

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TARA V. BENOIT and U.S. POSTAL SERVICE,  
POST OFFICE, Kearny, NJ

*Docket No. 03-122; Submitted on the Record;  
Issued June 4, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether appellant had continuing disability after July 7, 1999 causally related to the accepted employment injury; and (2) whether appellant met her burden of proof in establishing that she sustained a recurrence of disability causally related to the accepted employment injury.

The Office of Workers' Compensation Programs accepted that appellant, a postal clerk, born January 20, 1957 sustained a ganglion cyst of the right wrist on August 5, 1997 in the performance of duty.<sup>1</sup> The Office later accepted that appellant sustained a recurrence of disability on March 20, 1998, the date she had the ganglion cyst removed from her wrist. On April 23, 1998 appellant returned to full-time limited-duty work.

By decision dated July 7, 1999, the Office determined that appellant had no disability as a result of the August 5, 1997 employment injury and terminated appellant's entitlement to compensation. The Office relied on the opinion of Dr. Howard Baruch, a Board-certified orthopedic surgeon, in terminating appellant's compensation. In his March 8, 1999 report, Dr. Baruch determined that he was unable to find any objective findings to support that appellant still suffered from disability as a result of the accepted condition. He indicated that appellant had full range of motion to the fingers and related joints, that appellant had no pain and no objective findings other than healed scars. Dr. Baruch opined that appellant was able to report to her date-of-injury position without any restrictions.

In a letter dated December 17, 1999, appellant, through counsel, requested reconsideration of the termination decision. Her counsel submitted a September 15, 1999 report from Dr. Lance Kollmer, a Board-certified plastic surgeon, who stated that a July 16, 1999 magnetic resonance imaging (MRI) scan, revealed a scapholunate dislocation associated with a

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<sup>1</sup> The Office accepted two previous occupational disease claims for right wrist tendinitis on June 12, 1992 and left wrist tendinitis on July 22, 1996.

tear of the scapholunate ligament, which confirmed that an injury-related disability continued. In a February 18, 2000 report, Dr. Kollmer stated that appellant's work duties involving repetitive motions could easily have been responsible for the tear and for her wrist instability and chronic wrist pain.

By merit decision dated March 3, 2000, the Office denied modification of its prior order because it found that the evidence submitted was insufficient to warrant modification.

In a letter dated March 14, 2000, appellant, through counsel again, requested reconsideration and submitted additional evidence.

On May 26, 2000 the Office appointed Dr. Donald Frank, a Board-certified neurologist, to resolve the conflict in medical opinion between Drs. Baruch and Kollmer, as to whether appellant had any continuing disability causally related to the accepted employment injury. In an August 28, 2000 report, Dr. Frank, the impartial examiner, found that there were no neurological abnormalities caused by appellant's work and no disability from a neurological standpoint. He noted that the abnormalities diagnosed of the wrist clinically by history and by examination included the ganglion cyst. Dr. Frank stated that the MRI scan and x-ray indicated that the bony and joint abnormalities were not within the area of his neurological expertise therefore he would not provide an opinion. In a work capacity form (OWCP-5), dated September 11, 2000, he indicated that appellant was capable of returning to work without restrictions.

By merit decision dated March 31, 2001, subsequently reissued April 12, 2002, the Office denied modification of its prior decision.<sup>2</sup> The Office found that the weight of the medical evidence rested with Dr. Frank who stated that appellant was able to work full time with no medical work restrictions and therefore had no continuing disability.

In a letter dated April 23, 2002, appellant, through counsel, requested reconsideration and submitted argument and evidence in support of the request. By merit decision dated July 22, 2002, the Office again denied modification. The Office found, upon review of the case record, that the weight of the medical evidence continued to rest with Dr. Frank, who the Office stated, found that appellant exhibited no signs of neurological abnormality and found no continuing disability or requirement for treatment.

Appellant filed a recurrence of disability on April 22, 2002 claiming disability on April 9, 2002 related to the accepted employment injury.<sup>3</sup> By decision dated July 26, 2002, the Office denied the recurrence of disability claim. The Office noted that appellant indicated on the claim form that, after having received injections for her tendinitis, she might need surgery to relieve the pain. The Office further noted that appellant submitted a disability slip stating that she was unable to work from June 5 through 25, 2002. The Office determined that the evidence

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<sup>2</sup> The Board notes that the initial decision dated March 31, 2001 was sent to an old address. Further, the Board notes that the case record was lost for the period of at least August 15, 2001 to April 12, 2002. Therefore, the Office reissued the decision on April 12, 2002 to allow appellant to avail himself of the appeal rights.

<sup>3</sup> The record does not contain a Form CA-2a recurrence of disability claim dated April 22, 2002.

submitted was insufficient in establishing that the claimed recurrence of disability was causally related to the injury of August 5, 1997.

The instant appeal follows.

