

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**ALICE P. STANDARD, Appellant**

**and**

**U.S. POSTAL SERVICE, FLUSHING ANNEX,  
Flushing, NY, Employer**

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**Docket No. 02-2228  
Issued: May 11, 2004**

*Appearances:*  
*Alice P. Standard, pro se*  
*Jim C. Gordon, Jr., Esq., for the Director*

Oral Argument January 13, 2004

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On August 13, 2002 appellant filed a timely appeal of merit decisions of the Office of Workers' Compensation Programs dated August 13, 2001 and June 5, 2002, which terminated compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective August 13, 2000; and (2) whether appellant met her burden of proof to establish that she had any disability after August 13, 2000 causally related to her April 4, 1975 employment injury.

**FACTUAL HISTORY**

On April 4, 1975 appellant, then a 43-year-old clerk, filed a traumatic injury claim, alleging that she injured her left elbow at work that day. The Office accepted that appellant sustained an employment-related strain of the right elbow and right lateral epicondylitis. She

returned to limited duty and subsequently sustained several recurrences of disability and underwent surgery in January 1979. Thereafter, the employing establishment could not accommodate her physical restrictions and she was placed on the periodic rolls. She returned to limited duty on May 26, 1984, sustained additional recurrences of disability and stopped work completely on July 24, 1985. She was returned to the periodic rolls, and moved to Georgia in 1990.

On August 1, 1995 and March 1, 1996 the Office requested that appellant submit updated medical information. In response, she submitted a work capacity evaluation form dated December 26, 1997 in which Dr. Charmaine Martin Heard<sup>1</sup> advised that appellant was retired, remained totally disabled and had been so since 1979. The Office referred appellant to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an October 19, 1999 report, Dr. Doman advised that appellant had a full range of motion of her right elbow and concluded that she had no objective findings of residuals related to the April 4, 1975 employment injury and could return to her previous duties. He placed no limitations on her physical activity.

By letter dated June 7, 2000, the Office informed appellant that it proposed to terminate her compensation benefits on the grounds that her right elbow strain and right lateral epicondylitis condition had ceased. The Office accorded the weight of the medical evidence to Dr. Doman, the second opinion examiner. Appellant replied that she disagreed with the proposed termination.

In a decision dated August 1, 2000, the Office terminated appellant's compensation benefits, effective August 13, 2000, on the grounds that the medical evidence established that her condition had resolved.

On May 18, 2001 appellant, through her attorney, requested reconsideration and submitted additional medical evidence, including a February 21, 2001 report from Dr. Clayton E. Bell, a chiropractor, who noted that appellant had a normal range of motion of the elbow. He diagnosed chronic epicondylitis with associated arthralgia and myalgias and advised that her prognosis was guarded. Appellant submitted an unsigned treatment note dated October 4, 2000 from Dr. Don Morris, a Board-certified orthopedic surgeon, who indicated that appellant was seen to evaluate her right elbow pain that had been present since an employment injury in 1975. The physician reported that x-rays of her right elbow demonstrated narrowing and irregularity of the humeroulnar joint with some spurring of the coronoid process. He diagnosed osteoarthritis of the elbow and possible osteoarthritis of the right index finger and right wrist and recommended medication and exercise. The Office wrote to appellant requesting that Dr. Morris submit an updated report. In response, appellant submitted a June 27, 2001 report from Dr. Robert T. Greenfield, III,<sup>2</sup> Board-certified in orthopedic surgery, who advised that he had reviewed the medical records and x-rays. He stated that there was no evidence that appellant's osteoarthritis was caused by the employment injury and concluded that the findings were consistent with chronic epicondylitis of the right elbow.

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<sup>1</sup> Dr. Heard's credentials cannot be ascertained.

<sup>2</sup> Dr. Greenfield noted that Dr. Morris was deceased.

By decision dated August 13, 2001, the Office denied modification of the August 1, 2000 decision. On December 13, 2001 appellant, through her attorney, again requested reconsideration, and submitted a September 20, 2001 report from Dr. Clifford W. Roberson, Board-certified in psychiatry and neurology, who evaluated appellant's right elbow. He noted the history of injury and appellant's continued complaints of pain with numbness and tingling in the fingers of her right hand. Findings on examination included tenderness and pain with weakness in the wrists. Dr. Roberson diagnosed chronic lateral epicondylitis status post release of the extensor tendons of the right elbow. He concluded that appellant's condition was chronic and related to the 1975 employment injury, advising that she was disabled from any type of employment requiring the repetitive use of the elbow or heavy lifting.

