

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYL A. CASTLE and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 01-1207; Submitted on the Record;
Issued June 24, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to terminate appellant's compensation benefits effective April 27, 2000 on the grounds that her employment-related residuals ceased.

This is the second appeal in the present case. In the prior appeal, the Board issued a decision and order¹ on October 28, 1993 in which it found that the Office improperly terminated appellant's monetary compensation effective June 18, 1990 on the grounds that the medical evidence did not establish that her employment-related disability had ceased. The complete facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.²

In a July 2, 1998 report, Dr. Charles J. Kistler, an osteopath, noted appellant's history of injury and treatment. He stated that on her last examination of July 2, 1998, she had significant weakness in her left and right wrist and hand. Dr. Kistler found diminished grip strength to two and a half out of five the left and right side and that there was pain along the dorsal aspect of the left and right hand. He found numbness and tingling in the fingers and in the palmar area and that there was a feeling of tightness and swelling in the wrists and fingers. Dr. Kistler also found puffiness in the metacarpals and edema and noted that the tips of the fingers were numb and especially worse at the index finger and the thumb. He found that the Tinel's and Phalen's signs were positive bilaterally and noted that appellant has bilateral carpal tunnel release on both sides. Dr. Kistler opined that the objective findings rendered her disabled at the present time and that her medical condition was directly and causally related to her injury indicating her current objective findings were attributable solely to the accepted conditions in this claim. He opined that appellant has reflex sympathetic dystrophy and that she was totally disabled from sustained

¹ Docket No. 92-1608.

² Appellant's benefits were subsequently reinstated.

remunerative employments as a result of the injuries in this claim solely and that she cannot return to the work that she did prior to this injury at the present time.

By letters dated, August 14, 1998, the Office advised appellant of a second opinion examination with Dr. Boyd W. Bowden, an osteopath.

In a September 21, 1998 report, Dr. Bowden noted appellant's history of injury and treatment. He conducted a physical examination, noting that she continued to hold her right hand in partial flexion; however, full extension could be achieved. Dr. Bowden found a totally inconsistent two point discrimination when doing the two point discrimination, noting that this ranged from three centimeters (cm) two point discrimination to seven millimeters (mm) two point discrimination. He indicated that when mixing everything up, when two points were at two cm she could feel one point in the median distribution of the thumb, index, middle and radial one-half of the ring finger, right hand. However, when one point was put down, she could not feel anything. On the other hand, Dr. Bowden observed that ulnar nerve distribution, likewise, was totally inconsistent with similar effect. In testing her radial nerve of the thumb and web space of the index finger, she could detect nothing at three cm, right hand. Dr. Bowden found that all flexors are in; all extensors are in, that some thenar atrophy was noted in the right thumb region with a scar which was quite tender when feeling it when she was observing it. He determined that when looking at the back of the hand and feeling the same scar with palm down, no tenderness was noted, she had a negative Allen's test and all major nerves were intact to their most distal motor insertion. Dr. Bowden found the Jamar grip test, position one 0 pounds right, left 20 pounds; position two 0 pounds right, 25 pounds left; position three, 0 pounds right, 21 pounds left; position four 0 pounds right, 18 pounds left; position five, 0 pounds right, 2 pounds left; pinch on the right 2 pounds, left 4 at pounds. He stated the cervical spine was not examined since he was only asked to do the carpal tunnel of both wrists. Dr. Bowden found a negative Tinel's, negative Phalen's and stated the electromyogram reports were essentially unremarkable. He determined that his objective findings were totally inconsistent as related to carpal tunnel syndrome or sympathetic dystrophy but they were quite consistent with somatization. Dr. Bowden opined that appellant's current medical condition of somatization only comes forth as she has developed symptomatology that is unrelated to her injury and letting her original injury grow and creating the somatization. He explained the basis for this as due to the inconsistent objective findings throughout the examination. Dr. Bowden further offered that there was no reflex sympathetic dystrophy and involuntary disuse of her hand has been created by the somatization. He further noted that the only residuals that remained were the development of somatization. Dr. Bowden opined that the actual carpal tunnel syndrome has resolved; however, the somatization, indeed, would keep her from returning to a mailhandler position since symptomatology of any description will be placed on her problem.

