

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELA SPRINGER-GETER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, West Palm Beach, FL

*Docket No. 03-1187; Submitted on the Record;
Issued September 9, 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.

On March 4, 1998 appellant, a 35-year-old program support clerk, filed an occupational disease claim alleging that the pain in her left arm and hand were due to her employment. She noted that, on February 10, 1998, she first became aware that this condition was employment related. The Office accepted the claim for bilateral wrist tendinitis and left ulnar nerve entrapment. Appellant stopped work on March 31, 1998, returned to light duty on July 13, 1998 and stopped work again on August 23, 1999.¹

Dr. Mukesh D. Bhatt, a treating Board-certified physiatrist, in a note dated April 14, 1999, opined that appellant was unable to perform work requiring the repetitive use of her hands. He diagnosed tenosynovitis due to repeated use of her hands.²

In a deposition dated August 18, 1999, Dr. Bhatt indicated that he had been treating appellant since April 14, 1999 and that he reviewed the reports by her previous treating physicians. He indicated that appellant was totally disabled from performing the repetitive work required in her job description.

On November 22, 1999 the Office referred appellant to Dr. Frank D. Murphy, a Board-certified orthopedic surgeon, for a second opinion on appellant's current diagnosis, the

¹ Appellant was discharged by the employing establishment on October 25, 1999 for refusing to perform the duties of her limited-duty position. In a memorandum to file, the Office noted that the employing establishment had offered appellant several unsuitable jobs and that she should be placed on the periodic rolls. The Office also noted that appellant should be paid compensation for the lost work time since she stopped work.

² Appellant requested the Office to change her treating physician to Dr. Bhatt, in a letter dated March 17, 1999. By letter dated April 8, 1999, the Office denied appellant's request to change her treating physician to Dr. Bhatt.

relationship to her accepted February 10, 1998 employment injury and permanent work restrictions. He diagnosed bilateral upper extremity tendinitis, parasthesias without objective symptomatology. In a December 16, 1999 work capacity evaluation (Form OWCP-5c), Dr. Murphy indicated that appellant was capable of working four hours per day with restrictions and that she should be able to work eight hours per day in four weeks. Her restrictions included no pushing or pulling more than five to ten pounds and no performing reaching or repetitive movements with the elbows or wrist for more than four hours per day.

On March 29, 2001 the Office referred appellant to Dr. Joseph R. Purita, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence regarding the extent of appellant's work-related condition and her work capacity.

In an April 11, 2001 report, Dr. Purita reported physical examination findings as:

“[Appellant] has no particular areas of tenderness that I can detect at this time. She has a negative area of tenderness involving the elbows in both the lateral and medial epicondyle regions and there is no pain. Neurovascular status appears to be grossly within normal limits.”

Based upon his examination, Dr. Purita stated, “it is hard to say what is going on” with appellant and that “[c]ertainly some of her symptomatology could be consistent with possibly a pronator teres syndrome.” He then recommended diagnostic testing by a neurologist and “if that proves to be negative then I think there is nothing that can be offered to [appellant] and then she should then return to full duty.”

In an August 9, 2001 clinical electrophysiological study, Dr. Harold C. Friend diagnosed “[d]enervation in [o]ppon[,] [p]ollicis in [c]arpal tunnel syndrome and cervical radiculopathy” and indicated “[c]linical correlation necessary.”

In a September 17, 2001 addendum, Dr. Purita, after reviewing the August 9, 2001 report, concluded that due to the “minimal findings” he believed that appellant “should be able to go back and resume full duty.” Dr. Purita, in a September 27, 2001 work capacity evaluation (Form OWCP-5c), indicated that appellant was capable of working full duty for eight hours per day with no restrictions.

On December 7, 2001 the Office issued a proposed notice of termination of benefits. The Office, in terminating benefits, relied upon the opinion of Dr. Purita, the impartial medical examiner.³

³ The Board notes that the Office denoted Dr. Lewis Eastlick, a Board-certified surgeon with a subspecialty in hand surgery, as a treating physician. A review of the record indicates that appellant found Dr. Eastlick and requested the Office to fax him their approval for her to see him. In a memorandum to file, the Office noted that, Dr. Eastlick, after seeing appellant once, declined to take appellant on as a patient as he found nothing wrong with her. Dr. Murphy opined that appellant could initially work four hours per day with restrictions and then return to eight hours per day after four weeks. Dr. Eastlick opined that appellant was capable of working eight hours a day with no restrictions.

On January 2, 2002 appellant's counsel submitted a December 14, 2001 report by Dr. Bhatt. In his report, Dr. Bhatt diagnosed tardy ulnar paresthesia at the elbow and bilateral carpal tunnel syndrome. He concluded that appellant "should avoid use of her hands" due to these conditions.

