

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA A. KEMP and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Washington, DC

*Docket No. 99-1366; Submitted on the Record;  
Issued March 7, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective December 6, 1998 on the grounds that appellant no longer had any disability causally related to her June 19, 1986 employment injury.

On June 19, 1986 appellant, then a 49-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she experienced aches in her left breast, the upper part of her left arm near her shoulder and on the left side of her head after she walked from behind her desk and tripped over some trays in the walkway. She also alleged that she experienced ringing in her ear. She stopped work on June 19, 1986. Appellant returned to full-duty work on July 7, 1986. She worked intermittently until November 7, 1986. She has not worked since November 7, 1986.

The Office accepted appellant's claim for cervical strain and concussion.

Dr. Earl C. Mills, a Board-certified neurologist and appellant's treating physician opined that appellant remained disabled due to her June 19, 1986 employment injury.

By letter dated June 13, 1996, the Office referred appellant along with a statement of accepted facts, medical records and a list of specific questions to Dr. Michael W. Dennis, a Board-certified neurosurgeon, for a second opinion examination. By letter of the same date, the Office advised Dr. Dennis of the referral.

Dr. Dennis submitted a July 9, 1996 medical report revealing a history of appellant's 1980 head injury which occurred as a result of an elevator closing on her head while she was at work, June 19, 1986 employment injury, and her medical treatment. He indicated his findings on physical examination, and a review of magnetic resonance imaging (MRI) scan and computerized tomographic (CT) scan results. Dr. Dennis stated that it would appear that appellant was probably being treated for post-traumatic headaches associated with neck and back pain. He opined that there was no objective physical correlation between appellant's symptoms

and her 1980 and 1986 injuries at that time. Dr. Dennis further opined that “[a]t this point strictly on the basis of her physical findings, I find no reason why [appellant] could not return to her previous occupation.”

The Office found a conflict in the medical opinion evidence and referred appellant along with a statement of accepted facts, medical records and a list of specific questions to Dr. Seth Morgan, a Board-certified neurosurgeon, for an impartial medical examination by letter dated September 17, 1998. By letter of the same date, the Office advised Dr. Morgan of the referral.

Dr. Morgan submitted an October 6, 1998 medical report indicating a history of appellant’s June 19, 1986 employment injury, complaints, medical treatment and family. He also indicated his findings on physical and neurological examination, and a review of medical records. Dr. Morgan diagnosed post-traumatic pain syndrome, depression and questionable visual, sensory and memory dysfunction. He stated that appellant’s present examination did not identify any objective neurologic findings. Appellant’s abnormal responses were all subjective in nature and the problems she reported with short term recall were questionable. In response to the Office’s specific questions, Dr. Morgan opined that appellant’s examination did not reveal any objective findings to suggest residuals of the accepted conditions and that all findings on neurologic examination were subjective in nature. He further opined that appellant’s disability appeared to be depression related and is multifactorial in etiology. Dr. Morgan stated:

“[C]ertainly, life stressors in general will tend to aggravate such a condition but I do not believe that the underlying condition is work related. Other medical issues which are intercurrent clearly play a part in her disability status. I am not in receipt of any cardiac data but if in fact she has had prior heart attacks, this may be a medical disability which would be unrelated to her work-related injury.”

Dr. Morgan further opined that there was no objective finding to support the contention that appellant was disabled from performing the physical requirements of her work and that there were no injury-related limitations identifiable on neurologic examination. Regarding appellant’s medical treatment, Dr. Morgan stated that further treatment was not required, but that appellant should have her noninjury-related medical conditions addressed and an assessment of work capacity should be addressed by her general medical physician. In an accompanying work capacity evaluation for musculoskeletal conditions, Dr. Morgan indicated that appellant had no employment-related limitations and that she could work eight hours per day. He also indicated appellant’s limitations due to the nonwork-related conditions of depression and cardiac disease.

In a notice of proposed termination of compensation dated November 5, 1998, the Office advised appellant that it proposed to terminate her compensation based on the October 6, 1998 medical opinion of Dr. Morgan. The Office also advised appellant to submit additional medical evidence supportive of her continued disability within 30 days.

The Office received Dr. Mills’ March 24, 1994 medical report revealing a history of his treatment of appellant. He noted his findings on objective examination, appellant’s medical treatment for her 1980 injury and post-myocardial infarct syndrome and her continued symptoms. Dr. Mills diagnosed chronic severe low back pain syndrome, bilateral lower extremity radiculopathy, post-traumatic headaches, failed back syndrome, post-traumatic

dizziness related to her head injuries secondary to the elevator accident at work. He opined that appellant remained permanently totally disabled for work due to her back and head injuries.

