

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELLE D. WRIGHT and U.S. POSTAL SERVICE,
CLEVELAND HEIGHTS BRANCH, Cleveland, OH

*Docket No. 01-1205; Submitted on the Record;
Issued June 5, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits on the grounds that she no longer suffered residuals of her accepted employment injury.

On July 6, 1995 appellant, then a 28-year-old letter carrier, sustained an injury at work when flats fell out of a letter sorting case and struck her right side. The Office accepted her claim for the following conditions: right wrist sprain; right forearm strain; contusion right shoulder; lumbosacral strain; strain right and left thigh; contusion right hip; sprain/strain tendinitis right shoulder; and adhesive capsulitis right shoulder. Appellant received compensation benefits. She sustained recurrences of disability on June 24 and November 2, 1996.

A conflict in medical opinion arose between Dr. Moses Leeb, a Board-certified orthopedic surgeon and Office referral physician, and Dr. Bharat C. Shah, appellant's pain management specialist, on whether appellant continued to suffer disabling residuals of her accepted employment injury.

On November 27, 1998 Dr. Leeb reported that, based on objective findings alone, appellant could return to her July 6, 1995 job with a restriction against lifting with her right upper extremity beyond shoulder level. He noted that there appeared to be no indication for any definitive treatment, inasmuch as her objective findings were minimal and her attending physicians had found no evidence of "treatable conditions."

On June 28, 1999 Dr. Shah reported that appellant continued to have pain in her right upper and lower extremity. Although the extent of pain was difficult to decide and there was an issue of secondary gain, Dr. Shah reported that it was probable appellant had developed reflex sympathetic dystrophy. He recommended a comprehensive program of treatment by a physician, a psychologist and a physical therapist. Dr. Shah indicated that appellant was not able to perform her regular job duties.

In a supplemental report dated August 6, 1999, Dr. Leeb stated that he had read the investigative reports of appellant engaging in various physical activities, including dancing and activities demonstrating that she had complete overhead movement of both shoulders. With this information, Dr. Leeb advised that he based his previous restriction on appellant's incomplete compliance in determining the active motion of the right shoulder. It was now his opinion that appellant could return to work as a letter carrier without restrictions. It was also his opinion that appellant would not require any ongoing medical treatment such as lumbar epidural blocks, physical therapy or chronic pain management.

To resolve the conflict between Drs. Leeb and Shah, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Peter Bambakidis, a Board-certified neurologist. On March 13, 2000 Dr. Bambakidis reported that he performed a neurologic history and examination of appellant on February 2, 2000. In addition, he reviewed the medical records and surveillance videotapes of appellant engaging in various physical activities. After relating appellant's history and his findings on examination, Dr. Bambakidis reported as follows:

“In summary, despite the symptoms as described by the patient, the findings on examination, together with review of the videotape surveillance data, do not support the presence of any significant neurologic or other medical illness. More precisely, there is little evidence to support the diagnosis of reflex sympathetic dystrophy. In accordance with the statement of accepted facts in this case, I believe that the right wrist sprain, right forearm strain, lumbosacral strain, right shoulder contusion, strain of both thighs, right hip contusion and tend[i]nitis as well as adhesive capsulitis of the right shoulder were directly and causally related to the incident that occurred on July 6, 1995, but that these have resolved. Therefore, I recommend no further testing or treatment. Further, there is no reliable, objective data to support a causal relationship between her current symptoms and her July 1995, injury. The patient's behavior and activities as demonstrated on the videotape surveillance are not those that are typical of chronic pain syndrome which is a diagnosis that has been proposed. Certain features of her examination deserve some comment. The manner in which the rapid alternating movements in the tongue and fingers were performed had a volitional quality. More precisely, they were performed willfully in this fashion and thus do not reflect organic pathology. The fact that the modified straight leg raising test, *i.e.*, extension of the leg at the knee performed while sitting was normal, with, however, the onset of discomfort at 60 degrees when performed recumbent further indicates that the response with recumbency is a volitional one. Palpable areas in the trapezius musculature are a common finding in individuals who experience no symptoms whatsoever with firm pressure on any one of these areas. Thus, her complaint of increasing pain with palpation is of little significance in terms of an objective finding. It is my opinion that secondary gain is of fundamental importance in this case. It is my opinion, to a reasonable degree of medical certainty, that [appellant] is capable of resuming her position as a letter carrier with the [employing establishment] without restriction.”

In a decision dated April 20, 2000, the Office, following proper notice, terminated appellant's compensation benefits on the grounds that disability resulting from her accepted employment injury had ceased and no injury-related residuals remained.

In a decision dated February 7, 2001, an Office hearing representative affirmed the termination of appellant's benefits. The hearing representative found that the weight of the medical evidence rested with the rationalized opinion of Dr. Bambakidis, the referee medical specialist, and established that residuals of the accepted employment injury had ceased.

The Board finds that the Office met its burden of proof to justify the termination of appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of proof to justify the 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 a conflict in medical opinion arose between Dr. Leeb, the Office referral physician, and Dr. Shah, appellant's pain management specialist, on whether appellant continued to suffer disabling residuals of her accepted employment injury. Section 8123(a) of the Federal Employees' Compensation Act provides in part: "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

To resolve the conflict, the Office referred appellant to Dr. Bambakidis, a Board-certified neurologist. The Office provided Dr. Bambakidis a statement of accepted facts and appellant's medical record. Dr. Bambakidis related appellant's history and his findings on examination. In his March 13, 2000 report, he explained in some detail that the accepted medical conditions had resolved and that appellant was capable of resuming her position as a letter carrier. Dr. Bambakidis supported his opinion by noting the inconsistencies shown on the surveillance videotapes and in the clinical findings obtained on examination, both of which led him to conclude that secondary gain was of fundamental importance in appellant's case.

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an referee medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴

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

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ 5 U.S.C. § 8123(a).

⁴ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

The Board finds that the opinion of Dr. Bambakidis is based on a proper factual background and is sufficiently well reasoned that it must be accorded special weight in resolving the conflict that arose in this case. As the weight of the medical opinion evidence establishes that appellant no longer suffers residuals of her accepted employment injury and is capable of returning to her date-of-injury position without restrictions, the Office has met its burden of proof to justify the termination of appellant's compensation benefits.

The February 7, 2001 and April 20, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 5, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member