

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAIL E. MARTIN and DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS, Leroy, NY

*Docket No. 00-936; Submitted on the Record;
Issued August 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained a recurrence of disability commencing January 20, 1998, causally related to her June 18, 1996 employment injuries;¹ and (2) whether the Office of Workers' Compensation Programs properly determined that appellant had no work-related disability after March 15, 1999, the date the Office terminated her compensation and medical benefits.

The Board has given careful consideration to the issues involved, the contentions of the parties on appeal and the entire case record. The Board finds that the December 9, 1999 decision of the Office hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.

On appeal appellant's representative argues that the testimony of appellant's treating physician at the hearing was not given proper weight and that the Office's second opinion specialist's examination was perfunctory. In this case, the Office found a conflict in medical evidence between the reports of appellant's treating physicians and the second opinion specialist, and referred appellant, together with a statement of accepted facts, specific questions to be addressed and the complete case record, to a properly chosen impartial medical examiner to resolve the conflict.² The impartial medical examiner, Dr. Arlen K. Snyder, a Board-certified orthopedic surgeon, reviewed the record, examined and tested appellant, and provided several reports which, when taken together, constituted a thorough, complete and well-rationalized evaluation based on an accurate and complete factual and medical background. Dr. Snyder found that appellant had not sustained a recurrence of disability commencing January 20, 1998,

¹ Appellant's claim was accepted for a fractured right humerus, fractured ribs, and bilateral carpal tunnel syndrome.

² Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight. *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

causally related to her 1996 employment injuries. He further found that appellant had no continuing disability, causally related to her fractured humerus, fractured ribs or carpal tunnel syndrome,³ and had no injury-related residuals that required any further medical treatment.

Dr. Synder's reports were complete and based on a proper factual and medical background, and his overall evaluation was well rationalized. His opinion is entitled to that special weight accorded impartial medical examiners and therefore constitutes the weight of the medical opinion evidence of record.⁴

At the hearing appellant's treating physician, Dr. T. Wibberly-Baker, a Board-certified occupational medical specialist, testified that appellant had multiple ongoing pathologic processes, which included neck discomfort and cervical radiculopathy, upper back discomfort, paraspinal pain, lower back discomfort, myofascial strain and other muscle spasms, pinched nerve roots, tremors, multiple areas of sprain and strain, tingling in her lower extremities, right hip pain, teeth grinding, jaw aches, headaches and depression.

The hearing representative did not disregard the content of Dr. Wibberly-Baker's testimony, but found correctly that her testimony was insufficient to overcome the special weight accorded the impartial medical examiner's reports. None of the pathologic processes she reported were accepted by the Office as being work related. No factual evidence or medical rationale was provided to establish that they occurred during, or resulted from, the 1996 automobile accident.

Moreover, Dr. Wibberly-Baker was on one side of the medical opinion conflict that was resolved by the reports of Dr. Synder. Her subsequent hearing testimony, as reviewed by the Board, is redundant of her previous reports, and is thus insufficient to overcome the special weight accorded the reports of the impartial medical examiner.⁵

³ Appellant underwent carpal tunnel releases in 1997; the scars were reported as well healed without residuals.

⁴ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996)

⁵ See *Thomas Bauer*, 46 ECAB 257 (1994) (an additional report from appellant's physician, which essentially repeated his earlier findings and conclusions, was insufficient to overcome the weight accorded to an impartial medical examiner's report where appellant's physician had been on one side of the conflict in medical opinion that the impartial medical examiner resolved).

The decision of the Office of Workers' Compensation Programs dated December 9, 1999 is hereby affirmed.

Dated, Washington, DC
August 8, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member