

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA GIWA-OSAGIE and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Hollywood, FL

*Docket No. 02-2075; Submitted on the Record;
Issued November 27, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

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

Appellant's initial claim filed on February 27, 1991 and subsequent claims for recurrences of disability were accepted for bilateral carpal tunnel syndrome. Appropriate compensation and medical benefits were paid.¹ Appellant, a service representative, worked part time, limiting her typing and writing to one hour a day each, as imposed by her treating physician, Dr. Scott D. Tannenbaum, Board-certified in physical medicine and rehabilitation.

The Office referred appellant for a second opinion evaluation to Dr. Robert A. Bronfman, a Board-certified orthopedic surgeon who examined her on November 3, 1995 and concluded that she could work full time if she limited repetitive hand movements and typing to 30 minutes at a time. On December 28, 1995 Dr. Tannenbaum agreed that appellant could return to full-time work gradually, but should not perform one duty, such as typing, writing or holding the telephone, for more than one hour at a time.

Appellant continued to work, but experienced flare-ups of her condition and underwent release surgery on her left hand.² On December 23, 1996 the Office referred appellant to Dr. Morton S. Corin, Board-certified in neurology and pain management. He diagnosed bilateral carpal tunnel syndrome and stated that the left hand condition limited appellant's work to some extent. However, he found that appellant did not have cervical myofascitis or thoracic outlet

¹ Appellant also filed claims for thoracic outlet syndrome (A6-624240) and for a cervical strain, which the Office accepted. Her claims were consolidated, using case number A6-627163.

² Release surgery on the left hand was done on August 4, 1997; surgery on the right hand was done on June 8, 1988.

syndrome. Dr. Corin suggested further evaluation, but concluded that appellant's work-related conditions did not interfere with her work duties.

On April 16, 1998 the Office issued a schedule award for 10 percent permanent impairment of the left arm and 20 percent of the right arm. The award ran from November 9, 1997 to August 26, 1999 for 93.6 weeks. On May 5, 1998 the Office determined that appellant had been reemployed, effective October 20, 1997 and that this position fairly and reasonably represented her wage-earning capacity. Accordingly, the Office reduced appellant's compensation to zero.

On May 26, 2000 appellant filed a recurrence of disability claim, stating that she had trouble concentrating and was unable to type or write without experiencing severe pain. The Office accepted the recurrence and authorized therapy. Appellant returned to part-time work on June 18, 2001, after the employing establishment installed the technical modifications to her work site, which were recommended by Dr. Tannenbaum.³ On September 24, 2001 appellant increased her work to 20 hours a week. On October 1, 2001 Dr. Tannenbaum stated that appellant would never be capable of returning to full-time work because her diagnosed cervical myofascial pain would be aggravated.

The Office referred appellant to Dr. Barry Lotman, a Board-certified orthopedic surgeon who examined appellant on March 6, 2002 and concluded that she was able to work full time with restrictions against overhead lifting and repetitive pushing and pulling. On May 8, 2002 the Office determined that a conflict of medical opinion existed between Drs. Tannenbaum and Lotman over how many hours appellant could work and referred her to Dr. Jeffrey Brian Worth, also a Board-certified orthopedic surgeon, to resolve the issue.⁴

The Office issued a notice of proposed termination of compensation on June 18, 2002, based on the May 21, 2002 report of Dr. Worth. Appellant objected to the proposed termination and submitted a lengthy report of an ergonomic review of her workplace, a union-sponsored survey of employees and a health hazard evaluation. On July 22, 2002 the Office terminated appellant's compensation, effective that date, on the grounds that her work-related injuries had resolved.

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

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁵ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation

³ Dr. Tannenbaum recommended a voice-activated computer system, which was installed by the employing establishment.

⁴ 5 U.S.C. § 8123(a) states in pertinent part: "If there is a 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 *Betty Regan*, 49 ECAB 496, 501 (1998).

without establishing either that the disability has ceased or that it is no longer related to the employment.⁶

In situations where opposing medical opinions on an issue are of virtually equal evidentiary weight and rationale, the case shall be referred for an impartial medical examination to resolve the conflict in medical opinion.⁷ The opinion of the specialist properly chosen to resolve the conflict must be given special weight if it is sufficiently well rationalized and based on a proper factual background.⁸

In this case, the Office properly determined that a conflict of medical opinion existed over whether appellant was capable of working full time. Dr. Tannenbaum, appellant's treating physician, initially opined that appellant could return to full-time work within physical restrictions and with the modified assistive devices provided by the employing establishment. However, on October 1, 2001 he responded to the Office's inquiry by stating that appellant had objective findings consistent with myofascial pain and that full-time work would aggravate this condition. Dr. Tannenbaum stated that she could not ever return to work full time, but was able to tolerate four hours a day.

The second opinion physician, Dr. Lotman, found appellant capable of full-time work with no overhead lifting and limitations on reaching, pulling and pushing. He stated that many of appellant's complaints of pain defied anatomic explanation on examination and some were not reproducible on repeat testing. Dr. Lotman found no objective evidence of any continuing disability due to the accepted bilateral carpal tunnel syndrome.

To resolve this conflict, the Office sent appellant to Dr. Worth. He concluded that appellant could resume full-time work, limiting her writing to four hours a day and pushing, pulling and lifting activities to 15 pounds or less. He reviewed a statement of accepted facts and a history of appellant's treatment for her cervical strain and bilateral carpal tunnel syndrome, including the 1997 nerve conduction studies and a magnetic resonance imaging scan of her cervical spine, which showed normal results.

Dr. Worth diagnosed chronic neck pain of undetermined etiology and found no objective signs of any residual neural deficit attributable to the carpal tunnel syndrome or chronic cervical strain. He opined that appellant could perform administrative clerical duties at full capacity and noted that appellant exhibited symptom magnification during the physical examination. Dr. Worth concluded that the diagnosis of cervical myofascial pain, as reported by Dr. Tannenbaum, was not supported by any objective findings.

Dr. Worth reviewed the case record and various reports on appellant's medical treatment. He examined appellant thoroughly, discussed the diagnostic testing, explained his clinical findings, and provided medical rationale for his conclusion that appellant could resume full-time

⁶ *Raymond C. Beyer*, 50 ECAB 164, 168 (1998).

⁷ *Richard L. Rhodes*, 50 ECAB 259, 263 (1999).

⁸ *Sherry A. Hunt*, 49 ECAB 467, 471 (1998).

work. Thus, Dr. Worth provided an opinion that was sufficiently well rationalized to support his conclusion that appellant had no residuals of her work-related carpal tunnel syndrome. The Board finds that Dr. Worth's report represents the weight of the medical opinion evidence and establishes that appellant was capable of resuming full-time work.⁹ Therefore, the Office met its burden of proof in terminating her compensation.

The July 22, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 27, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

⁹ See *Jimmie H. Duckett*, 52 ECAB ____ (Docket No. 99-1858, issued April 6, 2001) (the opinion that appellant's back condition was due to the natural progression of his spondylitis was sufficiently rationalized to establish that his work-related back condition had resolved and to meet the Office's burden of proof in terminating compensation).