

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

HAYDEE O. RIVERA, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jersey City, NJ, Employer**

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**Docket No. 04-2002
Issued: February 10, 2005**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 11, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative decision dated April 22, 2004, which affirmed the June 9, 2003 decision terminating her compensation benefits effective June 14, 2003. 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 on appeal are: (1) whether the Office terminated appellant's compensation benefits effective June 14, 2003; and (2) whether appellant met her burden of to establish that she had any disability after June 14, 2003 causally related to the June 6, 2002 employment injury.

FACTUAL HISTORY

On June 6, 2002 appellant, then a 59-year-old mail handler, was injured when she was struck on the left arm by a falling box. Appellant stopped work on June 6, 2002.¹ On July 15, 2002 the Office accepted the claim for contusion of the left elbow and paid appropriate compensation for her disability for work.²

Appellant treated with Dr. Magdy Elamir, a neurologist, for complaints of left elbow pain. She submitted reports indicating that appellant was totally disabled for work due to her left elbow injury.

A magnetic resonance image (MRI) scan of appellant's left elbow performed on July 16, 2002 was read by Dr. David S. Leder as unremarkable. A bone scan of appellant's left upper extremity performed on September 4, 2002 was normal.

On November 9, 2002 the Office referred appellant for a second opinion, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Gregory S. Maslow, a Board-certified orthopedic surgeon. In a report dated December 12, 2002, Dr. Maslow described appellant's history of injury and treatment and diagnosed a contusion to the left elbow with ulnar neurapraxia. He did not find any abnormalities of appellant's left upper extremity with the exception of some hypesthesia complaints on the volar aspects of digits four and five on the left hand, with no intrinsic atrophy. He indicated that there was no tenderness of appellant's left elbow or loss of strength of the left upper extremity. Dr. Maslow opined that appellant had a full range of motion of the left elbow without evidence of synovitis, instability or tendinitis and concluded that she was capable of performing her date-of-injury job.

The Office subsequently received a February 20, 2003 bone scan that revealed arthritic disease in the wrists and elbows, more pronounced in the left wrist and both elbows with probable superimposed synovitis in the left wrist.

In a February 26, 2003 report, Dr. Elamir again opined that appellant was disabled for work.

On April 8, 2003 the Office found that Dr. Maslow's report created a conflict with Dr. Elamir on the issue of any ongoing injury-related medical condition and disability. The Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. Aaron Sporn, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

¹ Appellant received continuation of pay for the period from June 7 through July 21, 2002. She claimed compensation for wage loss on and after July 29, 2002. The Office paid appellant compensation for disability beginning July 29, 2002.

² The record reflects that appellant had an accepted claim for a right wrist injury sustained on February 5, 2002. No. 02-2021566. In a June 13, 2002 report Dr. Daniel Fletcher, a Board-certified orthopedic surgeon, indicated that he had been treating appellant prior to the June 6, 2002 injury for right wrist and bilateral shoulder problems and that she sustained a new work injury to her left elbow.

In an April 16, 2003 report, Dr. Sporn noted appellant's history of injury and treatment. He advised that a peripheral neurological examination of the upper extremities showed that reflexes were full and bilaterally equal and that clinical strength testing revealed a 5/5 pattern, including grip. Sensory testing which showed diminished sensation to pinwheel and light touch in a somewhat nonspecific distribution of the left hand but more towards the fourth and fifth digits. Dr. Sporn found no signs of a reflex sympathetic dystrophy, no tenderness, swelling, trigger points or other pathology of appellant's left humerus, elbow, forearm wrist or hand. Appellant exhibited normal strength and reflexes of the left upper extremity. Dr. Sporn noted that appellant had the same findings on the right side. He noted the fact that she was reporting the same symptoms in her left and right arms and concluded that she had sustained a contusion of the left elbow at the time of injury on June 6, 2002. The physician advised that there was no objective evidence of an abnormality causally related to the work injury. He noted that appellant had diabetes, which was a known source of peripheral neuropathy and this could explain her symptoms. Dr. Sporn opined that the June 6, 2002 employment injury was not serious, significant or permanent in nature and that she had reached maximum medical improvement. Appellant was not precluded from returning to work. In an April 25, 2003 statement accompanying a work-capacity evaluation form, Dr. Sporn reiterated that he found no continuing disability due to the June 6, 2002 injury and that, if appellant had any disability, it was "not resulting from the June 6, 2002 accident."

On May 7, 2003 the Office issued a notice of proposed termination of compensation on the basis that the weight of the medical evidence, as represented by the report of Dr. Sporn, established that residuals of the June 6, 2002 injury had ceased.

By decision dated June 9, 2003, the Office terminated appellant's compensation benefits effective June 9, 2003, on the grounds that she had no continuing residuals of the accepted employment injury.

By letter dated June 16, 2003, appellant, through her representative requested a hearing, which was held on February 18, 2004.³ She submitted a June 10, 2002 x-ray of the left elbow read by Dr. Stephen Zinn, a Board-certified diagnostic radiologist, who advised that there was no evidence of abnormality of the left elbow.

