

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARTINA TRIBBLE and DEPARTMENT OF TREASURY,
INTERNAL REVENUE SERVICE, Richmond, VA

*Docket No. 03-768; Submitted on the Record;
Issued September 9, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits; and (2) whether the Office properly determined that appellant was not entitled to receive a schedule award.

On October 31, 1997 appellant, then a 45-year-old supervisory tax examiner, filed a traumatic injury claim alleging that on October 29, 1997 she injured her back and neck while moving work from a desk.¹ The Office accepted the claim for cervical and thoracic strains and right elbow sprain. Appellant stopped work on October 29, 1997 and was subsequently placed on the automatic rolls for temporary total disability by the Office, by letter dated March 4, 1998.

Appellant filed a claim on January 9, 1998 alleging that her right carpal tunnel syndrome was employment related. The Office accepted the claim for bilateral median neuropathy and aggravation of upper extremity radiculopathy and plexitis on July 13, 1998.²

On July 8, 1999 the Office referred appellant to Dr. John T. Williams, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between his attending physicians, Dr. Gregory A. Nelson and Dr. Zohar Stark, a Board-certified orthopedic surgeon, who concluded that appellant was totally disabled due to her October 29, 1997 employment injury and the second opinion physician, Dr. Andrew Newman, a Board-certified orthopedic

¹ This was assigned claim number 03-0230894.

² The Office assigned this claim number 03-0234282. On October 27, 1999 the Office combined claim number 03-0234282 with claim number 03-0230894 with the latter number as the master file number.

surgeon, who concluded that appellant's residual disability due to her October 29, 1997 employment injury had ceased.³

In an August 30, 1999 report, Dr. Williams based upon a physical examination, review of medical records, statement of accepted facts and employment injury history, diagnosed a resolved acute cervical strain/sprain, resolved acute thoracic strain/sprain and "rule out degenerative joint and disc disease of the cervical spine." He noted appellant's history and indicated that appellant had sustained soft tissue injuries, which he noted "are self-resolving, anywhere from a few days to a couple of months." Dr. Williams concluded that appellant would be able to perform her usual employment without any restrictions. In support of this conclusion, he noted:

"Today, on physical examination, there are no positive objective findings to correlate to patient's complaints. There are, however, nonphysiological and nonorganic responses, no positive findings and in the absence of the same, it [i]s my medical opinion that this patient is fully recovered...."

Regarding appellant's other two claims Dr. Williams noted that there was nothing he had reviewed that would alter his opinion that appellant had fully recovered from her accepted employment injuries.

On July 5, 2000 the Office issued a notice of proposed termination of benefits.

In a July 21, 2000 letter, appellant's counsel responded to the Office's proposal to terminate benefits and enclosed a July 12, 2000⁴ report by Dr. Scott M. Fried, an attending osteopathic physician, in support of appellant's continuing employment-related disability.

In the January 12, 2000 report, Dr. Fried concluded that appellant was disabled from returning to her date-of-injury position. He diagnosed right median neuropathy greater on the right side; right radial tunnel; right upper extremity chronic radiculopathy with substantial right side brachial plexopathy and greater left side ulnar neuropathy than the right side.

Also in response to the proposal to terminate benefits, appellant's counsel submitted an August 8, 2000 report by Dr. John Aaron, an attending physician,⁵ in which he concluded that because appellant "continues to suffer from symptomatology, her prognosis remains guarded and is still under our care. She continues to be disabled and unable to return to work as a tax examiner."

³ In its statement of accepted facts, the Office accepted that appellant sustained a cervical, lumbosacral and right wrist sprains, resolved due to an August 3, 1992 employment injury. The Office stated that appellant stopped work due to the injury and returned on July 10, 1995.

⁴ This appears to be a typographical error as the date of the report should be January 12, 2000 not July 12, 2000

⁵ In her letter, appellant refers to Dr. Gregory A. Nelson instead of Dr. Aaron. This appears to be a typographical error as Dr. Aaron and Dr. Nelson both work for The Nelson Medical Group, P.C.

