

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERESA THOMAS and U.S. POSTAL SERVICE,
POST OFFICE, Ball Mawr, NJ.

*Docket No. 03-1161; Submitted on the Record;
Issued October 1, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 6, 2002; and (2) whether appellant was entitled to compensation after February 6, 2002.

On April 30, 1999 appellant, then a 38-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that for the prior year she experienced pain in her hand and it recently had become severe. Her medical history included work-related cervical and right shoulder muscle strains in 1995; a frozen right shoulder and myositis of the right shoulder deltoid and trapezius in 1997; left elbow, forearm and hip contusions in 1998; and a left trapezius sprain and spastic torticollis in 1999. Appellant also injured her low back in a nonindustrial motor vehicle accident in 1998.

In an April 29, 1999 report, Dr. Chris Spierer, an attending Board-certified family practitioner, diagnosed appellant with de Quervain's tenosynovitis. He recommended restricted duty and that appellant case mail with her left hand. In a May 31, 1999 decision, the Office accepted the claim for right-sided de Quervain's tenosynovitis.

In a July 14, 1999 report, Dr. Scott Fried, an osteopath, noted that appellant presented with significant problems in her upper extremities, pain and discomfort in her right hand and thumb with ecchymosis and swelling causing her to drop things. She also complained of tingling and bruised feelings in her thumb and her first three digits of the right hand and that her right wrist felt weak. On examination Dr. Fried found appellant to be in no acute distress and both extremities showed full range of motion. Neurologically, he reported a positive supracavicular irritability and infraclavicular Tinel's sign bilaterally tenderness. Dr. Fried noted that appellant had a positive Tinel's in the anterior forearm on the left over the median nerve and the median nerve was positive at the right wrist reproducing dysesthesias in the palm. He diagnosed appellant with de Quervain's tenosynovitis right, minimal left, secondary to casing mail and delivery activity, median neuropathy right wrist greater than left, cumulative trauma disorder right side greater than left, brachial plexitis with radiculitis right side and left secondary to a

bucket-lifting injury, cervical rib right three cm and disc space narrowing at C5-6. Dr. Fried recommended that she work four hours a day, light duty with no use of her right hand.

A July 20, 1999 magnetic resonance imaging (MRI) scan of appellant's cervical spine revealed minimal degenerative disc disease at C4-5 but no focal herniation, spinal stenosis or foramina narrowing. An x-ray of her right hand that same day revealed erosion involving the first metacarpal head suggesting rheumatoid arthritis. Appellant stopped work on November 8, 1999 and has not returned.

On November 9, 1999 appellant filed a claim alleging that she sustained a recurrence of disability. She indicated that her injury had never healed. In support of her claim, appellant submitted a November 8, 1999 report from Dr. Fried that essentially repeated his earlier findings, except he found appellant totally disabled from work. The employing establishment offered appellant a part time light-duty position that she rejected in a January 21, 2000 letter. In a February 8, 2000 decision, the Office accepted the recurrence claim. Appellant was treated conservatively with physical therapy and medications.

In a June 21, 2000 report, Dr. Fried wrote that appellant was getting better though she still remained symptomatic and his main concerns were right brachial plexus down through her right arm, forearm and radial tunnel through the hand and wrist. He diagnosed de Quervain's tenosynovitis right, minimal left, secondary to casing mail and delivery activity, median neuropathy right wrist greater than left, cumulative trauma disorder right side greater than left, brachial plexitis with radiculitis secondary to a bucket-lifting injury and disc space narrowing at C5-6. Dr. Fried opined that appellant remained totally disabled.

In an August 16, 2000 letter, the Office referred appellant for a second opinion examination. In a September 15, 2000 report, Dr. Gregory Maslow, a Board-certified orthopedic surgeon, noted that appellant presented wearing splints with bilateral upper extremity problems, including pain in both shoulders and forearms and pain in both wrists and hands associated with numbness and neck pain. On examination he found shoulder tenderness in superior trapezius, bilaterally, no indications of synovitis or tendinitis, no swelling in the forearms, full range of motion in the wrists and no evidence of de Quervain's tenosynovitis. Dr. Maslow's impression was that appellant was not disabled from full-time work as a mail sorter.

