

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NANCY M. DISPENSE and DEPARTMENT OF HEALTH & HUMAN SERVICES, OFFICE OF HEARINGS & APPEALS, New York, NY

*Docket No. 00-1765; Submitted on the Record;  
Issued July 13, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective February 1, 1997.

The Office accepted appellant's claim for contusion of the left knee, left elbow and left shoulder.

In a report dated August 27, 1996, appellant's treating physician, Dr. Robert J. Krenzer, a Board-certified psychiatrist and neurologist, who first treated appellant on April 25, 1994, considered appellant's history of injury, performed a physical examination and reviewed magnetic resonance imaging (MRI) scans of the brain which revealed areas of encephalomalacia due to trauma. He opined that the condition was "not likely to be due to cerebrovascular infarction or demyelinating disease, but probably secondary to trauma." Dr. Krenzer noted that appellant had a very unstable gait and required the assistance of a quad cane, and a wheelchair for longer distances. He concluded that appellant suffered an injury to her brain, "probably a bilateral temporal lobe contusion," and as a result was permanently totally disabled.

In a report dated March 21, 1996, the referral physician, Dr. Frank A. Luzi, an orthopedic surgeon, considered appellant's history of injury, performed a physical examination, and reviewed an MRI scan dated June 1, 1994 which showed a bilateral old temporal lobe infarct and an electromyogram (EMG) report dated March 1992 which suggested peripheral neuropathy. He stated that the exact diagnosis had been elusive and many consulting physicians felt that there was no organic disease. Dr. Luzi diagnosed mild left shoulder impingement and mild left knee discomfort related to the November 28, 1990 employment injury. He opined that appellant could work four to six hours a day in a sedentary job which required no repetitive overhead activity with her left upper extremity.

To resolve the conflict between Drs. Krenzer and Luzi's opinions as to whether appellant was disabled, the Office referred appellant to an impartial medical specialist, Dr. Owen W. Young, a Board-certified orthopedic surgeon. In his report dated September 19, 1996,

Dr. Young considered appellant's history of injury, performed a physical examination and reviewed a computerized axial tomography (CAT) scan dated March 9, 1992 of appellant's lumbar spine showing, in part, bilateral facet narrowing at all levels and the June 1, 1994 MRI brain scan showing old temporal lobe infarcts. He considered that Dr. Krenzer diagnosed an x-ray as showing an eighth thoracic compression fracture and diffuse osteopenia, and found that the bone scan dated November 21, 1995 was compatible with the compression fracture and bilateral degenerative arthritis of appellant's knees. Dr. Young reviewed an MRI brain scan dated October 24, 1995 which showed, in part, encephalomalacia of appellant's temporal lobes. He opined that appellant was disabled but not due to the November 29, 1990 employment injury. Dr. Young stated that there was the presence of neurologic abnormality but he could not identify the diagnosis. He stated that "[t]he presence of hemiparesis may be disputed in degree but not in fact" and "[t]he degree of measurable atrophy of the left arm and especially the leg when compared to the normal right cannot be fabricated."

Dr. Young believed that although appellant had a fall, the changes resulting in her left knee were not of traumatic origin. He stated that "[m]eniscus derangement if identified and appropriately treated without postoperative complication results in prompt functional recovery." Dr. Young opined that any symptoms and functional deficit in appellant's left knee resulted from causes other than the trauma described in the record. He concluded that he was unable to identify any of appellant's present complaints or physical abnormalities of a musculoskeletal type to be a consequence of the November 29, 1990 employment injury.

In a work capacity evaluation dated September 19, 1996, Dr. Young opined that appellant's disability was secondary to a left hemiparesis which was worsening based on review of serial examination and that her disability did not result from a work-related injury.

On December 17, 1996 the Office issued a notice of proposed termination of compensation, stating that Dr. Young's opinion constituted the weight of the medical evidence and established that appellant had no continuing disability after November 29, 1990.

Appellant submitted the MRI scan dated October 24, 1995 of her brain showing, in part, bilateral areas of encephalomalacia involving the inferior-anterior aspects of the temporal lobes. She also submitted a statement dated December 28, 1996 chronicling her problems of pain with her feet and her left leg, the medical treatment she received and her need to use a cane and wheelchair.

By decision dated January 24, 1997, the Office terminated appellant's compensation benefits effective February 1, 1997, stating that appellant had no continuing related disability.

By letter dated February 14, 1997, appellant requested an oral hearing before an Office hearing representative, which was eventually held on February 24, 1999.<sup>1</sup> At the hearing,

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<sup>1</sup> Initially, by decision dated April 10, 1997, the Office denied appellant's request for an oral hearing because the request was untimely. Appellant appealed to the Board which by order granting remand dated February 19, 1998 found that appellant's request was timely and the Office erred in denying the request. The Board therefore remanded the case, instructing the Office to schedule the requested oral hearing, and issue an appropriate decision on the merits of the claim.

appellant testified that she always had pain in her knees and trouble walking since the November 29, 1990 employment injury. She testified that she also had pain in her left elbow and left upper arm. Appellant stated that she was currently seeing a neurologist, Dr. Eugene Gosy, a neurologist with a specialty in pain management, who gave her pain medication and a TENS unit. Appellant testified that before the work accident she was very active in that she walked a lot and she was independent, but now she was “stuck” in the house, was unable to do work in the house and was unable to stand for long periods of time or even hold a pan. She stated that she used a walker at home and a wheelchair for long distances. Appellant stated that she had arthritis in her leg and the pain was “very bad.”

Appellant submitted additional evidence consisting of an operative report dated October 28, 1998 from Dr. Joseph Buran, a Board-certified orthopedic surgeon. The report documented that appellant underwent an arthroscopy with partial medial and lateral meniscectomy for a medial meniscus tear. The report also stated that mild degenerative changes were seen of the medial compartment of the knee, and the medial meniscus had evidence of pseudo gout and dystrophic calcification. Further, the report stated there was chondrocalcinosis of the lateral meniscus.

By decision dated January 28, 2000, the Office hearing representative affirmed the Office’s January 24, 1997 decision.

The Board finds that the Office properly terminated appellant’s compensation benefits effective January 24, 1997.

To resolve the conflict in the evidence between Drs. Luzi and Krenzer’s opinions as to whether appellant was capable of working the Office referred appellant to an impartial medical specialist, Dr. Young. In his report dated September 19, 1996, based on appellant’s history of injury, performed a physical examination, reviewed diagnostic tests and concluded that the changes in appellant’s knee were not of traumatic origin. He stated that meniscus derangement if identified and appropriately treated without postoperative complication resulted in prompt function recovery. Dr. Young found no present complaints or physical abnormalities of a musculoskeletal type resulting from the November 29, 1990 employment injury.

The Board has held 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.<sup>2</sup> In this case, the opinion of Dr. Young, the impartial medical specialist, is complete and well rationalized and therefore establishes that appellant no longer had continuing disability from the November 29, 1990 employment injury. Contrary to appellant’s contention on appeal, Dr. Buran’s postoperative report dated October 28, 1998 does not undermine Dr. Young’s report as Dr. Buran’s report does not address causation or disability. Further, although appellant contends on appeal that the Office hearing representative erred in failing to consider Dr. Gosy’s report dated March 5, 1999 which allegedly establishes she has a permanent work-related disability, his

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<sup>2</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

report is not in the record. Dr. Young's report, which is complete and well rationalized constitutes the weight of the evidence and justifies the Office's termination of benefits.

The decision of the Office of Workers' Compensation dated January 28, 2000 is hereby affirmed.

Dated, Washington, DC  
July 13, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member