



syndrome. Appellant received benefits for total temporary disability until she returned to work in March 1998. On September 2, 1998 she had a ganglion cyst removed from her right wrist and was placed in vocational rehabilitation on March 31, 1999. On July 19, 1999 appellant returned to work for the employing establishment as an associate national bank examiner. On September 28, 1999 the Office conducted a wage-earning capacity analysis and found that, based on the earning of actual wages, appellant's position fairly and reasonably represented her wage-earning capacity.

In a January 17, 2000 report, Dr. Michael Carl, an orthopedist, stated that appellant presented with recalcitrant neck and bilateral upper extremity discomfort radiating from the shoulders into her elbows. He noted that her symptoms were aggravated by repetitive activities at work including keyboard functioning seven to eight hours a day done in a poor ergonomic setting. Dr. Carl diagnosed myofascial pain syndrome and shoulder impingement syndrome. He restricted appellant to no lifting, carrying or pushing over 10 pounds and no reaching above the shoulders. Dr. Carl stated that appellant could continue her job provided that she had an ergonomically correct work station and was able to take breaks frequently.

On March 9, 2000 appellant filed a recurrence claim alleging that her repetitive work activities caused her to sustain pain in her right hand resulting in her over use of her left hand which has caused additional pain in it as well. She was terminated from her bank examiner job on March 31, 2000. Appellant submitted a March 8, 2000 report from Dr. Carl, who stated that appellant was experiencing increasing levels of pain in her right upper extremity with numbness and tingling in the first and fourth digits of the right hand. On physical examination he found that appellant had a full range of motion with generalized upper trapezius and cervical paraspinal discomfort. Dr. Carl also noted that carpal tunnel compression testing and a Tinel's test was positive. He diagnosed myofascial pain syndrome and right hand numbness and tingling. Dr. Carl stated that appellant was temporarily totally disabled.

On April 20, 1999 appellant filed an occupational disease claim for her left upper extremity that was accepted for left shoulder impingement and a left ganglion cyst that was removed on April 25, 2000. In support of her claim, appellant submitted an April 19, 2000 report from Dr. Douglas Brant, an attending Board-certified orthopedic surgeon, who stated that appellant presented with a severe pain in her left wrist and shoulder impingement resulting from repetitive typing and other clerical tasks performed in a poor ergonomic setting. He opined that appellant's condition was causally related to her employment and found appellant totally disabled. Appellant received benefits for total temporary disability.

In a November 2, 2000 report, Dr. Ralph Payne, an orthopedist and Office referral physician, stated that appellant presented with the chief complaint of pain in both shoulders. On physical examination he noted that appellant had well-healed scars on her wrists and that her shoulders showed no muscle atrophy. Dr. Payne also stated that it was apparent that appellant was not cooperating when he examined her shoulders and opined that she had nearly full motion of both shoulders. He noted that a magnetic resonance imaging (MRI) scan of her right shoulder was normal except some bursal surface inflammation without a tear of the tendon or rotator cuff and tendinosis of the horizontal section of the biceps tendon. Dr. Payne stated that an examination of appellant's hands revealed full radial and ulnar deviation with some tenderness at

the carpal metacarpal joints at the base of the thumbs. He stated that x-rays revealed increased sclerosis of the carpal metacarpal joint at the base of the thumbs consistent with early traumatic arthritis. Dr. Payne diagnosed chronic tendinitis of both shoulders but felt that it was not related to work as there was no history of injury. He also diagnosed osteoarthritis of the carpal metacarpal joints of the thumb but found extensive evidence of entrapment to the right upper extremity. Dr. Payne opined that appellant could work in a sedentary capacity with restrictions including no lifting or reaching above her shoulders and no lifting over 45 pounds. He stated that appellant could do full-time work as bank examiner including computer work and reaching for papers on her desk.

The Office found a conflict in the medical evidence and referred appellant for an impartial medical examination. In a December 12, 2000 report, Dr. Ghazi Rayan, a Board-certified orthopedic surgeon, wrote that appellant presented with mild pain in her wrists, hands and upper extremities including the shoulders. He noted that she did not have nocturnal paresthesias. On physical examination Dr. Rayan found a full range of motion but some tenderness in her elbow, forearm, wrist and digital joint motion with minimal stiffness in her wrists. He stated that all provocative maneuvers for localized tendinopathies in both upper extremities to all nerves were negative or neutral. Dr. Rayan noted that he reviewed past x-rays and found them normal. He diagnosed muscle pain with no definite localized tendinopathy and weakness of the upper extremity. Dr. Rayan stated that appellant can continue to work full time in property management without restrictions. In a March 9, 2001 supplemental report, he opined that appellant had no recurrence of her cysts or hand conditions. Dr. Rayan noted that she had residual weakness but, stated that she could work as a bank employee. His diagnosis remained the same.

In a March 21, 2001 decision, the Office proposed terminating appellant's total wage-loss compensation finding the weight of the medical evidence rested with the reports of Drs. Payne and Rayan. In an April 24, 2001 decision, the Office finalized the proposed termination. In a May 14, 2001 letter, appellant requested reconsideration arguing that Dr. Rayan's report was unrationalized and neither Drs. Payne nor Rayan expressly indicated that they had reviewed appellant's job description as a bank examiner. No new medical evidence was submitted. In a June 12, 2001 decision, the Office denied modification.