The Office found a conflict of medical opinion between Dr. Fried and Dr. Maslow and referred appellant for an impartial medical examination. In a May 5, 2001 work capacity evaluation, it was recommended that appellant work part-time, light duty with no repetitive activities and no lifting over 10 pounds.

In a May 10, 2001 report, Dr. Howard Zeidman, a Board-certified orthopedic surgeon, serving as the impartial medical examiner, reviewed appellant's medical history and on examination found some diffuse, nonspecific and nonlocalized tenderness through her neck, shoulders and upper extremities. He found good range of motion of her cervical spine without spasms of both shoulders and her elbows and hands had full range of motion. Dr. Zeidman could find no positive Tinel's in the shoulders, elbows or wrists. He found some erosion of appellant's first metacarpal head. Dr. Zeidman concluded that there was a paucity of positive physical findings and he could not identify any residuals of her past injuries that would limit her ability to

work. He noted that, since appellant had not worked for sometime, she might benefit from a 30- to 60-day strengthening program, but more as work conditioning effort than therapy for a particular physical problem.

In a July 13, 2001 letter, the Office proposed terminating appellant's compensation relying on the weight of Dr. Zeidman's report as the impartial medical examiner. Appellant was given 30 days to submit additional evidence.

In a July 19, 2001 letter, appellant, through her representative, objected to the weight given to Dr. Zeidman's report contending that the report lacked adequate medical rationale, that Dr. Zeidman did not show knowledge of appellant's full medical history and his conclusion was inconsistent with his findings because he indicated that she needed a strengthening program while writing that he found no residuals of her accepted injury.

In an August 9, 2001 report, Dr. Fried stated that appellant was very uncomfortable and requested decompression surgery be performed on the radial nerve in her right hand. He indicated that her radial nerve was positive to compression testing and appellant resisted supination testing on her right wrist. Dr. Fried stated that appellant had a Grade 1.5 weakness in her radial nerve function and moderately positive findings in the radial nerves on the left and medial nerves, bilaterally. Appellant tested positive in Phalen's, Roos', Hunter's tests. Dr. Fried diagnosed de Quervain's tenosynovitis right, minimal left secondary to casing mail and delivery activity, median neuropathy right wrist greater than left, cumulative trauma disorder right side greater than left, brachial plexitis with radiculitis right side and left secondary to a bucket-lifting injury and cervical rib right 3 cm. and disc space narrowing at C5-6. He indicated that appellant remained totally disabled and recommended decompression surgery.

In a September 7, 2001 letter, the Office forwarded Dr. Fried's August 9, 2001 report to Dr. Zeidman for his comments. In a September 25, 2001 follow-up report, Dr. Zeidman wrote that he did not find any residuals of appellant's prior injuries and saw no reason for decompression surgery. He wrote that he thought appellant might benefit from a strength program if she was assigned to physically arduous tasks and not due to any particular physical problem he found.

In a February 6, 2002 decision, the Office terminated appellant's benefits, finding the weight of the evidence rested with Dr. Zeidman as the impartial medical examiner.

In a February 11, 2002 letter, appellant requested a hearing. In support of her request, she submitted a February 26, 2002 report from Dr. Fried, who wrote that appellant was experiencing increased symptoms in her shoulders, numbness and tingling in her hands, the right more than the left, was sleeping poorly and had exacerbation of her brachial plexus right arm and asthma symptoms. He recommended that appellant work no more than five hours a day with no letter carrying or heavy lifting.