In an April 8, 1999 physician's report/treatment plan, Dr. Kistler, stated that appellant had pain, burning, tenderness, muscle spasms and weakness along with decreased range of motion and wrist weakness. He stated this was directly and causally related.

By letters dated August 30 and October 7, 1999, appellant was advised that she was being referred to Dr. Gerald S. Steiman, a Board-certified neurologist, for an impartial examination.³

In a November 8, 1999 report, Dr. Steiman, noted appellant's history of injury and treatment and that examination of the right wrist revealed a well-healed carpal tunnel release scar. He stated that the right wrist is held in a "claw" posture, however, passive range of motion revealed normal movement within the thumb and all digits. Dr. Steiman observed that within both wrists, neither synovial swelling nor joint hypertrophy was noted and the Tinel's and Phalen's signs were negative. He found that provocative testing over the carpal tunnel site failed to produce numbness or tingling within the tips of the thumb, index or long finger and that within both wrists, passive range of motion was performed with 50 to 60 degrees of palmar flexion and dorsiflexion. Dr. Steiman observed 15 to 20 degrees of radial deviation and 20 to 25 degrees of ulnar deviation -- within the right wrist and that active range of motion was performed with 5 to 15 degrees of palmar flexion and dorsiflexion. He noted further that there was 0 to 5 degrees of radial and ulnar deviation. Additionally, he found that the grip power was 1 PSI in the right hand and 0 PSI in the left hand and the right and left mid forearm circumferences were 23.0 cm bilaterally. Dr. Steiman stated that appellant indicated that she had absent light touch perception within the right hand and decreased light touch perception within the left hand. However, he offered that the pattern of altered perception is global and did not correspond to a peripheral nerve or nerve roots. Dr. Steiman further stated that when a coin was placed in appellant's hands, she demonstrated normal dexterity and was able to correctly identify the coin in the right hand. He noted that she mistook a dime for a penny in the left hand. Dr. Steiman found that appellant had no alteration of color 1 texture, moisture or sheen to the skin -- and exhibited normal reflexes. He opined that appellant had no objective physical findings with the exception of a scar on her right wrist and her diagnosis should include resolved bilateral carpal tunnel syndrome with significant pain behavior and symptom embellishment. Dr. Steiman further indicated that he could find no evidence, based on appellant's independent medical evaluation, to indicate that her current subjective complaints were related to the diagnoses of May 7, 1987 and it was his opinion that appellant had no objective physical findings which would preclude her ability to return to work as a mailhandler.

By letters dated December 15, 1999, February 7 and 17, 2000 the employing establishment noted the findings of Dr. Steiman and inquired into the status of appellant's claim.

By letter dated March 22, 2000, the Office notified appellant that it proposed to terminate her compensation benefits on the grounds that the weight of the medical evidence of record established that she had recovered from her accepted bilateral carpal tunnel syndrome and was able to return to full-time work.

Appellant responded by letter dated April 13, 2000. She argued that the reports from Drs. Bowden and Steiman were not the weight of the medical evidence and contradictory and

³ The letter does not actually state impartial examination, but at the hearing conducted on October 24, 2000, all parties referred to it as a impartial examination.

that she was denied a passive strengthening treatment. Appellant also enclosed notes from her examination with Dr. Steiman. No new medical evidence was provided.

By decision dated April 26, 2000, the Office terminated appellant's compensation.

By letter dated May 8, 2000, appellant, through her representative requested a hearing, which was held on October 25, 2000.⁴ During the hearing, appellant's representative argued that both doctors were supplied by the Rickwell Corporation and questioned their fairness and objectivity. However, he did not provide any documentation to support his claim.

By decision dated February 12, 2001, an Office hearing representative affirmed the Office's April 26, 2000 decision on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Steiman, established that appellant had no residual disability causally related to her May 7, 1987 employment injury.