In a decision dated February 12, 2002, the Office finalized the termination of appellant's wage-loss compensation effective February 24, 2002.⁴

On February 26, 2002 appellant's counsel requested an oral hearing which was held on October 29, 2002. Subsequent to the hearing, appellant submitted office notes dated April 14, April 20 and October 10, 2001 from Dr. Bhatt. He diagnosed elbow ulnar nerve compression and "[m]artin [g]ruber [a]nastomosis which gives symptoms like [c]arpal [t]unnel [s]yndrome." A physical examination revealed elbow tenderness and "mild flattening of [t]henar on [left] side." In his October 10, 2001 report, he reported fair grip strength, "[s]ensitive to forearm," "[t]unnel's tiva (sic) at elbow" and "sensory difficulty" at the wrists with fair grip.

In a January 10, 2003 decision, the hearing representative affirmed the decision terminating appellant's benefits.

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

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁵ The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.⁶ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸

Where there exists a conflict of medical opinion, the case is referred to an impartial medical specialist for the purpose of resolving the conflict. If the opinion of the impartial medical specialist is sufficiently well rationalized and based upon a proper factual background, it must be given special weight.⁹

⁴ In this decision the Office notes that appellant was referred to Dr. Purita to resolve a conflict between Dr. Eastlick and Dr. Bhatt regarding the extent of appellant's work-related condition and her ability to work. However, the Office erroneously labeled Dr. Eastlick as a second opinion physician since he was not selected by the Office.

⁵ *Gloria J. Godfrey*, 52 ECAB ___ (Docket No. 00-502, issued August 27, 2001).

⁶ *Lynda J. Olson*, 52 ECAB ___ (Docket No. 00-2085, issued July 11, 2001).

⁷ *Manuel Gill*, 52 ECAB ___ (Docket No. 99-915, issued March 2, 2001).

⁸ *Furman G. Peake*, 41 ECAB 361 (1990).

⁹ *Irene M. Williams*, 47 ECAB 619 (1996); *Roger Dingess*, 47 ECAB 123 (1995); *Carl Epstein*, 38 ECAB

Pursuant to section 8123(a) of the Federal Employees' Compensation Act,¹⁰ the Office referred appellant to a third physician for an impartial medical examination.¹¹ Dr. Purita provided an accurate and comprehensive review of appellant's medical history and performed a thorough examination. Based on this review and examination, specifically, he found no objective evidence of any continuing disability due to appellant's accepted bilateral wrist tendinitis and left ulnar nerve entrapment.

The Board finds that Dr. Purita's opinion is well rationalized, based on a thorough clinical examination and relies on a complete medical and factual background. Therefore, his opinion must be accorded special weight on the issue of whether appellant had any residuals or disability resulting from the accepted bilateral wrist tendinitis and left ulnar nerve entrapment as the result of her accepted employment injuries. As the weight of the medical opinion evidence on this issue, Dr. Purita's report justifies the Office's termination of appellant's compensation benefits effective February 24, 2002.

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.¹² However, the medical evidence submitted by appellant, after the termination of benefits, did not specifically address how any continuing condition was due to the February 10, 1998 work injury. She submitted several treatment notes from Dr. Bhatt. In his April 20, 2001 report, Dr. Bhatt diagnosed pain, symptoms of carpal tunnel and ulnar nerve compression at the elbow and in his October 10, 2001 treatment note, Dr. Bhatt diagnosed elbow pain and tardy elbow. He does not address how appellant's continuing condition was related to her accepted employment injury or the extent of any disability. The Board has held that a subsequently submitted report of a physician on one side of a resolved conflict of medical opinion, is generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.¹³ Dr. Bhatt, in these reports, did not specifically address how any continuing condition was causally related to the February 10, 1998 employment injury and, therefore, these reports are insufficient to overcome the report of Dr. Purita or to create a new medical conflict.

The Board finds that there is no medical evidence which supports that appellant has any disability causally related to her accepted work-related condition. Dr. Purita had full knowledge

539 (1987).

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ Section 8123(a) of the Act provides: "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); *see Geraldine Foster*, 54 ECAB ____ (Docket No. 02-66, issued February 28, 2003).

¹² *See Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992).

¹³ *Daniel F. O'Donnell, Jr.*, 54 ECAB ____ (Docket No. 02-1468, issued February 28, 2003).

of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. Based upon testing performed by Dr. Friend, Dr. Purita found that there were "minimal finding" and that she "should be able to go back and resume full duty." Dr. Purita concluded, based upon his physical examination and objective evidence, including the August 9, 2001 clinical electrophysiological study, that appellant was capable of working eight hours per day with no restrictions. At the time the benefits were terminated, he clearly opined that appellant had absolutely no work-related reason for disability. Dr. Purita's opinion is found to be probative evidence and reliable. The Board finds that his opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.

For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.

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

Dated, Washington, DC
September 9, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member