

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH A. CAMALO and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 01-447; Submitted on the Record;
Issued August 21, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that residuals of appellant's employment injury had ceased.

On March 6, 1997 appellant, then a 66-year-old letter carrier, filed an occupational disease claim alleging that he sustained injury causally related to his federal employment. The Office accepted the claim for left shoulder tendinitis. He returned to work in a light-duty position, then in 1999 he returned to carrying mail.¹

In a letter dated May 13, 1999, the Office notified appellant that it proposed to terminate his medical benefits on the grounds that his employment-related condition had resolved. After further development of the record, the Office issued a decision dated March 13, 2000, stating that appellant's claim for continuing medical benefits and any subsequent claims for wage loss were denied. By decision dated October 11, 2000, an Office hearing representative affirmed the prior decision. The hearing representative found that the opinion of Dr. Markus Kornberg, a Board-certified orthopedic surgeon, was entitled to special weight as an impartial medical specialist.

The Board finds that the Office did not meet its burden of proof to terminate medical benefits.

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.²

¹ There is evidence in the record that appellant filed traumatic injury claims for August 11, 1999 and February 24, 2000. These claims are not before the Board on this appeal.

² *Furman G. Peake*, 41 ECAB 361 (1990).

The Office initially issued a notice of proposed termination on May 13, 1999; the March 13, 2000 decision states that appellant's claim for continuing medical benefits and any subsequent claim for wage loss was denied. With respect to burden of proof in this case, the Office does have the burden to terminate medical benefits for an accepted employment injury. Since appellant did return to light-duty work, it would be his burden to establish a recurrence of total disability.³ There did not, however, appear to be a pending claim for wage loss with respect to this claim; the Office referred to future claims for wage loss.

In terminating medical benefits, the Office hearing representative gave special weight to the opinion of Dr. Kornberg as an impartial medical specialist.⁴ It is well established that when a case is referred to an impartial medical specialist pursuant to 5 U.S.C. § 8123(a) for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁵

A review of the record does not confirm that appropriate Office procedures were followed with respect to the referral to Dr. Kornberg. A memorandum dated August 20, 1999 states that the case has been referred for second opinion examination, and provides questions for an orthopedic surgeon. Unlike the selection of a second opinion physician, the selection of an impartial medical specialist is made by a strict rotational system using appropriate medical directories.⁶ There is no indication that the Office properly notified appellant that a conflict in the medical evidence existed and that the referral to Dr. Kornberg was intended to resolve the conflict. An August 20, 1999 letter to appellant states that it has been determined that "a SECOND (referee) OPINION EVALUATION" would be helpful in his case. The remainder of the notice is consistent with notices provided for second opinion examinations; appellant was advised that he could arrange to have a physician of his choice present at the examination, but the second opinion physician was in charge of the examination.

The Board has held that the Office must clearly notify a claimant of the existence of a conflict in the medical evidence and of the identity of the physician selected to resolve the conflict.⁷ A claimant has a right to be apprised of the existence of a conflict in the medical evidence, and, upon request, to participate in the selection of an impartial specialist or raise objections to the specialist selected.⁸ The Board finds that the August 20, 1999 letter is not sufficient to establish notification of a conflict in the medical evidence existed under 5 U.S.C. § 8123(a). The letter appears to be notification of a second opinion referral, with the word "referee" in small letters without further explanation. There is no statement that a conflict exists or that the referral is for the purposes of resolving a conflict. In addition, as noted above, the

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ The Office found a conflict in the medical evidence between an attending physician, Dr. Edward Feldman, an orthopedic surgeon, and Dr. Steven Warren, an orthopedic surgeon selected as a second opinion referral physician.

⁵ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4 (March 1994).

⁷ *Henry J. Smith, Jr.*, 43 ECAB 524 (1992); *reaff'd on recon.*, 43 ECAB 892 (1992).

⁸ *Id.*

record does not confirm that Dr. Kornberg was selected according to the rotational system appropriate for impartial medical specialists. For these reasons, the Board finds that the report of Dr. Kornberg may not be used to resolve the conflict in the medical evidence. Since it is the Office's burden to terminate medical benefits, they did not meet their burden in this case.

The decisions of the Office of Workers' Compensation Programs dated October 11 and March 13, 2000 are reversed.

Dated, Washington, DC
August 21, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member