

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOLORES A. BEYLO and DEPARTMENT OF TRANSPORTATION,
U.S. COAST GUARD, Washington, DC

*Docket No. 98-365; Submitted on the Record;
Issued March 2, 2000*

DECISION and ORDER

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

The issue is whether appellant has established that her cervical and psychological conditions are causally related to her March 19, 1991 employment injury.

On March 19, 1991 appellant, then a 54-year-old secretary, sustained an employment-related right arm sprain, lumbosacral strain and herniated disc at L4-5. She stopped work on March 20, 1991, returned on April 8, 1991, after which she missed intermittent periods. She stopped work again on October 1, 1991 and has not returned. She was placed on the periodic rolls on June 1, 1992. On March 25, 1992 the Office of Workers' Compensation Programs referred appellant to Dr. Sanford Eisenberg, a Board-certified orthopedic surgeon, for a second opinion evaluation. Finding that a conflict existed between the medical opinions of Dr. Eisenberg and appellant's treating Board-certified physiatrist, Dr. William Tham, on December 13, 1994 the Office referred appellant, along with the medical record, a statement of accepted facts and a set of questions, to Dr. Edward C. Rabbitt, a Board-certified orthopedic surgeon, for an impartial medical evaluation. Dr. Rabbitt provided a January 11, 1995 report in which he advised that appellant could return to sedentary employment for eight hours per day with restrictions to her physical activity. By decision dated January 8, 1997, the Office found that appellant's arm, neck and psychological conditions were not causally related to the March 19, 1991 employment injury. On January 19, 1997 appellant requested a hearing that was held on July 21, 1997. In an October 16, 1997 decision, an Office hearing representative affirmed the prior decision. The instant appeal follows.

The Board finds that appellant has not established that she sustained a psychological condition causally related to factors of employment.

To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical

opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.¹ Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

In this case, appellant submitted reports dated October 3 and December 11, 1996 from Richard M. Podolin, Ph.D., a licensed psychologist. While Dr. Podolin stated that appellant was under treatment for depression and pain management and advised that she should not work, he provided no opinion regarding the cause of her condition. His reports are, therefore, insufficient to establish that her psychological condition was causally related to the March 19, 1991 employment injury.

The Board further finds that appellant failed to establish that her neck condition was causally related to the March 19, 1991 employment injury.

In situations where there are 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 on a proper factual background, must be given special weight.³ Here, finding that a conflict of medical opinion existed, the Office referred appellant to Dr. Edward C. Rabbitt, a Board-certified orthopedic surgeon, to provide an impartial evaluation. In a comprehensive report dated January 11, 1995, Dr. Rabbitt noted findings on examination of the back and neck and advised that appellant did not have lumbar radiculopathy, that "her problem relates to complaints of back pain." He opined that she had reached maximum medical improvement, required no further treatment and could return to sedentary employment for eight hours per day with restrictions to her physical activity. In a supplementary report dated January 3, 1997, Dr. Rabbitt stated that the restrictions were related to the March 19, 1991 employment injury. While appellant submitted additional reports from Dr. Tham, he merely reiterated his opinion that employment factors caused appellant's neck condition, which, in turn, caused fibromyalgia, which has not been accepted by the Office as employment related. As Dr. Tham had been on one side of the conflict in the medical opinion that Dr. Rabbitt, the impartial medical examiner, resolved, Dr. Tham's reports are insufficient to overcome the special weight accorded Dr. Rabbitt.⁴ The Board, therefore, finds that appellant failed to establish that her neck condition was caused by the March 19, 1991 employment injury.

¹ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

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

The decisions of the Office of Workers' Compensation Programs dated October 16 and January 8, 1997 are hereby affirmed.

Dated, Washington, D.C.
March 2, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member