The Board finds that the Office properly terminated appellant's compensation benefits effective April 27, 2000, as the evidence establishes that her employment-related residuals had ceased.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits by establishing that the accepted disability has ceased or that it is no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on April 27, 2000 based on the well-rationalized opinion of the impartial specialist, Dr. Steiman.⁷ In a report dated November 8, 1999, he discussed appellant's history of injury, physical complaints, the results of objective tests and listed findings on physical examination. Dr. Steiman diagnosed a resolved bilateral carpal tunnel syndrome with significant pain behavior and symptom embellishment and the symptoms from May 7, 1987 had resolved. He further felt that appellant did not have any objective findings that would support being unable to perform her job activities.

In this case, appellant's physician, Dr. Kistler found that appellant remained totally disabled and Dr. Bowden, the second opinion physician, found that appellant's condition had

⁴ Appellant also requested a hearing on May 13, 2000.

⁵ *David W. Green*, 43 ECAB 883 (1992); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *Harold S. McGough*, 36 ECAB 332 (1984); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ Section 8123(a) of the Federal Employees' Compensation Act provides that, "[i]f 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." 5 U.S.C. § 8123(a).

resolved and released appellant to return to work with no restrictions. The Office determined that there was a conflict between Drs. Kistler and Bowden and properly referred appellant to Dr. Steiman.

In situations when there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist of 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.⁸

The Board has carefully reviewed the opinion of Dr. Steiman and notes that it has the reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue in the present case. He provided a thorough physical examination and provided a proper analysis of the factual and medical history and findings on examination and reached conclusions regarding appellant's condition which comported with this analysis. Dr. Steiman included medical rationale for his opinion that the work injury had resolved by explaining that there were no objective findings with the exception of a scar in the right wrist and that she had significant pain behavior and symptom embellishment. He reasoned that there were no objective physical findings that would preclude appellant from returning to work as a mailhandler.

In response to the Office's proposed termination of compensation, appellant submitted a letter dated April 13, 2000. She indicated that the weight of the medical evidence should not rely on Dr. Bowden or Dr. Steiman and that it should rely on her doctor, Dr. Kistler. Appellant commented on Dr. Steiman's method of examination and doubted his ability to be impartial. She also stated that she disagreed with Dr. Steiman's opinion.

The Board notes that as the weight of the medical evidence has been afforded the impartial specialist, Dr. Steiman, appellant's arguments concerning Dr. Steiman's opinion will be addressed first. It is noted that Dr. Steiman provided a complete comprehensive report based on a review of the medical records, a statement of accepted facts and a complete examination.

The Board finds that appellant did not submit any reports from her treating physician containing any rationale that would establish a causal relationship between an employment injury and the subsequent disability.⁹ Since no rationale was provided describing or explaining a causal relationship, appellant has not met her burden to overcome the weight of Dr. Steiman's reports. Although appellant took exception to Dr. Steiman's report, the Board finds that his opinion is well rationalized and based upon an accurate medical history. No new medical evidence was provided to conflict with Dr. Steiman's medical opinion that appellant's bilateral carpal tunnel syndrome had resolved. Accordingly, Dr. Steiman's opinion still constitutes the weight of the medical evidence.

⁸ *Rosie E. Garner*, 48 ECAB 220, 225 (1996).

⁹ *Richard N. Johns*, 31 ECAB 29 (1979).

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had disability causally related to his accepted employment injury.¹⁰ As noted, no new medical evidence has been provided.

Appellant questioned Dr. Steiman's and Dr. Bowden's credentials and questioned their examinations. A termination decision is rendered on the basis of medical evidence. Dr. Steiman is a Board-certified neurologist selected to resolve the conflict of medical opinion in this case. As his opinion is sufficiently well rationalized and based upon a proper factual background, it is given the special weight accorded to an impartial medical specialist.¹¹

Accordingly, the Board finds that Dr. Steiman's opinion is sufficient to meet the Office's burden of proof in terminating appellant's compensation.

The February 12, 2001 and April 26, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 24, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ *George Servetas*, 43 ECAB 424, 430 (1992).

¹¹ *Rosie E. Garner*, *supra* note 8.