

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERRY J. KEATING and U.S. POSTAL SERVICE,
POST OFFICE, Fort Collins, CO

*Docket No. 00-1983; Submitted on the Record;
Issued December 17, 2001*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective August 14, 1999; and (2) whether appellant met his burden of proof to establish that he had any disability after August 14, 1999 causally related to his employment injury.

On September 28, 1993 appellant, then a 51-year-old former clerk, filed an occupational disease claim alleging that employment factors caused chronic pain in the right wrist. Appellant had been terminated on June 22, 1993. The Office initially accepted that appellant sustained employment-related tendinitis and osteoarthritis of the right wrist and that appellant received appropriate compensation.¹ The employing establishment submitted an investigation report dated August 4, 1997 with supporting documentation which advised that appellant was observed playing basketball on eight separate occasions from February 14 to July 23, 1997.

On May 4, 1998 the Office referred appellant, along with a statement of accepted facts, a set of questions and the medical record, to Dr. Michael J.V. Gordon, who is Board-certified in plastic and hand surgery, for a second opinion evaluation. In an October 29, 1998 letter, the Office indicated to him that the accepted condition was temporary aggravation of osteoarthritis of the right wrist. Finding that a conflict in the medical evidence existed between the opinions of Dr. Gordon and appellant's treating Board-certified orthopedic surgeon, Dr. Dale C. Kaiser, by letter dated March 31, 1999, the Office referred appellant, along with a statement of accepted facts and a set of questions to Dr. Jeffrey Sabin, a Board-certified orthopedic surgeon, for an impartial medical examination.

¹ On February 21, 1995 the Office granted appellant a schedule award for an eight percent loss of use of the right arm. By decision dated November 3, 1995, the Office determined that appellant's actual earnings represented his wage-earning capacity. In a June 30, 1997 decision, the latter decision was modified by an Office hearing representative. These decisions are not before the Board in the present appeal.

By letter dated June 4, 1999 and finalized June 7, 1999, the Office informed appellant that it proposed to terminate his compensation, based on the opinions of Drs. Gordon and Sabin. In a July 6, 1999 letter, appellant disagreed with the proposed termination and submitted additional reports from Dr. Kaiser. By decision dated July 22, 1999 and finalized July 23, 1999, the Office terminated appellant's compensation benefits, effective August 14, 1999, on the grounds that his work-related aggravation had ceased.

On March 20, 1999 appellant, through counsel, requested a hearing and submitted additional evidence. In a written argument submitted to the hearing representative, appellant's attorney argued that a conflict did not exist because Dr. Gordon had been misled regarding the accepted condition and, therefore, Dr. Sabin's report should be stricken from the record. Subsequent to the hearing, appellant submitted an additional medical report. In a December 13, 1999 decision, an Office hearing representative affirmed the prior decision. The instant appeal follows.

The Board finds that the Office met its burden of proof to terminate appellant's compensation.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.² Furthermore, in situations where there are 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 on a proper factual background, must be given special weight.³

The medical evidence relevant to the termination of appellant's compensation includes a number of reports from his treating Board-certified orthopedic surgeon, Dr. Kaiser, who advised that appellant's condition was employment related. By report dated June 2, 1998, Dr. Gordon provided a second opinion evaluation for the Office, diagnosed osteoarthritis and opined that this condition was perhaps aggravated but not caused by the employment injury. In a report dated July 17, 1998, Dr. Gordon reiterated his opinion that appellant's arthritis was merely aggravated by the employment injury and noted that the arthritic condition had worsened. By letter dated October 29, 1998, the Office informed Dr. Gordon that the statement of accepted facts was incorrect and that appellant's accepted condition was temporary aggravation of osteoarthritis of the right wrist. In a report dated December 4, 1998, Dr. Gordon advised that appellant's current condition was caused by the underlying arthritis and was not due to the employment injury.

Dr. Sabin provided an impartial medical examination dated April 19, 1999 in which he advised that, while appellant had osteoarthritis involving both wrists and that his right wrist condition had been aggravated by employment activities, any work-related problem had ceased. Dr. Sabin reiterated his conclusions in a supplementary report dated May 13, 1999.