In a letter dated September 27, 2000, the Office requested that Dr. Williams review Dr. Fried and Dr. Aaron's reports to provide his opinion as to whether appellant continues to suffer from her accepted conditions as well as whether she is totally disabled due to her accepted employment injuries. The Office informed Dr. Williams that it had accepted the conditions of bilateral median neuropathy and aggravation of radiculopathy and plexitis due to her accepted October 29, 1997 and January 9, 1998 employment injuries.

In an addendum dated November 17, 2000, Dr. Williams reviewed the reports of Drs. Aaron and Fried, as requested by the Office. He stated that, when he examined appellant on August 3, 1999, "there was no clinical evidence of any bilateral median neuropathy, no evidence of radiculopathy, nor any evidence of any plexitis" and appellant was capable of performing her usual employment with no restrictions. Dr. Williams noted that Dr. Fried provided no clinical evidence to support his impressions and diagnoses and that Dr. Aaron did not mention any new objective evidence. In concluding, Dr. Williams stated that he found "no evidence to substantiate, correlate or confirm appellant's complaints."

Additional medical reports from Dr. Fried dated October 4 and November 3, 2000 were submitted by appellant. Dr. Fried, in an October 4, 2000 report, diagnosed right moderate radial tunnel, chronic right upper extremity radiculopathy, mild left upper extremity plexitis and "median neuropathy right side greater than left acute." He noted that appellant's "nerve studies show no evidence of cervical radiculopathy" and appellant's "primary problem occurs just outside the neck where the nerve roots begin and form brachial plexus at C5, 6, 7, 8 and T1." Dr. Fried noted appellant's carpal tunnel or median neuropathy involvements were consistent with her distal neuropathies and she "has electromyogram (EMG) negative carpal tunnel in that her major problem is at the other end of the carpal tunnel at the thoracic outlet of the C5-6 nerve root." He concluded that appellant "still has significant residual from her work-related injuries" and that she "obviously has two problems, the proximal involvement in her neck at the brachial plexus level and also discogenic involvement" and "evidence of involvement of substantial distal neuropathies." As to the cause of her disability, the physician stated: "There is a cause and effect relationship between her work activities and her symptomatology. Further, there is no doubt that, when she was removed from the work environment, her symptoms decreased although still remain." Dr. Fried reviewed and disagreed with Dr. William's opinion that appellant's condition had resolved. He opined that appellant continued to have residuals from her accepted employment injuries of dorsal and cervical strain, brachial plexitis and carpal tunnel median nerve involvement. In concluding, Dr. Fried opined that appellant "has not at this time, nor has she ever, resolved these issues and injuries and she remains significantly disabled and dysfunctional secondary to the same."

Dr. Fried's November 3, 2000 report noted the same diagnosis as in his October 4, 2000 report, which were median neuropathy greater on the right side than the left with "acute EMG negative," chronic radiculopathy in the right upper extremity with substantial right brachial plexopathy and "borderline left EMG positive," right EMG positive radial tunnel and ulnar neuropathy greater on the left than the right at "elbow level EMG positive, right side borderline, left side substantial." He noted that cold or rainy weather increased appellant's symptoms and that she "noted progressive symptoms since January, but July seems to have brought on much more symptomatology." Dr. Fried reported positive Phalen's test, Roos test and Hunter's test bilaterally.

On January 22, 2001 the Office requested that Dr. Williams review additional reports from Dr. Fried and EMGs dated November 27 and December 11, 2000 and indicate whether this evidence would change his opinion.

In an April 11, 2001 report, Dr. Williams responded to the Office's request to review additional medical evidence. He found nothing in the medical reports that would alter his opinion. Dr. Williams opined that mechanism of appellant's injury history did not support a connection with a bilateral brachial plexus injury. He noted that appellant's symptoms of her hand getting numb "does not correlate with carpal tunnel syndrome." Dr. Williams further noted that if appellant "had a significant neuropathy I would expect to see, first atony, then atrophy of the corresponding muscles" and that he did not see this either in his examination or the reports sent by the Office for his review. Next, he noted:

