

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYN M. WHEATON and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

*Docket No. 01-467; Submitted on the Record;
Issued August 20, 2002*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's entitlement to benefits.

On April 8, 1999 appellant, then a 42-year-old mailhandler filed a traumatic injury claim alleging that on March 19, 1999 she fell at work and sustained neck and back pain. The Office accepted the claim for right side chest contusion, cervical and lumbar strains and later left wrist sprain. Appellant resumed part-time limited-duty work immediately after the fall. She also had periods of partial and total disability from work due to a psychiatric condition, unrelated to her employment.

Dr. Geetha Pandian, a Board-certified physician in physical and rehabilitative medicine treated appellant for her accepted neck, back, chest and left wrist conditions related to the March 19, 1999 work incident beginning March 24, 1999. Appellant continued to receive medical treatment and worked a six-hour per day work schedule through May 2000.

On May 5, 2000 the Office referred appellant to Dr. John Milani, a Board-certified orthopedic surgeon to determine the extent of appellant's work-related condition and disability. On June 16, 2000 Dr. Milani conducted an evaluation of appellant, which included review of her medical records, history and physical examination. He related that appellant complained of worsened pain and numbness in her left wrist, hand, elbow and left shoulder which increased with most physical activities. Dr. Milani assessed cervical and lumbar strain, a history of left wrist pain with unknown etiology and complaints of numbness. He concluded that appellant likely had a chronic strain pattern in the lumbar area and left wrist pain, and no longer had a significant contusion of the chest. Dr. Milani determined that appellant would continue to have some sequelae, although he stated the exact nature was uncertain. He stated that appellant appeared surpassingly good on physical examination when considering she had extensive pain and a host of complaints, and concluded that some of her problem was psychiatric in nature. Dr. Milani further indicated that appellant could work light duty and that, because appellant had

completed a pain management program, she should only need to continue her home therapy routine.

In an addendum report dated July 5, 2000, Dr. Milani reiterated that appellant's chest contusion had resolved but that she did have tenderness in the neck and spinal areas, which he interpreted as being cervical and lumbar strain. He stated that neurologically, appellant was intact and the findings of tenderness were based on subjective complaints that could not be corroborated externally. Dr. Milani further stated that appellant's cervical, lumbar and left wrist pain appeared to be on the basis of her workplace injury and that it would not be unusual for such problems to persist over a prolonged period of time. He also indicated that appellant appeared able to work at a light-duty level on a long-term basis.

In a letter dated July 19, 2000, the Office requested that Dr. Pandian review Dr. Milani's findings outlined in the June 16 and July 5, 2000 reports. He was then asked to attest by date and signature whether he agreed with Dr. Milani's findings that appellant's chest contusions from 1999 had resolved and agreed that appellant was neurologically intact with regards to her left wrist, cervical and lumbar areas. Dr. Pandian returned the Office letter on July 21, 2000, which signified his expressed agreement with Dr. Milani's findings by his July 20, 2000 signatures as requested.

On July 24, 2000 the Office issued a notice of proposed termination of her entitlement to all benefits related to the March 19, 1999 injury on the basis that the medical conditions related to her accepted chest contusion, cervical and lumbar strains and left wrist sprain had resolved. The Office advised appellant that, if she disagreed with the proposed action, she may submit argument or evidence within 30 days or it would proceed with termination.

The Office subsequently received factual statements from appellant disagreeing with the proposed termination and a handwritten letter from Dr. Pandian dated August 21, 2000. Dr. Pandian stated in the letter that appellant should continue to receive medical benefits for her March 19, 1999 injury because although she had no neurological findings, she continued to experience back pain in the mid and lumbar area due to myofascial syndrome. He further noted that appellant was at that time on multiple medications and needed to continue using her transcutaneous electrical nerve stimulator at night. In the August 21, 2000 letter, Dr. Pandian concluded by increasing her work schedule from six to seven hours per day beginning August 28, 2000.

Following the submission of this evidence, the Office referred appellant for an independent medical examination with Dr. Bernie McCaskill, a Board-certified orthopedic surgeon to resolve the conflicting medical evidence regarding appellant's back.

In a report dated October 10, 2000, Dr. McCaskill reviewed appellant's work history and medical records and conducted a complete physical examination. He found on examination that appellant demonstrated full active range of motion of the back, cervical spine and both upper extremity, including both shoulders, elbows, wrists and hands. Dr. McCaskill noted that appellant could sit, stand and walk with no obvious discomfort, that she had no obvious swelling, atrophy, deformity or loss of strength in the evaluated areas. He concluded that, based on his examination, appellant's lack of significant abnormal physical findings and unremarkable

radiological testing that there were no objective findings to support the existence of any current back condition that continued to be affected by or a sequela from the March 19, 1999 fall.

By decision dated October 27, 2000, the Office terminated appellant's entitlement to further compensation, disability, work restrictions and ongoing medical care related to the March 19, 1999 fall effective that date. The Office found that there was no evidence of continuing residuals of the accepted chest contusion, cervical or wrist strains, and that the weight of the medical evidence rested with Dr. McCaskill's assertion that appellant did not demonstrate the existence of any active back condition attributable to the accepted fall at work on March 19, 1999.

The Board finds that the Office met its burden of proof in terminating appellant's entitlement to benefits.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

In this case, conflicting medical evidence existed as to whether appellant's accepted lumbosacral strain injury of March 19, 1999 had ceased. In noted reports of record, both Dr. Pandian, appellant's attending physician and Dr. Milani, the second opinion physician agreed that appellant had no residuals of her accepted chest contusions, cervical and wrist strains and that she was capable of full-time limited-duty work. However, Dr. Pandian indicated in an August 21, 2000 report that appellant should continue to receive medical benefits as she had continuing complaints of pain in her mid and lower back region.

Section 8123(a) of the Federal Employees' Compensation Act provides that, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."³

Given the conflict in the medical evidence, the Office properly referred appellant to an impartial physician for a medical evaluation. Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently reasoned upon a proper factual background, must be given special weight.⁴ The Office relied on a medical report from Dr. McCaskill, a Board-certified orthopedic surgeon, selected to act as an impartial medical examiner, dated which concluded that appellant had no continuing back

¹ *Harold McGough*, 36 ECAB 332 (1984).

² *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1929).

³ 5 U.S.C. § 8123.

⁴ *Roger Dingess*, 47 ECAB 123 (1995).

condition related to the employment injury and that appellant was capable of performing the full-time work duties.

Consequently, because Dr. Pandian's August 21, 2000 report is not sufficiently reasoned to overcome the opinion of the impartial medical specialist, the Board concludes that the Office met its burden of proof in terminating appellant's entitlement to benefits.

The decision of the Office of Workers' Compensation Programs dated October 27, 2000 is affirmed.

Dated, Washington, DC
August 20, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member