

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

TANYA D. CRUMBLEY, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 05-526
Issued: May 19, 2005**

Appearances:

*Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 27, 2004 appellant filed a timely appeal from the December 8, 2004 merit decision of the Office of Workers' Compensation Programs, which terminated her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the termination.

ISSUE

The issue is whether the Office properly terminated appellant's compensation benefits on the grounds that she no longer has residuals of her accepted employment injury.

FACTUAL HISTORY

On July 1, 1997 appellant, then a 33-year-old clerk, filed a claim alleging that she developed a ganglion cyst on the volar aspect of her left wrist while in the performance of her duties. The Office accepted her claim for ganglion cyst of the left wrist and authorized a surgical excision performed on August 12, 1997. Appellant sustained several recurrences and received compensation for temporary total disability.

A conflict arose between appellant's attending physician and an Office referral physician. Dr. Richard J. Mandel, appellant's orthopedic surgeon, reported that there was no evidence of a recurrence of the excised left-sided volar ganglion, but that in the course of recovering from her surgery appellant developed bilateral dorsal ganglion cysts that were work related. Dr. Victor R. Frankel, the second opinion orthopedic surgeon, found no evidence of residual ganglion cysts on either wrist. He noted that the area of the prior excision had healed uneventfully with no evidence of recurrent ganglion cyst at that location. Dr. Frankel concluded that no treatment was required.

To resolve the conflict, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. John S. Taras, a Board-certified hand surgeon. On October 2, 2000 Dr. Taras related appellant's history, complaints and findings on physical examination. He diagnosed bilateral developmental dorsal wrist ganglion cysts and status postsurgical excision of a left wrist volar carpal ganglion without recurrence. He then offered his opinion on the issue of injury-related residuals:

“[Appellant] does have physical findings consistent with bilateral wrist ganglion cysts. These ganglions are separate from the one that was excised from a different location. I believe that these ganglia are not related to the original ganglion which was excised. I note that these cysts are related to a developmental condition, which does not develop from repetitive or forceful use of the hand. As far as her previously excised cyst is concerned, I think it has been excised and is not symptomatic. With regard to her other cysts, I think that her symptoms would be present regardless of whether she is working or not working. These cysts will cause the hands to be symptomatic, but it is my opinion that they have not originated from her work. I do not think that these cysts are materially worsened by using the hands, thus, I would state that her current cysts are not aggravated by her work activities.

“[Appellant] has no impairment based on her recovery from the previously excised cysts. I find no impairment based on the currently existing work injury, because it is my opinion that there is no existing work injury. I see no motor or sensory impairment, because the excised ganglion cyst has resolved. There is no instability or arthritis contributing to [her] impairment. I believe she has recovered fully from the excised ganglion cyst and would not establish her as having an impairment based on the recovery from that cyst. I do not see any work injury from her previous cyst and do not place her under any permanent restrictions. I do note the issue of these other developmental cysts, which need to be addressed. If I can further clarify my opinion on this, I would be happy to do so. Please do not hesitate to contact me if my report is unclear in any respects. Thank you.”

On March 15, 2001 Dr. Mandel reported that appellant was not fully recovered and required limited duty indefinitely.

In a decision dated September 20, 2001, after appropriate notice, the Office terminated appellant's compensation benefits for the accepted condition of left ganglion cyst. The Office

found that the weight of the medical evidence, as established by the opinion of the impartial medical specialist, established that appellant had recovered and suffered no residuals.

On December 8, 2004 an Office hearing representative reviewed the written record and affirmed the termination of appellant's compensation benefits.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.¹ Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

Section 8123(a) of the Act provides in part: "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."⁴ When 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.⁵

ANALYSIS

The Office accepted appellant's claim for a ganglion cyst on the volar aspect of her left wrist and authorized surgical excision. It therefore has the burden of proof to establish that she no longer suffers residuals of this accepted medical condition or surgery. To be clear, the Office's burden extends only to the ganglion cyst that was excised from appellant's left wrist on August 12, 1997, as this is the only medical condition that the Office has accepted.

