

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROSETTA D. BOLAND and U.S. POSTAL SERVICE,  
POST OFFICE, West Des Moines, IA

*Docket No. 02-1197; Submitted on the Record;  
Issued February 3, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of total disability commencing October 29, 1997 causally related to her July 1, 1995 work-related injury.

This case has been before the Board on a prior appeal and the facts and findings of that decision are hereby incorporated into this decision.<sup>1</sup> The Board found that the Office of Workers' Compensation Programs improperly denied appellant's claim when it relied on Dr. L.T. Donovan, a Board-certified orthopedic surgeon, as the weight of medical opinion. The Board found that Dr. Donovan's April 6, 1999 report created a conflict with Dr. Samir R. Whaby, an orthopedic surgeon and appellant's treating physician.

In a January 23, 2002 letter, the Office referred appellant, along with a statement of accepted facts, to Dr. Gary Aldo Knudson for an impartial medical examination.

In a February 6, 2002 report, Dr. Knudson, a Board-certified orthopedic surgeon, after reviewing appellant's medical history, the surveillance tapes and conducting a physical examination, wrote that, while appellant had active bilateral carpal tunnel syndrome, her condition was quite mild. He opined that after watching the tape of appellant's activities and conducting a physical examination; and reviewing the results of her electromyogram test, her condition should not interfere with the performance of her regular duties as described in the statement of accepted facts. Dr. Knudson wrote that he could find "no evidence of any discomfort or difficulties with the use of her hands." He found that appellant was capable of returning to full duties of her position.

Regarding her recurrence of disability claim, Dr. Knudson wrote that he did not believe that a material change in her accepted condition occurred as a result of working eight hours on October 29, 1997. He opined that a majority of appellant's symptomology was related to

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<sup>1</sup> Docket No. 99-2408 (issued November 2, 2001).

deconditioning and that she was not likely ready to return to repetitive use of her hands and arms for the length of time she did on that day. Dr. Knudson further wrote that, while he felt appellant was capable of returning to full duty that “in order to give [appellant] the full benefit of the doubt,” he recommended she return to full duties over an eight-week period.

In a March 12, 2002 report, the Office denied appellant’s claim for a recurrence of total disability finding the weight of the medical evidence rested with the well rationalized report of Dr. Knudson, the impartial examiner. Appellant remained eligible for medical benefits and a schedule award.

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>2</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>3</sup>

In the present case, the Office determined that there was a conflict in the medical opinion between Dr. Wahby, appellant’s attending Board-certified orthopedic surgeon and Dr. Donovan, a Board-certified orthopedic surgeon, on whether appellant sustained an employment-related recurrence on October 29, 1997. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Federal Employees’ Compensation Act, to Dr. Knudson, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.<sup>4</sup>

In situations where there exist 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 upon a proper factual background, must be given special weight.<sup>5</sup>

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Knudson, the impartial medical specialist selected to resolve the conflict in the medical opinion. The February 6, 2002 report of Dr. Knudson establishes that appellant did not sustain a recurrence of total disability on October 29, 1997. He found that,

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<sup>2</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

<sup>3</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>4</sup> Section 8123(a) of the Act provides in pertinent 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.” 5 U.S.C. 8123(a).

<sup>5</sup> *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

while appellant may have had carpal tunnel symptoms after returning to work, based on her medical history and her daily activities as shown on the surveillance tape, she was not totally disabled from work after October 29, 1997.

The Board has carefully reviewed the opinion of Dr. Knudson and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Knudson's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Knudson provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.<sup>6</sup>

The Office properly relied on Dr. Knudson as the impartial examiner to deny appellant's claim of recurrence of total disability.

The March 12, 2002 decision by the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
February 3, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>6</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).