Appellant requested reconsideration and submitted a June 4, 2001 report from Dr. Andrew John, an attending Board-certified orthopedic surgeon, who stated that appellant's employment as a bank examiner caused inflammation of the tendons to a sufficient degree that she developed ganglion cysts that resulted in a painful condition but also weakened her tendons causing early fatigue impaired her ability to perform her job. He noted that the repetitive nature of appellant's work, such as typing and handling files, caused her conditions of bilateral tenosynovitis, ganglion cysts, rotator cuff inflammation, carpal tunnel syndrome and reflex sympathetic dystrophy. Dr. John noted that appellant was accommodated in many ways for the job as a bank examiner, yet the symptoms returned establishing that she could not perform her job. In an October 11, 2001 decision, the Office denied modification and, in a January 16, 2002 decision, the Office denied reconsideration.

In a July 2, 2002 decision, the Board remanded the case to consolidate the two case records, reconstruct the file and issue a new decision based on the entire record.<sup>1</sup> Subsequent to the consolidation and in an October 16, 2002 decision, the Office terminated appellant's wage loss again relying on Dr. Rayan as the impartial medical examiner.

Appellant requested reconsideration. In December 17, 2002 report, Dr. Houshand Seradge, an attending Board-certified orthopedic surgeon, stated that appellant underwent a functional capacity evaluation and the results showed that she was capable of working an eight-hour day in a sedentary position. Dr. Seradge stated that he was familiar with appellant's work duties as a bank examiner. He stated that appellant's repetitive movement test was normal with average speed and no range test. Dr. Seradge noted that appellant's movement pattern did not correlate with her pain rating. He added that when distracted her movement patterns improved significantly suggesting that her movement ability is greater than she demonstrated. Dr. Seradge added that appellant could bend squat and climb frequently and her repetitive fine hand movement suggested that she has excellent fine motor skills and is qualified for assembly tasks of pieces in the one to four millimeter range or larger. He found that appellant had a permanent impairment of 13 percent in her left upper extremity.<sup>2</sup>

In an April 22, 2003 decision, the Board set aside the October 16, 2002 decision due to an incomplete record and again remanded the case for proper assemblage of the record and a *de novo* decision.<sup>3</sup> In an August 21, 2003 decision, the Office terminated appellant's compensation effective May 20, 2001 relying on the special weight given to the report of Dr. Rayan as the impartial medical examiner.

### **LEGAL PRECEDENT**

Under the Federal Employees' Compensation Act,<sup>4</sup> once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>5</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>6</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

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<sup>1</sup> Docket No. 02-899 (issued July 30, 2002).

<sup>2</sup> The record shows that appellant received schedule awards of 10, 9 and 4 percent for her left upper extremity in 1998, 1999 and 2002 and a schedule award of 22 percent for a permanent impairment for her right upper extremity in 1997.

<sup>3</sup> Docket No. 03-679 (issued April 22, 1999).

<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>6</sup> *Id.*

<sup>7</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

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, must be given special weight.<sup>8</sup>

### ANALYSIS

There is a conflict in the medical evidence between Dr. Payne, a Board-certified orthopedic surgeon who served as an Office referral physician, and Drs. Carl and Brant, appellant's attending Board-certified orthopedic surgeons, regarding whether appellant was disabled from performing the job of a bank examiner. The Office properly referred appellant for an impartial medical examination. In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. However, in the present case, Dr. Rayan's reports are insufficient to be entitled to special weight because they are unrationalized and ambiguous.

In his December 12, 2000 report, Dr. Rayan wrote that appellant can work eight hours a day without restrictions. But, he also stated that it is possible that her residuals are work related and that, if she returns to the computer work, it is likely her symptoms may recur. Dr. Rayan does not explain what appellant's residuals are; nor does he explain why he feels that appellant can work eight hours a day without restrictions, while she has residuals. In his March 9, 2001 report, Dr. Rayan said that appellant had residual weakness but she can engage in gainful employment. But it is not clear what gainful employment he is referring to.

The Board must determine whether appellant can perform the position of bank examiner. Dr. Rayan's December 12, 2000 report does not discuss that position nor does the record clearly reflect that he reviewed a job description for that position. In his December 12, 2000 report, Dr. Rayan refers to appellant's job as property management specialist and wrote that she could perform that job without restrictions. In his March 9, 2001 supplemental report, Dr. Rayan stated that appellant can "engage in gainful employment at a bank." That statement is too general for the Office to rely on to terminate appellant's compensation because it is not clear what specific employment activities appellant can perform.

For the reasons discussed above, the Office has not yet resolved the conflict in the medical evidence regarding appellant's employment-related residuals and, given the continuing conflict on this matter, it has not met its burden of proof to terminate appellant's compensation.

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<sup>8</sup> 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, must be given special weight. *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

**CONCLUSION**

The Board finds that the Office improperly terminated appellant's compensation effective May 20, 2001.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 21, 2003 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 27, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
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