The Board finds that the Office met its burden of proof. Both Dr. Frankel and Dr. Taras reported that appellant no longer suffers from the excised ganglion. They reported that the ganglion was excised, that area of the excision healed uneventfully and that it was not symptomatic. As Dr. Taras stated, "it is my opinion that there is no existing work injury." He reported that appellant had recovered fully from the excised ganglion cyst.

¹ 5 U.S.C. § 8102(a).

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ 5 U.S.C. § 8123(a).

⁵ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

There is no medical opinion evidence to the contrary. Insofar as Dr. Frankel and Dr. Taras addressed the accepted ganglion cyst that was excised on August 12, 1997, appellant's physician, Dr. Mandel, did not disagree. He did not report that the excision was unsuccessful or incomplete or that appellant continued to suffer disability as a result of that particular cyst or surgery. Rather, his reports address a different matter: whether other ganglion cysts, in both wrists, are also causally related to appellant's federal employment. Because the Office has not accepted these other ganglion cysts as employment related, the burden of proof rests with appellant to establish causal relationship and entitlement to benefits. For the purpose, however, of determining whether the Office properly terminated benefits for the accepted condition, there is no conflict. Dr. Taras may not have the status of an impartial medical specialist on this issue, but this does not mean his opinion has no probative value. Indeed, the Board finds that his opinion is based on a proper factual and medical history and is sufficiently well reasoned that it constitutes the weight of the medical evidence on the issue of injury-related residuals.

The Board will therefore affirm the Office's December 8, 2004 decision terminating appellant's compensation benefits for the accepted ganglion cyst that was excised from her left wrist on August 12, 1997.

There remains an issue in this case relating to the other cysts, the bilateral ganglion cysts that Dr. Mandel consistently reports are causally related to repetitive activity in appellant's federal employment. Dr. Frankel, the second opinion physician, found no evidence of residual ganglion cysts on either wrist, creating a conflict with the attending physician. Dr. Taras therefore does have the status of an impartial medical specialist on the issue of whether appellant has other ganglion cysts, bilaterally, that are causally related to her federal employment. On this issue, the Board finds that further development is warranted.

Dr. Taras reported that appellant did have physical findings consistent with bilateral wrist ganglion cysts, but he stated that these cysts were separate from the one that was excised from a different location. He believed that they were not related to the original ganglion: "I note that these cysts are related to a developmental condition, which does not develop from repetitive or forceful use of the hand." He added that these cysts would be present regardless of whether appellant was working and that they were not materially worsened or aggravated by her work activities. The problem with this opinion is that Dr. Taras made a distinction between developmental ganglion cysts and those that arise from repetitive or forceful use of the hands, but he did not explain how he was able to tell the difference or why work activities materially worsen or aggravate one and not the other. His observation may well be true, but he did not offer sufficient medical reasoning to permit a finding that his opinion is medically sound, logical and rational.

When the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the opinion from the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting a defect in the original report. When the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the specialist is unable to clarify or elaborate on the original report or if the specialist's supplemental report is also vague, speculative or lacks rationale, the Office must submit the case record together with a detailed statement of accepted facts to a second impartial specialist for a rationalized medical

opinion on the issue in question.⁶ Unless this procedure is carried out by the Office, the intent of section 8123(a) of the Act will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.⁷

The Board will remand the case to the Office to secure a supplemental report from Dr. Taras explaining in more detail the nature of developmental ganglion cysts and how a physician can reliably distinguish such cysts from those that can arise or be materially aggravated by repetitive or forceful use of the hands. After such further development as may be necessary to resolve this issue, the Office shall issue an appropriate final decision on the matter.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits for the accepted ganglion cyst that was excised from her left wrist on August 12, 1997. Further, development is warranted, however, on whether her other ganglion cysts are causally related to her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2004 decision of the Office of Workers' Compensation Programs is affirmed on the issue of termination and is otherwise set aside. The case is remanded for further action consistent with this opinion.

Issued: May 19, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ See *Nathan L. Harrell*, 41 ECAB 402 (1990).

⁷ *Harold Travis*, 30 ECAB 1071 (1979).