

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNICE L. CRAIN and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 03-93; Submitted on the Record;
Issued February 12, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective February 25, 2002.

This case has previously been on appeal before the Board. In its February 11, 2000 decision, the Board found that the Office did not meet its burden of proof to terminate appellant's compensation benefits effective March 1, 1996 as there was an unresolved conflict of medical opinion evidence.¹ The facts and circumstance of the case as set out in the Board's prior decision are adopted herein by reference.

Following the Board's February 11, 2000 decision, the Office proposed to terminate appellant's compensation benefits by letter dated November 19, 2001. By decision dated February 25, 2002, the Office terminated appellant's compensation benefits effective that date. Appellant requested an oral hearing on March 2, 2002. Appellant's oral hearing took place on June 26, 2002 and by decision dated September 13, 2002, the hearing representative affirmed the Office's February 25, 2002 decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective February 25, 2002.

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.² 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.³ Furthermore, the right to medical

¹ Docket No. 98-823.

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ 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.⁵

As the Board found an unresolved conflict of medical opinion evidence in its February 11, 2000 decision, the Office referred appellant for an impartial medical examination by Dr. Dan Shamir, a physician Board-certified in physical medicine and rehabilitation, on June 1, 2000. In a report dated July 5, 2000, Dr. Shamir noted that appellant's history of injury and reviewed her medical history. He performed a physical examination and found normal hand, wrist and elbow strength with intact sensation to light touch and normal reflexes. Dr. Shamir found no swelling, edema or erythema about the right hand and a negative Phalen's sign. He noted that Tinel's sign over the median nerve at the wrist was positive bilaterally and positive over the ulnar nerve on the right at the elbow. Dr. Shamir found that provocative maneuvers for lateral epicondylitis led to pain by the lateral epicondylar area and extensor muscle group on the right. He stated that appellant was tender to palpation over the snuff box and diffusely over the de Quervain's area as well as tender to palpation over the extensor muscle group area and lateral epicondylar area. He stated that although Finkelstein's sign elicited discomfort and pain over the extensor muscle group and lateral epicondylar area there were no pain complaints in the de Quervain's area. He stated that appellant was tender to palpation in the first carpometacarpal joint as well as the second metacarpal joint with no wasting of the first dorsal interosseous.

Dr. Shamir diagnosed de Quervain's syndrome resolved. He attributed appellant's current symptoms to arthritic changes in the carpometacarpal joint, lateral epicondylitis and carpal tunnel syndrome. He stated that there was no relationship between appellant's accepted employment injury of June 16, 1993 and her current conditions. Dr. Shamir stated that there was no measurable residual disability for de Quervain's disease. He opined that appellant's June 16, 1983 employment injury led to the development of de Quervain's syndrome which was treated surgically. He stated that this condition did not accelerate the degenerative aging changes or arthritis in the right thumb nor was it responsible for appellant's right carpal tunnel syndrome.

On May 8, 2001 the Office requested a supplemental report from Dr. Shamir, addressing whether appellant had completely recovered from the 1983 employment injury and whether she could return to her date-of-injury position based on her work-related conditions alone. In a report dated October 10, 2001, Dr. Shamir confirmed that appellant had completely recovered from the work injury of June 16, 1983 and that she had no residuals of this injury. He further opined that appellant could perform the duties of her date-of-injury position when considering only her work-related conditions.

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.⁶ In this case, the Board determined in its

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

February 11, 2000 decision, that there was a conflict of medical opinion evidence between appellant's attending physician and a physician for the Office. To resolve the conflict, the Office properly referred appellant to Dr. Shamir. In his July 5, 2000 and October 10, 2001 reports, he found that appellant had no residuals of her accepted employment injury of 1983 including no findings as a result of her diagnosed de Quervain's syndrome. Dr. Shamir provided an extensive history of injury, a detailed review of the medical evidence and physical findings relating to appellant's upper extremities muscle strength, range of motion and tests for Phalen's, Tinel's and Finkelstein's signs. He concluded that appellant's current conditions of right lateral epicondylitis and right carpal tunnel syndrome as well as arthritic changes of the carpometacarpal joint were not related to her resolved de Quervain's syndrome or her 1983 employment injury. Dr. Shamir's report comports with the above-mentioned requirements and is entitled to special weight as he reviewed appellant's factual and medical history, made physical findings and based his conclusion of no continuing disability on those physical findings. As Dr. Shamir's detailed reports provide an opinion supported with physical findings and medical reasoning that appellant had no disability nor residuals due to her accepted employment injury, the Office met its burden of proof to terminate her compensation benefits.

The September 13 and February 25, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
February 12, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member