

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANKIE C. YOUNGUE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, REGIONAL OFFICE, Detroit, MI

*Docket No. 00-340; Submitted on the Record;
Issued July 13, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective August 27, 1999 on the grounds that she had no disability due to her employment injury after that date.

This case is before the Board for a second time. In the prior decision, the Board reversed a September 18, 1995 termination decision of the Office. The reversal of the Office's decision was based on the fact that the July 5, 1995 narrative opinion provided by Dr. Jeffrey M. Hall, a Board-certified general and hand surgeon, who provided a second opinion evaluation for the Office, was inconsistent with his work capacity evaluation submitted the same day.¹

The Office found a conflict of medical opinion existed between Dr. Hall, the Office referral physician, and Dr. Walter L. Everett, a Board-certified orthopedic surgeon and appellant's treating physician, regarding continuing disability as causally related to federal employment and referred appellant, along with a statement of accepted facts, to Dr. John V. Corbett, a Board-certified orthopedic surgeon, to settle the conflict of medical opinion in this case. By decision dated August 27, 1999, the Office terminated appellant's compensation effective the same day on the grounds that she had no disability due to her work-related orthopedic conditions after that date. The Office based its termination on the opinion of Dr. Corbett, to whom it referred appellant.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective August 27, 1999.

Under the Federal Employees' Compensation Act,² once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.³ The Office

¹ Docket No. 96-475 (issued March 9, 1998).

² 5 U.S.C. §§ 8101-8193.

may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

In this case, the Office has accepted the conditions of stenosing tenosynovitis of the right thumb, arthrodesis surgery, fusion of the metacarpophalangeal joint, tenosynovectomy of the right thumb as being effects of an injury appellant sustained at work on February 1, 1983. The record reflects that, after appellant was examined by Dr. Hall, an Office referral physician, in 1995, the claim was expanded to include arthritis of the right thumb joint. The record further reflects that appellant completely stopped working on December 4, 1990.

Initially, the Board notes that, although the Office considered Dr. Corbett to be an impartial medical examiner, no conflict of medical opinion existed at the time appellant was referred to him. The Board, in its first decision of this case, found the report of the second opinion physician, Dr. Hall, was inconsistent with the work capacity evaluation issued on the same date. As the Office did not request further clarification from him but instead referred appellant to Dr. Corbett, his resulting opinion is that of a second opinion physician and, accordingly, is not afforded the special weight given to an impartial specialist.⁶

In an April 20, 1999 medical report, Dr. Corbett detailed appellant's factual and medical history including her history of injury and medical treatment. He noted on examination that the right upper extremity revealed possible very slight limitation of shoulder evaluation, although it was hard to get appellant to comply. Normal flexion, extension, pronation and supination of the elbow and forearms were noted along with normal wrist motions for both wrists. The finger motions were normal in all fingers of both hands except for the right thumb, but it was noted that the right thumb was in good position. Dr. Corbett stated that appellant could use the interphalangeal joints of the thumb normally, but the metacarpophalangeal joint of the right thumb was sold and rigid from the fusion that Dr. Everett did. Measurements of the circumstances of the thumb, palm of the hand and forearm of the right side were compared with the left side and measured the same. Dr. Corbett noted that it was difficult to test the right hand for tenderness and stated that, when any part of the right thumb was touched with even a very light touch, appellant jerked her hand away and complained of a lot of pain. Pain was also complained of when her hand was squeezed anywhere on the thumb side and also pain when pressure was applied to the forearm about six inches up from the wrist towards the elbow. Temperature and color of both hands were exactly the same as were the pulses at the wrists and pattern of sweating in both hands. Dr. Corbett stated that the April 20, 1999 x-ray of the right hand was normal with the exception of a surgical fusion of the first carpometacarpal joint. Based on the history of injury, physical examination, statement of accepted facts and the Office's

³ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁴ *Id.*

⁵ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *See Brady L. Fowler*, 44 ECAB 343, 352 (1992)

questions, he diagnosed resolved right hand tenosynovitis as there was no objective findings on examination, no swelling or deformity. Dr. Corbett noted that the only finding was stiffness of the first carpometacarpal joint, which was due to a prior fusion of that joint. He stated that the fusion would have eliminated any arthritis, which would have occurred following the tenosynovectomy. Dr. Corbett further diagnosed a stiff thumb and related that this operation was done by Dr. Everett to make the thumb stiff. Accordingly, the stiffness of the thumb was permanent. Dr. Corbett stated that no arthritis was present and that the arthritis was eliminated by the operation to fuse the thumb. No spasms were present on examination of the right hand. He stated that, from an objective standpoint, there were no residuals that would disable appellant from her job as a clerk as described in the statement of facts. Dr. Corbett opined that appellant was able to work as a stiff thumb would not keep her from using her hand properly and especially for typing. The thumb is not deformed and she should be able to use the hand. Regarding appellant's complaint of pain with light touch, Dr. Corbett opined that this was not a significant factor since all of the other findings were not suggestive of a neurological problem despite appellant's complaints of severe pain. He did recommend that appellant soak her hand in slightly warm water for 20 minutes once a day and to squeeze a soft sponge under water with her hand to eliminate any symptoms appellant might have.