"When I asked [appellant] to volar flex both wrists and she said that causes pain and tingling. I asked her, 'where?' She said, 'my hands.' Again I asked, 'where.' [Appellant] points to all the digits of her right and left hands. This is not a positive Phalen's test in view of the fact that Phalen's test is for carpal tunnel and carpal tunnel involves the thumb, index, middle and part -- maybe half or maybe the whole ring finger, but it does not involve the little finger. So, if someone points to the little finger, that's not carpal tunnel, nor a positive Phalen's test as described by Dr. Phalen. I was able to break the [appellant's] pinch (index to thumb) on three different occasions. [She] had fair abduction and adduction of the digits of both hands, but I found no evidence of any atony, nor atrophy in either of her upper extremities."

An additional report of Dr. Fried was submitted by appellant. In the March 6, 2001 report, Dr. Fried noted "positive Tinel mildly at the ulnar nerve at the right elbow greater than the left and median nerve right side greater than the left." He also found positive bilateral Phalen's and compression tests. Based upon his findings, Dr. Fried diagnosed median neuropathy greater on the right side; upper right extremity chronic radiculopathy with substantial right brachial plexopathy; right radial tunnel; "Ulnar neuropathy left side greater than right at elbow level EMG positive and right side borderline, left side substantial."

On June 28, 2001 the Office finalized the termination of appellant's benefits effective July 15, 2001 on the basis that she no longer had any disability or residuals from her accepted October 29, 1997 employment injury. The Office found that the report of Dr. Williams, the impartial medical specialist, supported the finding that appellant no longer had any residuals due to her employment injuries.

In a letter dated July 3, 2001, appellant's counsel requested an oral hearing before an Office hearing representative.

Subsequent to the June 28, 2001 termination, appellant submitted reports dated July 24 and 25, 2001 by Dr. Fried.

In a July 24, 2001 report, Dr. Fried provided the same diagnoses noted in his previous reports. He stated that appellant continued "to struggle with respect to her symptoms and

remains severely symptomatic at her neck, brachial plexus and has axillary nerve symptoms as well as anterior axillary nerve symptoms bilaterally.”

Dr. Fried, after reviewing a June 30, 2001 functional capacity evaluation, opined in a July 25, 2001 report, that appellant was disabled from performing her former occupation.

A hearing was held on January 3, 2002, at which appellant was represented by counsel and presented testimony. At the hearing she also submitted medical reports already submitted and discussed.

By decision dated May 9, 2002, the hearing representative affirmed the termination of appellant’s compensation benefits. The hearing representative found that the report of Dr. Williams, the impartial medical specialist, represented the weight of the medical evidence to establish that appellant does not suffer from any employment-related injury.

In a letter dated September 24, 2002, appellant’s counsel requested reconsideration and submitted a July 18, 2002 report by Dr. Nicholas P. Diamond,⁶ an osteopath.

In his July 18, 2002 report, Dr. Diamond concluded that appellant had a 38 percent impairment of her right upper extremity and a 33 percent impairment of her left upper extremity. He opined that appellant “remains very symptomatic, despite her pharmacotherapy in regards to the neck, brachial plexus and axillary nerve symptoms (bilaterally).” Dr. Diamond diagnosed right wrist and elbow sprains; right cervical radiculopathy aggravation; bilateral brachial [plexus] aggravation; bilateral ulnar and median neuropathies; and thoracic; cervical and lumbosacral sprains and strains.

Dr. Diamond noted that appellant had sustained employment injuries in 1986 or 1987, August 3, 1992 and October 29, 1997. He then concluded that appellant’s disability and injuries were “sustained during the course of [her] employment” and “were the competent producing factor for” appellant’s objective and subjective findings.

Appellant filed a claim for a schedule award on September 28, 2002.

By merit decision dated November 7, 2002, the Office denied appellant’s request for modification. The Office also found that appellant was not entitled to a schedule award as there was no permanent impairment.

The Board finds that the Office met its burden of proof in terminating appellant’s compensation for her traumatic injury claim.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits by establishing that the accepted disability has ceased or that it is no longer related to the employment.⁷ The Office’s burden of proof includes the

⁶ Appellant’s counsel mistakenly identified the physician as Dr. David Weiss in his letter.