² See *Patricia A. Keller*, 45 ECAB 278 (1993).

³ See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

Dr. Kaiser submitted a June 24, 1999 report in which he advised that appellant had post-traumatic arthritis of the hands and wrists due to overuse phenomenon. While it preexisted his work-related injury, the arthritis was essentially asymptomatic and there was no way of predicting whether it would have occurred in the absence of an overuse situation at work. He concluded that appellant's problem was more one of thumb and hand function which did not preclude his playing basketball and recommended that appellant undergo a functional capacity evaluation.

The "questions for resolution" provided by the Office to Dr. Sabin asked that he state whether work caused or aggravated osteoarthritis of the right wrist and whether any work-related disability continued. Dr. Sabin unequivocally opined that appellant's employment had caused a temporary aggravation of appellant's preexisting arthritis, which had ceased.

The Board therefore finds that a conflict in medical evidence existed and, based on the thorough, well-rationalized opinion of Dr. Sabin, the impartial medical examiner, the Office properly found that appellant's accepted condition was temporary aggravation of osteoarthritis of the right wrist. Likewise, the Board finds that the weight of the medical evidence is represented by Dr. Sabin's opinion that appellant had no residuals of his accepted wrist conditions. While Dr. Kaiser submitted a report subsequent to Dr. Sabin's examination, he essentially reiterated his previous conclusion that appellant's arthritis was employment related. His report is, thus, insufficient to overcome the special weight accorded Dr. Sabin. The Office, therefore, properly terminated appellant's compensation effective August 14, 1999.

The Board further finds that appellant failed to establish that he had an employment-related disability after August 14, 1999.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had disability causally related to his accepted injury.⁴ To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵ Causal relationship is a medical issue,⁶ and the medical evidence required to establish a causal relationship is rationalized medical evidence.

Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the

⁴ See *George Servetas*, 43 ECAB 424 (1992).

⁵ See 20 C.F.R. § 10.110(a); *Kathryn Haggerty*, *supra* note 3.

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

The medical evidence submitted subsequent to the July 23, 1999 decision terminating appellant's compensation includes a November 11, 1999 report in which Dr. Kaiser reiterated his opinion that appellant's condition was employment related. Appellant also submitted a report dated November 30, 1999 in which Dr. Kenneth H. Duncan, a Board-certified orthopedic surgeon, repeated appellant's job and treatment history and advised that he had reviewed the statement of accepted facts and records from Drs. Kaiser and Sabin.

Dr. Duncan noted findings on examination of the wrist and hand and diagnosed degenerative arthritis of the STT⁸ joint of the right wrist. He stated that by history appellant was asymptomatic until he had worked at the employing establishment for seven to eight months and opined that appellant's repetitive work duties aggravated the preexisting arthritis which had "never calmed down since that point." Dr. Duncan advised that appellant could not return to his previous employment because he could not repetitively pinch or grasp. In a January 13, 2000 report, he explained that appellant could play basketball but reiterated that he could not return to a mail sorting job.

In this case, while appellant submitted medical evidence regarding disability after August 14, 1999, Dr. Kaiser merely reiterated his prior conclusions that had created the conflict regarding appellant's condition. The Board has frequently explained that additional reports from a physician who was on one side in creating the conflict in medical opinion are insufficient to overcome the weight of the referee opinion or to create a new conflict.⁹ Furthermore, while Dr. Duncan indicated that appellant's symptoms had not "calmed down," his reports did not explain how or why appellant's brief employment would cause a permanent aggravation in his preexisting degenerative condition.

⁷ *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ Dr. Duncan stated that the STT joint is also known as the scaphoid-greater or lesser multangular joint or the navicular-greater or lesser multangular joint.

⁹ *See Thomas Bauer*, 46 ECAB 257 (1994).

The decision of the Office of Workers' Compensation Programs dated March 16, 2000 is hereby affirmed.

Dated, Washington, DC
December 17, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member