

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CAROLYN ROBINSON and DEPARTMENT OF THE ARMY,  
BYONNE MILITARY OCEAN TERMINAL, Bayonne, NJ

*Docket No. 02-382; Submitted on the Record;  
Issued June 6, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective June 19, 1999.

Appellant, a 26-year-old secretary, filed a claim alleging that a bulletin board fell on her back during the performance of her federal employment. The Office accepted appellant's claim for cervical muscle spasm and sprain. In a letter dated April 25, 1997, the Office proposed to terminate appellant's compensation benefits. By decision dated June 14, 1999, the Office terminated appellant's compensation benefits effective June 19, 1999. Appellant requested reconsideration on May 16, 2000. By decision dated June 9, 2000, the Office denied modification of its June 14, 1999 decision. Appellant filed an appeal with the Board. The Office failed to include the June 9, 2000 decision in the record before the Board. The Board issued an order remanding case on April 25, 2001 remanding the case for reassemblage and an appropriate decision.<sup>1</sup> On July 25, 2001 the Office reissued the June 9, 2000 decision with the appropriate appeal rights.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective June 19, 1999.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>2</sup> 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.<sup>3</sup> Furthermore, the right to medical

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<sup>1</sup> Docket No. 00-2761.

<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *Id.*

benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>4</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>5</sup>

Appellant's attending physician, Dr. Lewis A. Levy, a Board-certified neurologist, continued to support her claim for total disability. The Office referred appellant for a second opinion evaluation with Dr. James B. Sarno, a Board-certified neurosurgeon. In a report dated April 7, 1997, Dr. Sarno noted appellant's history of injury, her medical history and performed a physical examination. He reviewed a cervical magnetic resonance imaging (MRI) scan which demonstrated normal cervical lordosis and a small subligamentous disc herniation at C6-7 in the mid-line which impinges upon the subarachnoid space but not on the spinal cord or the foramina laterally. Dr. Sarno stated that the MRI scan demonstrated small ridges of osteoarthritis with narrowing of the disc at C3-4, C4-5 and C5-6. He noted that appellant had a tendency to notice sensations on the right side as slightly diminished as compared with the left. Dr. Sarno found that appellant had a positive Phalen's test but no Tinel's sign over appellant's right wrist. He diagnosed carpal tunnel syndrome of the right wrist, status post anterior cervical discectomy C5-6 and cervical sprain resolved. Dr. Sarno found that appellant sustained a contusion and sprain of the cervical spine as a result of her employment injury and that she had no continuing disability or residuals due to these conditions. He stated, "I find no true objective findings. All her complaints are subjective without objective corroboration except for the carpal tunnel syndrome in the right wrist."

In a report dated May 12, 1997, Dr. Levy provided his findings on physical examination. He found decreased pin and touch sensation affecting both C7 distributions worse on the right side. Dr. Levy also found a positive Tinel's sign over the right carpal tunnel, minor weakness for all wrist actions bilaterally and additional loss of pin and touch sensation affecting the distal volar aspect of all digits of the right hand. He diagnosed herniated C6-7 disc as documented by MRI scan giving rise to bilateral C6 and C7 radiculopathies. Dr. Levy stated that appellant also suffered from residual cervical radiculopathies related to injuries sustained prior to the cervical surgery. He diagnosed migraine headaches, bilateral L5 radiculopathies and right carpal tunnel syndrome. Dr. Levy stated that appellant was totally disabled due to severe relentless cervical spinal pain radiating down her arms and that this also caused weakness of both hands and wrists. He stated that she had a severe cervical radicular disorder due to a herniated disc demonstrated on MRI scan. Dr. Levy stated that Dr. Sarno had disregarded appellant's significant weakness in her arms as well as her sensory disorder.

Section 8123(a) of the Federal Employees' Compensation Act,<sup>6</sup> provides, "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." The Office properly found a conflict of medical opinion between appellant's attending physician Dr. Levy, who supported disability due to the accepted employment injury,

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<sup>4</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>5</sup> *Id.*

<sup>6</sup> 5 U.S.C. §§ 8101-8193, § 8123(a).

and the Office's second opinion physician, Dr. Sarno, who found that appellant had no disability nor residuals due to her accepted employment injury. Due to this conflict, the Office properly referred appellant to Dr. Satish Kadakia, a Board-certified neurologist, to resolve the disputed issues.

In his report dated December 28, 1998, Dr. Kadakia noted appellant's history of injury, reviewed the statement of accepted facts and reviewed appellant's medical history. He listed his findings on physical examination to include numbness of the right thumb, right middle and right little fingers as well as patchy distribution sensation loss on the right lateral side of the arm, foot and palm. Dr. Kadakia found that Tinel's sign was positive on the right. He stated that appellant had clinical findings consistent with right carpal tunnel syndrome and that her history was indicative of chronic pain. Dr. Kadakia stated, "Upon review of my records and my examination it is my opinion that because of the accident reported on August 11, 1978 the claimant did not sustain any condition other than a cervical muscle sprain and spasm." He noted that during her evaluations there are no reports of any specific radicular or specific nerve distribution signs or symptoms, and that her nerve testing during that time did not demonstrate carpal tunnel syndrome. Dr. Kadakia stated that appellant's examination was suspicious of right C7 distribution, there were no objective documented findings of C7 radiculopathy and that the MRI scan of the cervical spine was nonspecific. He stated that he agreed with Dr. Levy that appellant has a central subligamentous disc herniation at C6-7 and that this could cause neck pain. However, Dr. Kadakia concluded that there was no objective evidence that these findings are from the August 11, 1978 employment injury. He stated that appellant's current conditions were not related her employment injury and that she does not require further treatment for that injury.

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.<sup>7</sup> In this case, Dr. Kadakia provided detailed factual and medical findings and concluded that appellant's employment-related condition had resolved with no residuals. The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits based on this report.

Following the June 14, 1999 decision, appellant requested reconsideration and submitted additional medical evidence from Dr. Levy. In a report dated January 12, 2000, Dr. Levy provided his findings on physical examination including positive Tinel's sign and Phalen's sign on the right side. He also noted decreased pin and touch sensation affecting approximately right C6 and C7 distribution. Dr. Levy noted that appellant sustained additional injuries in 1982 in a motor vehicle accident. Appellant suffered injuries to her neck and low back. He also described appellant's employment injury and stated, "Since that time, she suffered from headaches, back pain, neck pain and symptoms related to carpal tunnel syndromes. Prior to the accident, the patient never suffered from any similar symptoms. Thus these abnormalities are causally related to the accident dated August 11, 1978." Dr. Levy noted appellant's subsequent motor vehicle accident and stated that this accident "only may have worsened the initial abnormalities." He did not provide any reasoning in support of this statement.

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<sup>7</sup> *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

Dr. Levy's report supports a temporal relationship between appellant's employment injury and her continuing conditions. However, the Board has held that the mere manifestation of a condition during a period of employment does not raise an inference that there is a causal relationship between the condition and the employment. Neither the fact that the condition became apparent during a period of employment nor the belief that the employment cause or aggravated a condition is sufficient to establish causal relationship.<sup>8</sup> Dr. Levy's report lacks the necessary medical rationale to establish that appellant's current conditions are causally related her employment injury.

The additional report from Dr. Levy is insufficient to overcome the weight accorded Dr. Kadakia's report as the impartial medical specialist or to create a new conflict with same.<sup>9</sup>

The July 25, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
June 6, 2002

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>8</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>9</sup> *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).