The Board finds that the case is not in posture for a decision regarding appellant's continuing disability, since the opinion of the impartial medical specialist, that appellant had no continuing residuals and disability as a result of the accepted employment injury, was insufficiently rationalized to represent the weight of the medical evidence.

At the time of the 1999 termination decision, the Office found that the weight of the medical opinion to be represented by the second opinion report of Dr. Baruch, a Board-certified orthopedic surgeon who found that appellant had no continuing residuals and further disability as a result of the accepted employment injury. Following a reconsideration request and submission of new evidence supporting continuing disability, the Office determined that a conflict of medical opinion existed and referred appellant to Dr. Frank, a Board-certified neurologist, to provide an impartial evaluation.<sup>4</sup> The Office subsequently denied appellant's request for reconsideration of its termination decision in a decision reissued on April 12, 2002.

The Board notes that, after termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits.<sup>5</sup> Based upon the medical evidence appellant submitted from Dr. Kollmer supporting continuing disability, the Office determined that a conflict existed which required referral to an impartial medical examiner.

The Board finds that the impartial medical report of Dr. Frank in this case has little probative value in determining whether or not appellant disability continuing after termination as a result of the accepted employment injury.<sup>6</sup> In his August 28, 2000 opinion, Dr. Frank found that there were no neurological abnormalities caused by appellant's work and no disability from a neurological standpoint. However, he also specifically stated the abnormalities diagnosed of the wrist clinically by history and by examination including the ganglion cyst and by MRI scan and x-ray indicating bony and joint abnormalities were not within the area of neurological expertise therefore, he would not provide an opinion." Because Dr. Frank concluded that appellant had no neurological abnormalities or disability from a neurological standpoint while indicating that the diagnosed abnormalities including the accepted condition were not within his

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<sup>4</sup> The Board notes that the Office also referred appellant to Dr. Evan Fisher and Dr. H. Mahmood Cheema, a Board-certified orthopedic surgeon, for impartial medical examinations; however, their reports have been excluded from the record pursuant to Office regulations and will not be considered on appeal. The Board further notes that one of the physicians involved in the conflict, Dr. Kollmer, voluntarily surrendered his medical license subsequent to reports submitted to the Office. Dr. Kollmer was considered a physician as defined by the Federal Employees' Compensation Act and Board-certified in neurology at the time the Office considered his opinion.

<sup>5</sup> See *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992).

<sup>6</sup> *Annie L. Billingsley*, 50 ECAB 210, 213 (1999).

area of neurological expertise, his opinion on whether appellant has any residuals from his accepted injury or disability is equivocal. Moreover, Dr. Frank failed to adequately discuss his opinion that appellant had no neurological disability from a neurological standpoint. Further, although he opined that appellant was capable of performing unrestricted work for eight hours per day consistent with the limitations set forth in his September 2000 Form OWCP-5c, he failed to provide any rationale for his opinion. Notwithstanding these deficiencies, a clarifying report which provided a well-reasoned medical opinion on the pertinent issue was not obtained by the Office.

Where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical opinion evidence and the opinion requires further clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for purpose of correcting the defect in the original report.<sup>7</sup>

Due to the limitations of Dr. Frank's report which has not yet been clarified, the Board finds that, without any further explanation or rationale, such report is insufficient to establish that appellant had a continuing disability causally related to her employment. The case must be remanded for clarification by Dr. Frank of his medical opinion or a referral of appellant to obtain a neurological consultation if he feels it is appropriate.

The Board further finds that appellant did not meet her burden of establishing a recurrence of disability on April 9, 2002 or that she was totally disabled from June 5 through 25, 2002 as a result of the accepted employment injury.

In the July 22, 2002 Office decision, reference was made to a medical report from Dr. Richard Boiardo, a Board-certified orthopedic surgeon dated June 3, 2002, which noted an indication of disability for the period June 5 through 25, 2002. Dr. Boiardo's report, however, failed to indicate a diagnosis or injury and did not provide a reasoned explanation supporting causal relationship to the accepted employment injury.

The record is devoid of any evidence establishing any change in the nature and extent of appellant's permanent light-duty position after April 23, 1998 or that appellant was precluded by the employing establishment from working her light-duty position after April 9, 2002, the date of the claimed recurrence of disability.

Accordingly, appellant has failed to establish a recurrence of disability commencing on or after April 9, 2002 or a claim for total disability for the period of June 5 through June 25, 2002.

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<sup>7</sup> *Harry T. Mosier*, 49 ECAB 688 (1988); *Terrance R. Stath*, 45 ECAB 412 (1994).

The decision of the Office of Workers' Compensation Programs dated July 26, 2002 is affirmed. The decisions of the Office dated July 22 and April 12, 2002 are set aside and the case is remanded for further development consistent with this decision of the Board.

Dated, Washington, DC  
June 4, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member