

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOIS A. LOSHCIAVO and DEPARTMENT OF COMMERCE,
REGIONAL CENSUS CENTERS, Lorain, OH

*Docket No. 01-454; Submitted on the Record;
Issued March 19, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation effective February 27, 2000, based on her capacity to perform the duties of appointment clerk.

On May 6, 1990 appellant, then a 57-year-old census enumerator, hurt her lower back when she slipped on wet steps of a home during the course of her employment. The Office accepted the claim for lumbar strain and paid appropriate compensation benefits. Appellant has not returned to work.

On December 7, 1998 the Office referred appellant to Dr. Thomas E. Baker, an osteopath, to resolve the conflict in the medical opinion evidence between Dr. James H. Rutherford, a second opinion Board-certified orthopedic surgeon, and Dr. Brian Still, an attending osteopath, regarding whether appellant had any work-related residuals and whether she was capable of working eight hours a day.

In a report dated January 21, 1999, Dr. Baker concluded that appellant could work part time with restrictions as a census enumerator or was capable of working eight hours a day with restrictions if she were allowed to sit much of the time and perform primarily sedentary activities.

By decision dated February 10, 2000, the Office reduced appellant's compensation to zero effective February 27, 2000 based on the factual and medical evidence that appellant could perform the selected full-time position of appointment clerk, which was equal to or greater than the pay she would have been earning if presently employed in her former temporary position of census enumerator.

By decision dated October 11, 2000, an Office hearing representative affirmed the earlier decisions of the Office.

The Board finds that this case is not in posture for a decision due to an unresolved conflict in medical opinion regarding whether appellant had any work-related residuals and whether she was capable of working eight hours a day.

In the present case, the record reveals that there was a conflict in the medical opinion between Dr. Still, appellant's attending osteopath, and Dr. Rutherford, a Board-certified orthopedic surgeon, who acted as an Office referral physician, on whether appellant had any work-related residuals and whether she was capable of working eight hours a day. The Office referred appellant to Dr. Baker, an osteopath, for an impartial medical evaluation and opinion regarding whether appellant had an employment-related disability. On the basis of his opinion, the Office determined that appellant could work part time with restrictions as a census enumerator or was capable of working eight hours a day with restrictions if she was allowed to sit much of the time and perform primarily sedentary activities.

The Board notes, however, that there is no indication in the record that Dr. Baker is a Board-certified medical specialist.¹ The Office's procedures require that an impartial medical specialist be a Board-certified physician unless the physician has special qualifications for performing the examination as documented by the medical adviser.² The record does not reflect that the Office documented any special qualifications of Dr. Baker. Therefore, his opinion cannot be accorded the special weight of an impartial specialist. Thus, the record contains an unresolved conflict in medical opinion regarding whether appellant continues with work-related residuals and whether she is capable of working eight hours of day.

¹ A search of the directories reveals that Dr. Baker is an osteopath specializing in orthopedics.

² *Albert Cremato*, 50 ECAB 550 (1999). Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(b)(1) (March 1994).

The decision of the Office of Workers' Compensation Programs dated October 11, 2000 is hereby reversed.

Dated, Washington, DC
March 19, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member