In reports of examinations by Dr. Regina Hillsman, a Board-certified orthopedic surgeon, dated August 27, 2002 to May 13, 2003, the physician noted that appellant had an accident at work on June 6, 2002 and gave a history that containers struck her left upper extremity, shoulder and elbow. She noted that an MRI scan of appellant's left elbow performed on July 16, 2002 was unremarkable. Dr. Hillsman described the current examination findings and diagnosed chronic epicondylitis of the left elbow. She diagnosed of bilateral carpal tunnel syndrome. On May 13, 2003 Dr. Hillsman opined that appellant had objective findings involving both upper extremities in particular the left elbow, bilateral wrists and both forearms. She advised that appellant sustained trauma to her neck in the June 6, 2002 injury and diagnosed chronic overuse tendinitis of both elbows chronic epicondylitis, medial and lateral in the left elbow, lateral in the

³ During the hearing appellant described her subsequent medical care and stated that she continued under the care of Dr. Elamir and that she has not returned to work.

right elbow; chronic overuse tendinitis, both wrists; post-traumatic de Quervain's tendinitis, both wrists; scapholunate sprain, left wrist and right wrist; and chronic cervical radiculitis. She opined that appellant was totally disabled.

By decision dated April 2, 2004, the Office hearing representative affirmed the June 9, 2003 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.⁴ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁵

The Federal Employees' Compensation Act⁶ provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician, who shall make an examination.⁷ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

ANALYSIS -- ISSUE 1

The Office determined that a conflict of medical opinion was created as to the nature and extent of appellant's residuals from the June 6, 2002 injury based on the opinions Dr. Elamir, a neurologist and Dr. Maslow, a Board-certified orthopedic surgeon and second opinion physician.⁹ The Office properly referred appellant for an impartial medical examination by Dr. Sporn, a Board-certified orthopedic surgeon.

The Board finds that Dr. Sporn's April 16, 2003 report is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight in establishing that residuals of appellant's employment injury had ceased. Dr. Sporn provided an

⁴ *Curtis Hall*, 45 ECAB 316 (1994).

⁵ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁶ 5 U.S.C. §§ 8101-8193, 8123(a).

⁷ 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁸ *Gloria J. Godfrey*, 52 ECAB 486 (2001); *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁹ As previously noted appellant's treating physician, reported that appellant continued to be totally disabled and as a result of her June 14, 2002 employment injury, while Dr. Maslow, the second opinion physician, indicated that appellant no longer had any residuals of the accepted work injury and was capable of performing her date-of-injury job.

extensive review of appellant's medical history, reported his examination findings and determined that there were no objective findings to correspond with her subjective complaints. He found no objective evidence of any work-related disability. His neurological examination of the upper extremities showed that appellant's reflexes were full and bilaterally equal, sensory testing showed diminished sensation to pinwheel and light touch and there were no signs of reflex sympathetic dystrophy, tenderness, swelling, trigger points or other pathology. He also noted normal strength and reflexes of the left upper extremity with the same findings on the right side. He noted her diabetes condition and the fact that she was reporting the same symptoms in her left and right arms. He concluded that there was no current objective evidence of an abnormality causally related to accepted injury and that appellant had reached maximum medical improvement. He indicated that her diabetes could explain her continuing symptoms. In an April 25, 2003 report, Dr. Sporn reiterated that he found no continuing disability due to the June 6, 2002 work injury and that any remaining disability did not result from the injury. In these circumstances, the Office properly accorded special weight to the impartial medical examiner's opinion.

On appeal, appellant asserts that the failure of the statement of accepted facts to note the accepted right arm condition from a prior claim reduced the probative value of Dr. Sporn's opinion. However, the matter at issue is whether appellant's accepted left arm condition had resolved and not whether appellant had a continuing right arm condition. There is no evidence indicating that Dr. Sporn had an insufficient medical and factual basis on which to frame his opinion relative to appellant's accepted left arm condition.

When an impartial medical specialist is asked to resolve a conflict in medical evidence, his opinion, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹⁰ The Board finds that Dr. Sporn's report represents the weight of the medical evidence and established that there were no ongoing objective findings of residuals of the work injury of June 6, 2002. Consequently, the Office met its burden of proof in terminating compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.¹¹

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the

¹⁰ See *supra* note 8.

¹¹ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

physician must be based on a complete factual and medical background of appellant, 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 appellant.¹²

ANALYSIS -- ISSUE 2

Following the termination of compensation, the Office received additional medical reports. Dr. Hillsman noted that containers struck appellant's left upper extremity, shoulder and elbow. She also noted that the incident also caused trauma to appellant's neck. However, this history is inaccurate in that there is no history of injury to appellant's shoulder and neck in addition to her elbow. The most contemporary evidence of the June 6, 2002 injury, appellant's June 6, 2002 claim, indicates only that a box fell on her left arm. The contemporaneous medical records from 2002 indicate only an injury and symptoms relative to the left elbow. Medical evidence predicated on inaccurate factual or medical history is of diminished probative value.¹³ Dr. Hillsman later reports her previous findings and included several diagnoses, which are not accepted conditions. She did not provide sufficient rationale to show how the diagnosed conditions were causally related to the work injury of June 6, 2002, or how the accepted condition of an elbow contusion would cause or contribute to the diagnoses she made. The reports received from Dr. Hillsman subsequent to the termination of appellant's compensation are insufficient to establish an ongoing condition or disability causally related to the work injury of June 6, 2002. Dr. Hillsman's reports are insufficient to create conflict with the opinion of Dr. Sporn. Appellant did not submit any other evidence to establish continuing disability related to the June 6, 2002 injury. Appellant has not established that her condition on and after June 14, 2003 is causally related to her accepted employment injury.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective June 14, 2003. Further, the Board finds that appellant did not meet her burden of proof to establish that she had any injury-related disability or residuals after June 14, 2003 causally related to the June 6, 2002 employment injury.

¹² *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

¹³ *See Bille C. Rae*, 43 ECAB 192 (1991).

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2004 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: February 10, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member