

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VERDIE M. STAGGERS and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Little Rock, AR

*Docket No. 00-1901; Submitted on the Record;  
Issued July 3, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has sustained any additional conditions causally related to her September 6, 1991 employment injuries, other than the accepted head contusion, cervical, shoulder and lumbosacral strains, and depression.

On a prior appeal, the Board affirmed a May 8, 1996 decision of the Office of Workers' Compensation Programs, finding that appellant had no continuing disability after October 17, 1992 causally related to her September 6, 1991 employment injuries.<sup>1</sup> The Board also noted that appellant had submitted evidence supporting additional injuries, such as seizures and post-traumatic syndrome, and the Office was directed to issue an appropriate decision.

In a decision dated February 8, 2000, the Office determined that appellant had not established any neurologic condition as employment related.<sup>2</sup>

The Board has reviewed the record and finds that a conflict exists and the case must be remanded for resolution of the conflict.

The Office determined that appellant did not have any employment-related neurologic condition based on the reports of Dr. Reginal Rutherford, a neurologist serving as a second opinion physician. In a report dated May 19, 1999, Dr. Rutherford provided a history and results on examination. In a report dated June 18, 1999, he stated that he found no evidence to suggest neurological injury referable to her closed head injury. Dr. Rutherford noted a negative computerized tomography (CT) scan following the injury and found no objective evidence to support a neurologic injury. In a brief report dated September 24, 1999, he indicated that the electroencephalogram (EEG) and magnetic resonance imaging (MRI) scans were normal and stated there was no evidence of brain injury or epilepsy.

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<sup>1</sup> Docket No. 96-2521 (issued November 12, 1998).

<sup>2</sup> The Office accepted the condition of depression, based on the report of a second opinion psychiatrist.

As the Board noted in its prior decision, appellant had submitted an October 10, 1995 report from Dr. Yvonne Baker, a neurologist, who provided a history and results on examination. Dr. Baker stated that appellant had evidence of damage to the rear of the frontal lobe and parietal lobe, the site most likely for post-traumatic seizures. She also discussed post-traumatic syndrome and associated cognitive difficulties, opining that appellant's symptoms were causally related to the head trauma sustained in the employment injury.

The Board finds that the record contains probative medical evidence that there is a conflict on the issue of whether appellant sustained seizures, or a post-traumatic syndrome, causally related to her employment injury. Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.<sup>3</sup> When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.<sup>4</sup>

Accordingly, the case will be remanded to the Office for referral to an appropriate medical specialist for a reasoned medical opinion on the issues presented. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated February 8, 2000 is set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC  
July 3, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

<sup>4</sup> *William C. Bush*, 40 ECAB 1064 (1989).