⁷ *Betty M. Regan*, 49 ECAB 496 (1998).

necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

In this case, the Office accepted appellant's claim for cervical, thoracic strains, right elbow sprain and bilateral median neuropathy and aggravation of upper extremity radiculopathy and plexitis and paid appropriate compensation. The Office reviewed the medical evidence and determined that a conflict existed in the medical evidence between appellant's attending physicians, Drs. Nelson and Stark and the second opinion physician, Dr. Newman, on the issue of whether appellant's residual disability due to her accepted October 29, 1997 injury had ceased. Consequently, the Office referred appellant to Dr. Williams to resolve the conflict.

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 the medical opinion.⁹ 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.¹⁰

On appeal appellant's attorney argues that the Office erred in relying on Dr. Williams report to terminate benefits, as the report was more than a year old at the time of termination. Dr. Williams concluded, in an August 30, 1999 report, that appellant no longer had any residuals due to her accepted employment injuries. Subsequently, the Office requested him to review additional medical information and he concluded, in addendum reports dated November 17, 2000 and April 11, 2001, that his opinion that appellant had recovered from her employment injuries was unchanged. The Board rejects appellant's argument that Dr. Williams report is stale and insufficient to support the June 28, 2001 termination decision.

Regarding appellant's traumatic injury claim, the Office properly determined that a conflict of medical opinion existed over whether appellant had any continuing disability due to her accepted October 29, 1997 employment injuries. Her treating physicians, Drs. Nelson and Stark concluded that she was not capable of performing her duties due to her accepted October 29, 1997 injury. The second opinion examiner, Dr. Newman, found that appellant had no residual disability due to her accepted October 29, 1997 employment injury. Therefore, the Office referred her to Dr. Williams to resolve whether appellant was currently disabled from her work-related injury and, if so, the level of disability.

Dr. Williams reviewed the extensive case record and many reports on appellant's medical treatment. He examined her thoroughly, discussed the diagnostic testing, explained his clinical findings and provided medical rationale for his conclusion that appellant's work-related neck, thoracic, forearm, elbow strains, bilateral median neuropathy, aggravation of upper extremity radiculopathy and plexitis had resolved. Thus, Dr. Williams provided an opinion that was sufficiently well rationalized to support his conclusion that appellant was capable of returning to

⁸ *Raymond C. Beyer*, 50 ECAB 164 (1998).

⁹ *Richard L. Rhodes*, 50 ECAB 259 (1999).

¹⁰ *Sherry A. Hunt*, 49 ECAB 467 (1998).

her usual work in his reports. The Board finds that his reports are entitled to the special probative weight accorded to impartial medical examiners and establishes that appellant's accepted October 29, 1997 work injuries had resolved.¹¹

Subsequent to Dr. William's August 30, 1999 report and the Office's July 5, 2000 notice of proposed termination, appellant submitted reports dated January 12, October 4 and November 3, 2000 and March 6, 2001 by Dr. Fried and an August 8, 2000 by Dr. Aaron. The Board finds that neither Dr. Fried nor Dr. Aaron provided a rationalized opinion explaining how appellant continued to be totally disabled due to her accepted employment injuries.

Dr. Aaron, in his August 8, 2000 report, concluded that appellant was totally disabled as she was still symptomatic. In his January 12, 2000 report, Dr. Fried noted several conditions and concluded that appellant was totally disabled. These reports fail to provide a well-reasoned opinion to support that appellant's inability to work resulted from her accepted work injuries. Moreover, the August 8, 2000 opinion of Dr. Aaron and Dr. Fried's January 12, 2000 opinion that appellant was totally disabled is unsupported by medical rationale and, therefore, is insufficient to outweigh the probative value of Dr. Williams' impartial medical examination report, which specifically concluded that appellant was no longer disabled due to her accepted employment injuries.¹²

