

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AUDREY M. SCHULTZ-MUNZ and DEPARTMENT OF VETERANS
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, PA

*Docket No. 99-1806; Submitted on the Record;
Issued March 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that residuals of appellant's April 7, 1996 employment injury had ceased by November 24, 1997.

On April 7, 1996 appellant, then a 40-year-old nursing assistant, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured both her knees and shins when a patient kicked her. The Office accepted the claim for contusion of both knees and chronic pain in the right knee. On October 28, 1996 the Office put appellant on the disability rolls for temporary total disability. Appellant returned to light-duty work on December 23, 1996 and stopped work again on January 27, 1997.

In a report dated December 22, 1996, Dr. W. Scott Nettrour, a second opinion physician and Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed medical records. He concluded that appellant had recovered from her injury and was capable of performing her date-of-injury job as a nursing assistant with no restrictions. Dr. Nettrour opined that further medical treatment was unlikely to be required and that the objective evidence did not support that appellant had any permanent impairment in the use of her right leg.

In a March 11, 1997 report, Dr. Stephen G. Paxson, an attending physician and Board-certified in physical medicine and rehabilitation, diagnosed chronic right knee pain, probable reflex sympathetic dystrophy in the right lower extremity, somatic dysfunction of the pelvis and gait dysfunction secondary to her right lower extremity pain. Dr. Paxson indicated that appellant was totally disabled and was not to work for three months.

Due to the conflict in the medical opinions between Drs. Paxson and Nettrour, as to whether appellant continued to be disabled, the Office referred appellant to Dr. H. Andrew Wissinger, an impartial medical specialist and Board-certified orthopedic surgeon. In a report

dated April 4, 1997, Dr. Wissinger considered appellant's history of injury, performed a physical examination, reviewed medical records and concluded that appellant could return to her usual employment of nursing assistant. He concluded that appellant had no objective impairment of her lower extremities based upon his physical examination and that appellant's complaints were unrelated to her April 7, 1996 employment injury. The physician opined that appellant no longer had any residuals from her accepted employment injury and, thus, had no impairment which would prevent her from returning to her position as a nursing assistant without any restrictions.

On June 4, 1997 the Office referred appellant to Dr. Robert M. Yanchus apparently for a second impartial medical opinion to resolve a conflict in the medical opinion evidence between Drs. Paxson and Wissinger. In a report dated July 10, 1997, Dr. Yanchus opined that appellant's work-related injuries should have resolved by June 1, 1996 and that appellant's current symptoms were unrelated to her April 7, 1996 employment injury. Dr. Yanchus concluded that appellant was capable of performing employment as a nursing aid.

In a report dated July 9, 1997, Dr. Paxson diagnosed chronic right knee pain secondary to reflex sympathetic dystrophy.

In a work restriction form (Form OWCP-5) dated July 2, 1997, Dr. Paxson indicated that appellant was unable to work eight hours, but could work as many hours as she could tolerate with the restrictions he noted.

By letter dated October 17, 1997, the Office issued a notice of proposed termination which was finalized by decision dated November 24, 1997.

In a report dated November 4, 1997, Dr. Paxson diagnosed right lower extremity pain due to her work injury as well as reflex sympathetic dystrophy due to her work injury. Dr. Paxson concluded that appellant would be "unable to ever return as a nurses (sic) aide due to the nature of the activities."

In a February 10, 1998 report, Dr. Paxson opined that appellant was totally disabled from returning to work as a nurse's aid.

In May 1, 1998 report, Dr. Paxson diagnosed reflex sympathetic dystrophy of her right lower extremity due to her employment injury.

Appellant, through her representative, requested a hearing which was held on November 20, 1998.

By decision dated February 11, 1999, the hearing representative affirmed the November 24, 1997 decision. The hearing representative determined that Dr. Wissinger, the impartial medical examiner, provided sufficient rationale to support his conclusion that appellant had no continuing disability related to her accepted April 7, 1996 employment injury.¹

¹ The hearing representative noted that the Office had "no apparent reason for referring appellant to a second impartial examiner, since Dr. Wissinger provided a well-reasoned report in support of his opinions" regarding the referral to Dr. Yanchus for a second impartial opinion. The Office found Dr. Yanchus to be a second opinion

The Board finds that the Office properly determined that any residuals from appellant's April 7, 1996 employment injury had ceased by November 24, 1997.

Under the Federal Employees' Compensation Act,² once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.³ Thus, after the Office determines that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing either that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.⁴

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁵ The Board finds that Dr. Wissinger's April 4, 1997 report is sufficiently rationalized to be entitled to special weight.⁶

In his April 4, 1997 report, Dr. Wissinger opined that there was no objective evidence to support that appellant had any impairment of her lower extremities and concluded that there was no permanent disability and that appellant was capable of performing her position as a nursing assistant with no restrictions. Dr. Wissinger's opinion is supported by medical rationale and is fully responsive to the inquiries of the Office. The Board finds that the report of Dr. Wissinger is entitled to special weight and is sufficient to support the termination of appellant's compensation benefits. Furthermore, Dr. Wissinger's opinion is supported by the second physician opinions of Drs. Nettrour and Yanchus who concluded that appellant no longer had any residual disability due to her accepted employment injury. Thus, the Office properly terminated appellant's compensation benefits based upon Dr. Wissinger's report.⁷

physician rather than an impartial medical specialist.

² 5 U.S.C. §§ 8101-8193.

³ *William Kandel*, 43 ECAB 1011, 1020 (1992).

⁴ *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

⁵ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane D. Roanhaus*, 42 ECAB 288 (1990).

⁶ The Board notes that the Office inadvertently referred appellant to Dr. Yanchus for a second impartial examination, finding a conflict between Dr. Wissinger, the impartial medical examiner, and Dr. Paxson, appellant's treating physician. The Board notes, however, that since Dr. Paxson was on one side of the conflict that Dr. Wissinger resolved, his additional reports reiterating his opinion on appellant's disability are insufficient to overcome the weight accorded to Dr. Wissinger's opinion. See *Dorothy Sidwell*, 41 ECAB 857 (1990). For this reason, Dr. Yanchus was a second opinion physician.

⁷ The Board notes that by letter dated June 16, 1999 counsel was requested to inform the Board by July 1, 1999 if he wanted oral argument in this case. As no response was received, the Board has proceeded to decide the case on the record.

The decision of the Office of Workers' Compensation Programs dated February 11, 1999 is affirmed.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member