The Office found that a conflict in medical evidence was created between the opinions of Dr. Doman and Dr. Roberson regarding whether appellant had any work-related disability. On January 23, 2002 the Office referred appellant to Dr. Jack H. Powell, III, a Board-certified orthopedist, for an impartial medical evaluation. In reports dated February 27 and April 10, 2002, Dr. Powell noted the history of injury and x-ray findings. Physical examination of the elbow revealed tenderness of the lateral epicondyle area with no significant swelling and full range of motion. Dr. Powell further noted weakness of appellant's hands, and advised that she had probable carpal tunnel and possible cubital tunnel symptoms with proximal migration. He advised that appellant had no residuals of her employment injury and her elbow condition caused no disability. In an April 30, 2002 work capacity evaluation, Dr. Powell advised that there was no reason that appellant could not work eight hours per day with the restriction that she limit pushing and pulling and repetitive movements of the wrists.

In a decision dated June 5, 2002, the Office reviewed the case on the merits and found that the weight of the medical evidence rested with Dr. Powell's impartial examination regarding any disability on or after August 13, 2000.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>3</sup> The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that, as of the time of the August 1, 2002 termination decision, the weight of the medical evidence was represented by the thorough, well-rationalized opinion of Dr. Doman who provided a second opinion evaluation. Dr. Doman provided an October 19, 1999 report which listed his findings on physical examination and concluded that appellant had

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<sup>3</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>4</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

no objective ongoing residuals related to the April 4, 1975 employment injury. He advised that appellant could return to her previous duties and placed no limitations on her physical activity. Dr. Doman provided thorough, well-rationalized reports in which he explained his findings and conclusion. The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective August 13, 2000.

### **LEGAL PRECEDENT -- ISSUE 2**

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had disability causally related to her accepted injury.<sup>5</sup> To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>6</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>7</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup> Furthermore, in situations where there are 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 on a proper factual background, must be given special weight.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

The evidence relevant to any continuing disability includes the October 4, 2000 report in which Dr. Morris diagnosed osteoarthritis of the elbow. However, he did not indicate if the condition was employment related or that appellant was disabled due to this condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>10</sup> In a February 21, 2001 report, Dr. Bell diagnosed chronic epicondylitis. However, in assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is a physician as defined

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<sup>5</sup> See *Manuel Gill*, 52 ECAB 282 (2001).

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

<sup>7</sup> *Elizabeth Stanislav*, 49 ECAB 540 (1998).

<sup>8</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> See *Gloria J. Godfrey*, *supra* note 3.

<sup>10</sup> See *Michael E. Smith*, 50 ECAB 313 (1999).

under section 8101(2) of the Federal Employees' Compensation Act.<sup>11</sup> A chiropractor cannot be considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.<sup>12</sup> A chiropractor's report is considered medical evidence only to the extent that spinal subluxations as demonstrated by x-rays to exist are treated.<sup>13</sup> In the instant case, as Dr. Bell was not treating a spinal subluxation as diagnosed by x-ray, he is not considered a physician and his report is of no probative value.

In a June 27, 2001 report, Dr. Greenfield noted findings consistent with chronic epicondylitis. However, he did not provide an opinion regarding whether appellant was disabled by the condition or indicate that the condition was related to the 1975 work injury. His report is also of diminished probative value.<sup>14</sup> In a September 20, 2001 report, Dr. Roberson diagnosed chronic lateral epicondylitis related to the 1975 employment injury and advised that appellant was disabled from any type of employment requiring repetitive use of the elbow or heavy lifting. He did not fully explain how or why this condition had continued more than 25 years after the accepted injury and 16 years after appellant stopped work. The Board has held that medical reports not containing rationale on causal relation are entitled to little probative value.<sup>15</sup> The Board finds Dr. Roberson's report insufficient to establish that she has any employment-related continuing disability.

Dr. Jack H. Powell, III, a Board-certified orthopedic surgeon and impartial examiner, submitted reports dated February 27 and April 10, 2002 in which he advised that appellant had no residuals of her employment-related right epicondylitis and could work. The reports of Dr. Powell found full range of motion of her hands and elbows with x-rays showing no degenerative changes. He opined that appellant's subjective complaints did not relate to the lateral epicondylectomy. Dr. Powell diagnosed carpal tunnel syndrome, which he did not attribute to the accepted employment injury. He opined that appellant's condition due to the 1975 injury had resolved and recommended treatment for her carpal tunnel condition.

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>16</sup> As Dr. Powell thoroughly explained his findings and conclusions, the Board finds that the Office properly determined that appellant had not met her burden of proof to establish that she was entitled to compensation benefits after August 13, 2000.<sup>17</sup>

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<sup>11</sup> 5 U.S.C. §§ 8101-8193; *see* § 8101(2).

<sup>12</sup> *See Carmen Gould*, 50 ECAB 504 (1999).

<sup>13</sup> *Phyllis F. Cundiff*, 52 ECAB 439 (2001).

<sup>14</sup> *Michael E. Smith*, *supra* note 10.

<sup>15</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>16</sup> *Gloria J. Godfrey*, *supra* note 3.

<sup>17</sup> *Id.*

**CONCLUSION**

The Board therefore finds that the Office met its burden of proof to terminate appellant's compensation benefits effective August 13, 2000 and appellant failed to establish that she continued to be disabled after that date.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 5, 2002 and August 13, 2001 be affirmed.

Issued: May 11, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member