Similarly, the Board finds that Dr. Fried's subsequent reports are unrationalized and insufficient to create a conflict with Dr. Williams. In his October 4, 2000 report, Dr. Fried diagnosed right moderate radial tunnel, chronic right upper extremity radiculopathy, mild left upper extremity plexitis and a right side median neuropathy greater than the left and concluded that she continued to have residuals from her accepted employment injuries. He attributed her disability to her employment based upon appellant's symptoms decreasing, when removed from her work environment. In his November 3, 2000 report, Dr. Fried noted that appellant's symptoms had worsened since January. In his October 4, 2000 report, provided no medical rationale for his conclusion that appellant was disabled beyond noting, without medical rationale, that her symptoms decreased when she was not at work. In his November 3, 2000 report, Dr. Fried, while noting appellant's symptoms had worsened and that rainy or cold weather appeared to have an adverse impact, did not state that appellant was disabled. For these reasons, the Board finds that his reports lack sufficient probative value to create a conflict with the opinion of Dr. Williams.

As the medical evidence of record is insufficient to overcome the special weight accorded to Dr. Williams' reports, the Office met its burden of proof to terminate appellant's compensation benefits for her October 29, 1997 employment injury effective July 15, 2001.

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In

¹¹ See *Richard L. Rhodes*, *supra* note 9 (finding that the impartial medical examiner's opinion that appellant's hysterical conversion disorder had resolved was sufficiently well rationalized to merit special weight).

¹² *Jacquelyn L. Oliver*, 48 ECAB 232 (1996) (medical reports unsupported by rationale are of diminished probative value).

order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability that continued after termination of compensation benefits.¹³

After the Office's June 28, 2001 decision terminating appellant's compensation, she submitted additional medical evidence. Given that the Board has found that the Office properly relied on the opinion of Dr. Williams in terminating appellant's compensation effective July 15, 2001, the burden shifts to appellant to establish that she is entitled to compensation after that date.

The medical evidence submitted subsequent to the June 28, 2001 decision terminating appellant's compensation, includes reports dated March 6, July 24 and 25, 2001 by Dr. Fried and a July 18, 2002 report by Dr. Diamond.

None of the reports submitted by appellant are sufficient to support her burden of proof establishing that she has any continuing disability or residuals due to her accepted October 29, 1997 employment injury. Dr. Diamond provided a somewhat conclusory report, when he attributed appellant's current symptoms and disability to injuries she "sustained during the course of appellant's employment" and opined these "were the competent producing factor for" her objective and subjective findings without providing any rationale supported by objective evidence. As this report was unrationalized and conclusory, it was of diminished probative value.¹⁴ Similarly, Dr. Fried's opinions are also insufficient to support appellant's burden. He noted appellant continued to be symptomatic and opined that she was totally disabled from performing her former occupation. Dr. Fried failed to provide an opinion, supported by underlying documentation, explaining how appellant's current disability was related to her accepted employment injury. The Board finds that as neither Dr. Diamond nor Dr. Fried provided a rationalized medical opinion, their reports are insufficient to create a conflict with Dr. Williams' opinion that appellant no longer had any disability or residuals due to her accepted employment injuries. Accordingly, as appellant has not submitted additional probative medical opinion evidence establishing that she had continuing disability causally related to her accepted October 29, 1997 employment injuries, she has not met her burden of proof.

Regarding appellant's occupational disease claim, the Board finds that the Office did not meet its burden in terminating her compensation due to an unresolved conflict in the medical opinion evidence.

Appellant's counsel also contends that the Office erred in finding a conflict on her occupational disease claim. The Board agrees that the Office erred in finding that a conflict did not exist in the record between the reports of Dr. Newman, the Office referral physician and Drs. Nelson and Stark, appellant's treating physician, on the issue of whether appellant continued to have any disability due to her accepted occupational claim. Appellant correctly points out that at the time appellant was referred to Dr. Williams, the conflict in the medical opinion evidence

¹³ *Talmadge Miller*, 47 ECAB 673, 679 (1996); see also *George Servetas*, 43 ECAB 424 (1992).