The Office also received Dr. Mills' October 9, 1996 medical report. In this report, Dr. Mills indicated a history of appellant's 1980 injury and 1986 employment injury. He further indicated that based on an MRI scan and computerized axial tomography (CAT) scan results, appellant had a basal ganglionic infarct giving rise to Parkinson's like syndrome which she never had prior to her elevator head injury. Dr. Mills also indicated that appellant continued to experience back pain and suffered from a failed back syndrome. Regarding appellant's volunteer work, he stated that this work was such that appellant could endure pain for an hour since she could stop work when she could no longer perform the work. Dr. Mills further stated that appellant's volunteer work probably benefited her more than the people for whom she performed the work in the form of mental sanctity. He then stated that it was very logical and clear that a head injury in an elevator, an upper torso injury and an associated back injury and knee involvement as a direct result of the accident were directly related to appellant's work injury. Dr. Mills concluded that appellant was never going to return to work, that she had a permanent injury, that she had a condition that was never expected to change and that for over the last 10 years the diagnostic tests, physical examinations and clinical history were consistent with appellant's present medical status.<sup>1</sup>

Further, the Office received Dr. Mill's November 20, 1998 attending physician's supplemental report. Dr. Mills noted the June 19, 1986 employment injury, and a diagnosis of chronic low back pain syndrome, bilateral lower extremity radiculopathy and post-traumatic headaches. He indicated that appellant's conditions were due to the injury for which compensation was claimed by placing a checkmark in the box marked "yes." Dr. Mills further indicated that appellant was totally disabled for her usual work by placing a checkmark in the box marked "yes."

By decision dated December 9, 1998, the Office terminated appellant's compensation benefits effective December 6, 1998 on the grounds that appellant no longer had any disability causally related to her June 19, 1986 employment injury.<sup>2</sup>

The Board finds that the Office properly terminated appellant's compensation effective December 6, 1998 on the grounds that appellant no longer had any disability causally related to her June 19, 1986 employment injury.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits.<sup>3</sup> After it has determined that

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<sup>1</sup> Dr. Mills' October 9, 1996 medical report was previously of record and was submitted at that time in response to the Office's May 30, 1996 letter advising him to explain appellant's continued disability and her ability to perform volunteer work while she was unable to return to her job with the employing establishment.

<sup>2</sup> The Board notes that subsequent to the Office's December 9, 1998 decision, the Office received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. See 20 C.F.R. § 501.2(c)(1).

<sup>3</sup> *Curtis Hall*, 45 ECAB 316 (1994); *John E. Lemker*, 45 ECAB 258 (1993); *Robert C. Fay*, 39 ECAB 163

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.<sup>4</sup>

Section 8123(a) 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.<sup>5</sup> When there exists 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>

In this case, Dr. Mills, a Board-certified neurologist and appellant's treating physician, opined that appellant remained totally disabled from work due to her June 19, 1986 employment injury while Dr. Dennis, a Board-certified neurosurgeon and an Office second opinion physician, opined that appellant was no longer disabled due to her employment injury. The Board finds that there was a conflict in the medical opinion evidence between Drs. Mills and Dennis regarding whether appellant continued to be disabled due to her 1986 employment injury. The Office, therefore, properly referred appellant to Dr. Morgan for an impartial medical examination pursuant to section 8123(a) of the Act.

The Office terminated appellant's compensation benefits based on Dr. Morgan's impartial medical opinion. In his October 6, 1998 medical report revealing a history of appellant's June 19, 1986 employment injury, complaints, medical treatment and family, Dr. Morgan opined that appellant was no longer disabled due to her employment injury based on the lack of objective findings indicating any residuals of appellant's accepted employment-related conditions. He further opined that the findings made were subjective in nature. Dr. Morgan also opined that appellant was not disabled from performing the physical requirements of her job and that she could perform her work without any physical limitations. Dr. Morgan's opinion is rationalized and based on an accurate factual and medical background.

In support of her continued employment-related disability, appellant submitted Dr. Mills' March 24, 1994 medical report revealing that she was permanently totally disabled. In further support of her continued employment-related disability, appellant submitted Dr. Mills' October 9, 1996 medical report indicating that she was permanently totally disabled as a direct result of her work injury. Dr. Mills' medical reports are insufficient to establish continued disability inasmuch as he failed to provide any medical rationale explaining how or why appellant's disability was caused by her June 19, 1986 employment injury.

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(1987).

<sup>4</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>5</sup> 5 U.S.C. § 8123(a); *see also Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>6</sup> *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

In his November 20, 1998 Form CA-2a, Dr. Mills indicated that appellant's condition of chronic low back pain syndrome, bilateral lower extremity radiculopathy and post-traumatic headaches were caused by her June 19, 1986 employment injury, and that appellant was disabled for her usual work by placing a checkmark in the boxes marked "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>7</sup> Inasmuch as Dr. Mills did not provide any medical rationale explaining a causal relationship between appellant's conditions and her June 19, 1986 employment injury, his reports are of diminished probative value.

Since Dr. Morgan's October 6, 1998 medical report constitutes the weight of the evidence in this case, the Office properly terminated appellant's compensation effective December 6, 1998 on the grounds that she no longer had any disability due to her June 19, 1986 employment injury.

The December 9, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
March 7, 2000

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>7</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).