

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JACQUELINE WYNN and U.S. POSTAL SERVICE,  
POST OFFICE, Cincinnati, OH

*Docket No. 98-1782; Oral Argument Held November 9, 1999;  
Issued January 4, 2000*

Appearances: *Jacqueline Wynn, pro se; Miriam D. Ozur, Esq.*, for the Director,  
Office of Workers' Compensation Programs

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate benefits effective March 19, 1997.

The Office accepted appellant's claim for a left ankle sprain and bone contusion of the medial talus. Appellant worked light duty and regular duty intermittently until April 19, 1996 when the employing establishment did not renew her light-duty job of transitional clerk.

In a report dated October 19, 1995, Dr. James A. Amis, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination, reviewed x-rays and diagnosed left peroneal tendinitis and impending reflex sympathetic dystrophy (RSD) of the left foot and ankle.

In a report dated February 16, 1996, Dr. Charles Duane Bellamy, a Board-certified anesthesiologist and second opinion physician, considered appellant's history of injury and performed a physical examination. He diagnosed history of chronic left ankle and lower extremity pain secondary to appellant's left ankle sprain and strain. Dr. Bellamy stated that he found no evidence of RSD except appellant's complaint of chronic pain. He based his conclusion, in part, on his finding that appellant had no swelling or differential in skin temperature and on inconsistent findings with hypersensitivity and restriction of motion on physical examination. Dr. Bellamy opined that there were no physiologic findings of appellant's reported disability.

In a report dated February 29, 1996, Dr. Luis F. Pagani performed a physical examination, considered diagnostic tests including a bone scan, x-rays and a magnetic resonance imaging (MRI) scan and diagnosed post-traumatic pain syndrome of the left foot with several

features of RSD. He prescribed amitriptyline for one week and lumbar sympathetic blocks. On April 10, 1996 Dr. Pagani diagnosed RSD. He referred appellant to the Jewish Hospital for pain management where, in a report dated May 7, 1996, Dr. William J. Bajorek, an osteopath, and Merritt S. Oleski, Ph.D. and clinical director, diagnosed chronic pain syndrome.

In a progress note dated June 6, 1996, Dr. Pagani opined that appellant's diagnosis was changed from RSD "which was originally suspected" to chronic pain syndrome secondary to ankle sprain. On September 18, 1996 he additionally prescribed neurontin.

To resolve the conflict between Drs. Pagani's and Bellamy's opinions as to whether appellant had any disabling, work-related residuals resulting from the June 8, 1995 employment injury, the Office referred appellant to an impartial medical specialist, Dr. Arthur L. Hughes, a Board-certified psychiatrist and neurologist. In his report dated October 9, 1996, Dr. Hughes considered appellant's history of injury, performed a physical examination, and reviewed diagnostic tests including an x-ray, MRI scan and bone scan. He diagnosed left ankle pain and opined that appellant did not have RSD. He stated:

"[Appellant] has in the past, however, had a syndrome indistinguishable from [RSD] as defined by the Task Force on Taxonomy of the International Association for the Study of Pain. It should be emphasized, however, that she no longer has [RSD] but does have a persisting pain state."

He opined that appellant was not disabled due to the June 8, 1995 employment injury and that there were no objective findings upon examination. He stated that he agreed with Dr. Pagani's recommendation that appellant should undergo a three-week pain clinic. In a follow-up report dated December 26, 1996, Dr. Hughes stated that there was no diagnosis and no restrictions based on objective findings and there was no treatment necessitated by any objective findings.

By decision dated March 19, 1997, the Office terminated benefits, finding that the evidence of record demonstrated that the disability causally related to the June 8, 1995 employment injury had ceased. In so finding, the Office relied on Dr. Hughes' October 9 and December 26, 1996 reports that appellant did not have RSD and was no longer disabled due to the June 8, 1995 employment injury.

On April 2, 1997 appellant requested an oral hearing before an Office hearing representative which was held on January 21, 1998.

At the hearing, appellant described her June 8, 1995 employment injury, the impact it had on her work and the course of her medical treatment by several different doctors. She said that she did not do the three week pain clinic which Dr. Pagani recommended because the Office would not allow it. Appellant stated that the employing establishment terminated her because they gave her a "bogus evaluation." Appellant also submitted additional medical documentation that she underwent nerve blocks in May and June 1997 and a medical report from Dr. Bajorek dated May 28, 1997, in which he diagnosed probable RSD in left extremities by history and stated that, based on objective findings, appellant would have difficulty with lifting, carrying, prolonged standing, walking or sitting. She submitted a report from Dr. Pagani dated

January 12, 1998, in which he stated that appellant had RSD of the left lower extremity, that it is a permanent, disabling condition and that appellant was totally disabled.

By decision dated April 7, 1998, the Office hearing representative affirmed the Office's March 19, 1997 decision.

Appellant appealed to the Board and an oral argument was held on November 9, 1999.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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 disabling condition has ceased or that it is no longer related to the employment.<sup>1</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical evidence.<sup>2</sup>

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 and medical background, must be given special weight.<sup>3</sup> In the present case, the Office referred appellant to an impartial medical specialist, Dr. Hughes, to resolve the conflict between the opinion of appellant's treating physician, Dr. Pagani, that appellant was disabled due to work-related RSD or chronic pain syndrome and the opinion of the referral physician, Dr. Bellamy, that appellant did not have RSD or any other work-related residual resulting from the June 8, 1995 employment injury. Dr. Hughes' opinion, however, is not well rationalized. In his October 9, 1996 report, Dr. Hughes diagnosed ankle pain and opined that appellant did not have RSD but stated that appellant had a syndrome indistinguishable from RSD in the past and continued to have a "persisting pain state." He agreed with Dr. Pagani that appellant should undergo a three-week pain clinic. In his December 26, 1996 report, Dr. Hughes stated that there were no objective findings of any work-related condition. Pain has been a significant concomitant of appellant's condition since the Office accepted her claim for an ankle sprain and bone contusion. As such, whether appellant's condition was diagnosed as chronic pain or RSD or "persistent pain state," Dr. Hughes' opinion establishes that appellant continued to have the same work-related condition manifested by pain. Dr. Hughes stated that appellant had a persisting pain state, which was indistinguishable from RSD in the past and recommended treatment for it. He did not explain how RSD differed from appellant's current condition of persisting pain or indicate that appellant's pain had ceased or provide any rational explanation that appellant's current condition of persisting pain was no longer work related. Because his opinion is not well rationalized, Dr. Hughes' opinion did not justify the Office's termination of benefits. Further, the conflict between Dr. Pagani's and Dr. Bellamy's opinions remains unresolved.

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<sup>1</sup> *Patricia M. Mitchell*, 48 ECAB \_\_\_\_ (Docket No. 95-384, issued February 27, 1987); *Patricia A. Keller*, 45 ECAB 278 (1993).

<sup>2</sup> *Larry Warner*, 43 ECAB 1027 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>3</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1984); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

The decision of the Office of Workers' Compensation Programs dated April 7, 1998 is hereby reversed.

Dated, Washington, D.C.  
January 4, 2000

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member