

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA HILL-GRIFFIN and U.S. POSTAL SERVICE,
POST OFFICE, Southeastern, PA

*Docket No. 98-664; Submitted on the Record;
Issued March 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective June 19, 1996.

Appellant, a flat sorting machine operator, filed an occupational disease claim on June 8, 1991 alleging that she sustained an injury to her right arm and wrist as a result of repetitive movement in her job. The Office accepted the claim for median nerve irritation, precipitated by overuse. Appellant stopped work on December 22, 1991 and returned to work on April 16, 1992. She sustained recurrences of disability January 5 to January 7, September 17 to September 28, 1993 and May 7 to October 1, 1994. She has been working limited duty for four hours per day since October 1, 1994.

In a series of medical reports dated December 1994 to September 1996, appellant's treating physician, Dr. Albert Tahmoush, a Board-certified neurologist, diagnosed that appellant suffered from thoracic outlet syndrome secondary to her repetitive work activities. He opined that appellant was unable to work for more than four hours a day.

A nerve conduction study performed on September 27, 1995 was interpreted as showing no evidence of a median nerve entrapment at the wrist or ulnar nerve entrapment at the elbow.

The Office subsequently referred appellant to Dr. Richard H. Bennett, a Board-certified neurologist, for a second opinion evaluation. In a February 5, 1995 report, Dr. Bennett noted appellant's normal objective findings and opined that there was no evidence of thoracic outlet syndrome or any other repetitive movement trauma. He opined that appellant's symptoms were exaggerated and indicated that she had no residuals of her accepted employment injury.

The Office found that there was a conflict in the record between Dr. Tahmoush and Dr. Bennett so the Office referred appellant along with a statement of accepted facts and a copy of the medical record to Dr. E. Balasubramanian, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In an August 3, 1995 report, Dr. Balasubramanian opined that

appellant had completely recovered from her accepted work injury of median nerve irritation and that she was capable of returning to her normal work activities. Although he noted a possibility of thoracic outlet syndrome based on appellant's subjective complaints, he found that there was no objective evidence to prove that diagnosis at the time of his examination. He stated, "there is no evidence of disability as a result of the work injury as accepted in the statement of facts." He further noted that appellant had no clinical signs of nerve damage nor any evidence on electromyogram (EMG) or nerve conduction studies of a nerve injury.

The Office issued a notice of proposed termination of benefits on October 31, 1995. The Office advised appellant of her right to submit additional evidence.

The Office also wrote to Dr. Tahmoush requesting that he address with a rationalized opinion whether appellant's thoracic outlet syndrome was causally related to factors of appellant's employment. The doctor responded in a May 13, 1996 report that appellant "now has a chronic condition, which can be activated by repetitive activity with either arm," which is "made worse by her work at the [employing establishment]." He reiterated that appellant could only perform sedentary work and was not able to work more than four hours a day.

In a decision dated June 19, 1996, the Office terminated appellant's compensation on the grounds that her disability related to the accepted work condition had resolved and she no longer had any residuals related to that work condition.

Appellant requested a hearing, which was held on July 9, 1997. In a decision dated September 29, 1997, an Office hearing representative determined that the Office properly terminated appellant's compensation based on the opinion of the impartial referee physician. The Office hearing representative affirmed the Office's June 19, 1996 decision.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ 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.²

In the instant case, the Office properly determined that a conflict existed in the record between appellant's treating physician, Dr. Tahmoush, and the Office referral physician, Dr. Bennett, as to whether appellant had any evidence of a thoracic outlet syndrome related to

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

factors of her federal employment or any continuing disability or residuals related to the accepted work injury of median nerve irritation, precipitated by overuse. The Office also correctly sent appellant for an impartial medical evaluation with Dr. Balasubramanian to resolve that conflict.³

In situations where there are opposing medical reports of virtually equal weight and rationale exist and the case is referred to an impartial medical specialist for the purpose of resolving that conflict, the opinion of such specialist, if sufficiently rationalized and based upon a proper factual background, must be given special weight.⁴ The Board finds that the opinion of Dr. Balasubramanian is entitled to special weight as it is based on a proper factual background and provides a rationalized explanation as to why appellant no longer suffers disability or residuals causally related to factors of her employment. Dr. Balasubramanian also adequately explained that a diagnosis of thoracic outlet syndrome was not supported by the objective evidence of record including the normal EMG and nerve conduction studies of record.⁵ Thus, because the opinion of the impartial medical referee is found to be rationalized and entitled to special weight on the issue of continuing disability and residuals related to appellant's accepted work injury, the Board concludes that the Office properly carried its burden of proof in terminating appellant's compensation.

The decision of the Office of Workers' Compensation Programs dated September 29, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 8, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott

³ Section 8123 of the Federal Employees' Compensation Act provides that if there is a 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; *see Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁴ *Kathryn Haggerty*, 45 ECAB 383 (1994).

⁵ The Board notes that there is no rationalized medical opinion of record from which to conclude that appellant sustained thoracic outlet syndrome due to factors of her employment.

Alternate Member