On March 4, 2002 appellant filed a recurrence of disability claim contending that her injuries were never properly addressed. Appellant noted that she experienced pain in her right hand with tingling, throbbing and burning sensation and numbness. On February 25, 2002 she felt spasms in her wrist, numbness in her finger and irritation and swelling in her thumb. On

March 19, 2002 the employing establishment placed appellant on light duty. In a March 26, 2002 progress note, Dr. Fried reported that appellant was doing much better with her light-duty assignment. In a May 20, 2002 report, Dr. Fried wrote that appellant was doing much better in a light-duty capacity, although she had some exacerbations for her symptoms.

At a hearing held on October 23, 2002 appellant, through her representative, argued that her current condition was related to her prior injuries and that Dr. Zeidman did not specifically indicate that she had no residuals from her previous injuries. She also argued that Dr. Zeidman's report was internally inconsistent because he indicated that appellant was no longer disabled yet recommended a work hardening program.

In a January 10, 2003 decision, the hearing representative affirmed the February 6, 2002 decision finding the weight of the evidence rested with the well-rationalized opinion of Dr. Zeidman as the impartial medical examiner.

The Board finds the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

The Office properly determined that there was a conflict in the medical opinion between Dr. Fried and Dr. Maslow regarding whether appellant continued to have residuals of the April 27, 1999 employment injury. In order to resolve the conflict, the Office properly referred appellant to Dr. Zeidman for an impartial medical examination and an opinion, pursuant to section 8123(a) of the Act.⁴

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, will be given special weight.⁵

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Zeidman, the impartial medical examiner selected to resolve the

¹ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

² *Id.*

³ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ Section 8123(a) of the Act provides 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 U.S.C. § 8123(a).

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

conflict in the medical opinion. The report of Dr. Zeidman establishes that appellant had no residual disability due to her April 27, 1999 employment injury after February 6, 2002.

In his May 10, 2001 report, Dr. Zeidman provided medical rationale for his opinion by explaining that appellant had diffuse nonspecific nonlocalized tenderness in the neck, shoulder and upper extremities with good range of motion in her shoulders, elbows and hands. He found a negative Tinel's sign, symmetric and equal deep tendon reflexes with no evidence of atrophy. Dr. Zeidman noted few positive physical findings and no residuals of her accepted de Quervain's tenosynovitis. He further explained that his comments regarding a work hardening program were not in reference to a specific injury but only to appellant's general decondition after not working for several years and would only apply if appellant was assigned to particularly arduous physical tasks. In his September 25, 2001 report, Dr. Zeidman wrote that he did not find any residuals of appellant's prior injuries and saw no reason for decompression surgery.

The Board has carefully reviewed the opinion of Dr. Zeidman and finds that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Zeidman'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. Zeidman 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.⁶

Regarding appellant's allegation that Dr. Zeidman did not discuss her pre-1999 injuries, the Board notes that he reviewed her extensive medical history in his May 10, 2001 report and concluded they no longer caused residuals.

As Dr. Zeidman's report is well rationalized and based on proper medical and factual history, the Board finds that the Office properly gave it the weight of the medical evidence.

After the Office's February 6, 2002 decision terminating compensation, appellant submitted additional medical evidence from Dr. Fried, which she felt showed that she was entitled to further compensation. Given that the Board has found that the Office properly relied on the opinion of the impartial medical examiner, Dr. Zeidman, in terminating appellant's compensation effective February 6, 2002, the burden shifts to appellant to establish that she is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is of insufficient probative value to establish that she had residuals of her employment injury after February 6, 2002. Dr. Fried's reports, dated February 26, March 26 and May 20, 2002, essentially repeated his previous opinion or noted that appellant was improving with some residuals without further rationale. These reports are insufficient to overcome the weight accorded to Dr. Ziedman's report or to create a new conflict because Dr. Fried was on one side of the conflict that Dr. Zeidman was selected to resolve.

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

The decision of the Office of Workers' Compensation Programs dated January 10, 2003 is affirmed.

Dated, Washington, DC
October 1, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member