The record also contains recent reports of Dr. Everett, appellant's attending orthopedic surgeon. The record reflects that, on December 24, 1998, the Office authorized exercise therapy and paraffin bath treatments of the hands at three days a week for the period January 1 to March 1, 1999. In a February 2, 1999 report, Dr. Everett noted that appellant had not reached maximum improvement yet and stated that hopefully the paraffin bath treatments would provide significant symptomatic relief and that appellant would be able to resume her work as a clerk. In a letter dated February 5, 1999, the Office requested an updated report from Dr. Everett to determine appellant's rights to ongoing compensation benefits and directed him to answer specific questions concerning appellant's condition. In a March 2, 1999 report, Dr. Everett stated that appellant was utilizing a home exercise program and a paraffin bath. Formal physical therapy was being discontinued. Localized tenderness about the wrist was noted. Dr. Everett indicated that he would see appellant in approximately two months to monitor her progress. In a corresponding OWCP-5c work capacity evaluation form, Dr. Everett indicated that currently appellant could work less than four hours. He indicated that appellant would be able to work an eight-hour workday with limitations on repetitive movements of her right wrists and elbow and limitations on the right hand for pushing, pulling, and lifting as of March 15, 1999. No further reports were received from Dr. Everett.

In the present case, the weight of the evidence lies with the second opinion physician, Dr. Corbett. In his April 20, 1999 report, Dr. Corbett opined that there were no residuals, from an objective standpoint, that would disable appellant from performing her date-of-injury job. He stated that the right hand tenosynovitis had resolved as there were no objective findings on examination, no swelling or deformity. Dr. Corbett noted that the only finding was stiffness of the first carpometacarpal joint, which was the result of a prior fusion of that joint, and that there were no findings of arthritis. He specifically opined that, since the thumb was not deformed, appellant would be able to work as a stiff thumb would not keep her from using her hand properly, especially for typing. Dr. Corbett further opined that appellant's pain was not a significant factor since all other findings were not suggestive of a neurological problem. His opinion is well rationalized and establishes that appellant had recovered from her accepted

employment-related conditions. The opinion of Dr. Everett, appellant's attending orthopedic surgeon, dated March 2, 1999, in which he stated that appellant would be able to work an eight-hour workday with limitations on repetitive movements of the right wrist and elbow and restrictions on the right hand for pushing, pulling, and lifting is not well rationalized as he did not provide any explanation for appellant's ongoing disability or offer his objective findings with appellant's subjective complaints.⁷ Inasmuch as Dr. Corbett's opinion is well rationalized and establishes that appellant could return to work without restrictions, it constitutes the weight of the evidence and justifies the Office's termination of benefits.

The decision of the Office of Workers' Compensation Programs dated August 27, 1999 is affirmed.⁸

Dated, Washington, DC
July 13, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁷ See *Larry Warner*, 43 ECAB 1027, 1032 (1992).

⁸ The Board's jurisdiction on appeal is limited to a review of the evidence, which was in the case record before the Office at the time of its final decision; see 20 C.F.R. § 501.2(c). In this case, the Board's jurisdiction to review the evidence ended August 27, 1999, the date the Office issued its termination decision. The record reflects and Robert M. Sullivan, district director, acknowledged in a letter of September 28, 1999 to Senator Carl Levin, that certified mail receipts established that appellant responded to the July 12, 1999 notice of proposed termination in a timely fashion. Mr. Sullivan stated that the documents associated by appellant were not associated with her case file and could not be located. He further stated that, since the determinative issue in appellant's case is medical in nature, only medical evidence sufficient to overcome the weight of Dr. Corbett's opinion could have a possible effect on the decision. Mr. Sullivan noted that the documentation appellant stated she submitted did not constitute medical evidence and therefore would not affect the decision. As the Board is precluded from reviewing any documentation appellant submitted after August 27, 1999, appellant may resubmit the documentation and any legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 10.606(b) (1999).