¹⁴ See *Vicky L. Hannis*, 48 ECAB 538 (1997); *Jacquelyn L. Oliver*, 48 ECAB 232 (1996); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

concerned her traumatic injury claim, not her subsequently filed occupational claim, which the Office accepted for bilateral median neuropathy and aggravation of upper extremity radiculopathy and plexitis. The Board finds that the report of Dr. Williams creates a conflict with Dr. Fried on the issue of whether appellant is disabled due to her accepted bilateral median neuropathy and aggravation of upper extremity radiculopathy and plexitis. As there is an unresolved conflict on the issue of appellant's disability due to her January 9, 1998 occupational claim,¹⁵ the Office erroneously determined that Dr. William's report constituted the weight of the medical opinion evidence and, therefore, it erroneously terminated compensation and medical benefits for appellant's occupational claim based upon his report.

At the time of the Office referral to Dr. Williams, the conflict in the medical opinion evidence concerned whether appellant continued to have any disability due to her accepted October 29, 1997 employment injury. He was not asked to resolve a conflict regarding her occupational claim as no conflict existed at that time. Thus, Dr. Williams would be considered a second opinion physician and not an impartial medical examiner on this matter.

In this case, the Office terminated appellant's compensation benefits on the basis of the report of Dr. Williams. The Board notes, however, that there is an unresolved conflict in the medical evidence between appellant's treating physician, Dr. Fried, and a second opinion physician, Dr. Williams. Dr. Fried concluded that appellant continued to be disabled due to her accepted bilateral median neuropathy and aggravation of upper extremity radiculopathy and plexitis. Dr. Williams opined that appellant had no disability due to her employment injuries. He concluded that her symptoms did not correlate with carpal tunnel syndrome and her history of injury did not support a bilateral brachial plexus injury. Accordingly, there is a conflict between these opinions regarding whether appellant has any disability due to her occupational employment injuries.

Because a conflict existed in the medical opinion evidence between Drs. Fried and Williams, which the Office did not resolve with an impartial medical evaluation before terminating appellant's compensation benefits on her occupational claim, the Office did not meet its burden of proof to terminate appellant's compensation benefits.¹⁶

Since the Office has not resolved the existing conflict in the medical evidence, it has failed to meet its burden of proof in terminating appellant's compensation benefits.

The Board finds that the issue of whether appellant is entitled to a schedule award is not in posture for decision.

¹⁵ The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "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."

¹⁶ See *Warren L. Divers*, 47 ECAB 574 (1996).

The schedule award provisions of the Act¹⁷ and its implementing regulation¹⁸ set forth the number of weeks of compensation payable to employees sustaining permanent loss or loss of use, of scheduled members of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.¹⁹ However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.²⁰

Appellant's treating physician, Dr. Diamond concluded that appellant had a 38 percent impairment of her right upper extremity and a 33 percent impairment of her left upper extremity, based upon findings of tests of range of motion, grip strength and sensory examination. Dr. Diamond diagnosed appellant with bilateral carpal tunnel syndrome and related her conditions to factors of her employment. He also applied his findings to the A.M.A., *Guides*. Dr. Diamond determined that appellant had reached maximum medical improvement on August 20, 1997.

The Federal (FECA) Procedure Manual states that, after obtaining all necessary medical evidence, appellant's file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment using the A.M.A., *Guides*.²¹ As the Office did not forward appellant's file to the Office medical adviser to determine her percentage of permanent impairment, the issue is not in posture for a decision.

¹⁷ 5 U.S.C. §§ 8101-8193; see 5 U.S.C. § 8107(c).

¹⁸ 20 C.F.R. § 10.304.

¹⁹ 5 U.S.C. § 8107(c)(19).

²⁰ 20 C.F.R. § 10.404. FECA Transmittal No. 02-12 (issued August 30, 2002) explains that all permanent impairment awards determined on or after February 1, 2001 should be based on the fifth edition of the A.M.A., *Guides*. The fifth edition was first published in 2001.

²¹ A.M.A., *Guides*, *supra* note 20.

The May 9, 2002 decision of the Office of Workers' Compensation Programs is affirmed with respect to termination of compensation benefits for the October 29, 1997 employment injury, but reversed on the termination of benefits for her occupational disease claim. The November 7, 2002 schedule award decision of the Office is set aside and the case remanded for further proceedings consistent with the above opinion.

Dated, Washington, DC
September 9, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member