinghoffer indicated that he suspected that nonphysical factors were causing appellant’s complaints.

The Board has carefully reviewed the opinion of Dr. Klinghoffer and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. His opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Klinghoffer provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant’s condition which comported with this analysis.<sup>7</sup> He provided medical rationale for his opinion by explaining that appellant did not exhibit any objective evidence of residuals of her employment injury.<sup>8</sup>

After the Office’s June 9, 1998 decision terminating appellant’s compensation effective June 21, 1998, she submitted additional medical evidence which she felt showed that she was entitled to compensation after June 21, 1998 due to residuals of her employment injury. Given that the Board has found that the Office properly relied on the opinion of the impartial medical examiner, Dr. Klinghoffer, in terminating appellant’s compensation effective June 21, 1998, the burden shifts to appellant to establish that she is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had residuals of her employment injury after June 21, 1998.

Appellant submitted reports dated in August and September 1998 in which Dr. Randall W. Culp, an attending Board-certified orthopedic surgeon, indicated that she had an employment-related brachial plexopathy.<sup>9</sup> In a report dated December 21, 1998, Dr. Barbara S. Knight, an attending Board-certified internist, indicated that appellant continued to suffer from employment-related shoulder and arm pain which disabled her from work. She noted that appellant had been diagnosed with brachial plexopathy. These reports, however, are of limited probative value on the relevant issue of the present case in that the physicians did not provide adequate medical rationale in support of their conclusions on causal relationship.<sup>10</sup> It has not

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<sup>7</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

<sup>8</sup> After Dr. Klinghoffer produced his April 8, 1996 report and before the Office terminated appellant’s compensation, appellant submitted additional reports of attending physicians. Although some of these reports indicated that appellant had disability due to upper extremity reports, none of the reports contained a probative medical opinion that appellant had continuing employment-related disability; see *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

<sup>9</sup> The record contains the results of diagnostic testing from August 1998 which indicates that appellant had bilateral brachial plexopathy. In reports dated in July 1998, Dr. John M. Fenlin, Jr., an attending Board-certified orthopedic surgeon, indicated that appellant had brachial plexopathy.

<sup>10</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on

been accepted that appellant sustained employment-related brachial plexopathy and these reports do not contain sufficient medical rationale to support such a finding. None of the physicians discussed the accepted employment conditions in any detail or adequately explained why they would continue to cause employment-related disability.

The decision of the Office of Workers' Compensation Programs dated and finalized February 8, 1999 and the decision of the Office dated June 9, 1998 are affirmed.

Dated, Washington, D.C.  
June 14, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).