

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARDEN E. BUTLER and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Bensalem, PA

*Docket No. 01-543; Submitted on the Record;
Issued October 25, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant established that she has a disability causally related to her April 3, 1990 employment injury.

This case is on appeal to the Board for the third time.¹ Previously, the Board found that the Office of Workers' Compensation Programs erred in finding that appellant's request for reconsideration of its April 13, 1993 decision terminating benefits was untimely. The Board therefore vacated the Office's August 4, 1995 decision, and remanded the case for consideration of appellant's reconsideration request.

By decision dated March 3, 1998, the Office denied modification, finding that the opinion of the referral physician, Dr. Richard A. Bennett, a Board-certified psychiatrist and neurologist, constituted the weight of the evidence. In the second appeal, the Board affirmed the Office's April 13, 1993 decision but found that, since then, a conflict arose between Dr. Bennett's opinion and that of Dr. S. Manzoor Abidi, a Board-certified psychiatrist and neurologist, that appellant was unable to work due to post-traumatic left-sided headaches resulting from the April 3, 1990 employment injury. The Board therefore vacated the March 3, 1998 decision and remanded the case for referral to an impartial medical specialist to determine whether appellant had any residuals from the April 3, 1990 employment injury.

On remand, the Office referred appellant to Dr. Marcia L. Halpern, a Board-certified psychiatrist and neurologist. In a report dated July 18, 2000, Dr. Halpern considered appellant's history of injury, performed a physical examination, and reviewed the diagnostic tests, consisting of a negative computerized axial tomography scan of the brain dated April 1990, a normal electroencephalogram and reference to magnetic resonance imaging scans which showed small vessel ischemic disease but no acute lesions. She opined that appellant had a normal neurologic

¹ Docket No. 95-2754 (issued December 17, 1997). Docket No. 98-1172 (issued January 31, 2000). The facts and history surrounding the prior appeals are hereby incorporated by reference.

examination. Dr. Halpern added that appellant had no headaches prior to the injury and a diagnosis of post-traumatic cephalgia “may be reasonable.” She stated that she did not see any documentation for a diagnosis of concussion, reasoning:

“The description of the head injury was mild and such a nature that a 10-year history of unremitting chronic daily headaches would be most unusual. Apparently, her treating physicians felt similarly as they looked for another diagnosis, including performing temporal artery biopsies. Whether her persistent headaches are related to her persistent labile high blood pressure (apparently started a new medication by her treating physician) or related to depression (which she denies) is unclear. I would suspect that the post-traumatic cephalgia has been replaced by a chronic headache disorder and I sincerely doubt at this point that it is in any way related to her mild work injury of 10 years ago.”

Dr. Halpern stated that appellant was not disabled as a result of post-traumatic cephalgia and could return to work without any physical limitations due to her April 3, 1990 employment injury. She opined that appellant did not have any residuals due to that injury.

By decision dated August 24, 2000, the Office denied appellant’s claim, stating that the medical evidence failed to support any current disabling residuals of the April 3, 1990 employment injury.

As the Office met its burden of proof to terminate appellant’s compensation benefits in its April 13, 1993 decision, the burden shifted to appellant to establish that she had a disability causally related to her accepted injury after that time.² 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

In this case, the Board instructed the Office to resolve the conflict between Dr. Bennett’s and Dr. Abidi’s opinions on whether appellant had any work-related residuals from the April 3, 1990 employment injury. In her July 18, 2000 report, the impartial medical specialist, Dr. Halpern, considered appellant’s history of injury, performed a physical examination, and reviewed the diagnostic tests of record. She concluded that appellant had a normal neurologic examination and believed that appellant’s post-traumatic cephalgia was replaced by a chronic headache disorder unrelated to her mild work injury occurring 10 years earlier.

Dr. Halpern opined that appellant was not disabled due to post-traumatic cephalgia, could return to work without limitations, and had no residuals from the April 3, 1990 employment injury. Dr. Halpern’s opinion is complete and well rationalized. As the impartial medical specialist, her opinion constitutes the weight of the evidence, and establishes that appellant no longer suffers from her April 3, 1990 employment injury.

² See *George Servetas*, 43 ECAB 424 (1992).

³ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

The August 24, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 25, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member