

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANCES MAYS and U.S. POSTAL SERVICE,  
POST OFFICE, Southeastern, Pa.

*Docket No. 95-2829; Submitted on the Record;  
Issued March 16, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has any medical residuals after January 26, 1995 causally related to her accepted employment injury.

Appellant filed a claim on January 9, 1989 alleging that she injured her left side and right knee in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for contusion and sprain of the right knee and lumbar sprain. By decision dated January 26, 1995, the Office denied appellant's claim for further compensation benefits finding that the weight of the medical evidence demonstrated there were no residual effects of the work injury. Appellant requested a review of the written record. By decision dated June 1, 1995 and finalized June 2, 1995, the hearing representative affirmed the Office's January 26, 1995 decision.

Appellant sustained a recurrence of disability on January 27, 1992 and returned to light-duty work for five hours a day at that time. She continued to complete CA-8s requesting compensation for the remaining hours throughout 1994.<sup>1</sup> Appellant's attending physician, Dr. Corey K. Ruth, an orthopedist, supported appellant's partial disability with brief reports from March 1989 through September 15, 1994.

The Office referred appellant for a second opinion evaluation with Dr. Frank A. Mattei, a Board-certified orthopedic surgeon, on January 13, 1994. In a report dated February 14, 1994, Dr. Mattei found appellant had no restrictions and released her to full duty. He further found that additional medical treatment would not be helpful.

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<sup>1</sup> Appellant began working six hours a day on May 19, 1994.

Section 8123(a) of the Federal Employees' Compensation Act,<sup>2</sup> provides, "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." Due to the conflict of medical opinion between Drs. Mattei and Ruth, regarding appellant's disability and medical residuals due to her accepted employment injury, the Office referred appellant to Dr. Leonard A. Brody, a Board-certified orthopedic surgeon, for an impartial examination.

Dr. Brody completed a report on December 21, 1994. He noted that appellant demonstrated inconsistent findings on physical examination relating to her back range of motion and pain as well as right knee pain. Dr. Brody found appellant's cervical and lumbar spines were normal and that her right knee was normal. He stated that there were no objective positive physical findings to go along with appellant's multi-focal and inconsistent complaints of pain. Dr. Brody concluded that appellant had recovered from her soft tissue injuries, that she could return to full work and that she would not benefit from further medical treatment.

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>3</sup> In this case, Dr. Brody's report is based on a proper factual background and provides objective findings supporting his conclusion that appellant is capable of returning to her date-of-injury position and that she has no medical residuals causally related to her accepted employment injury. Therefore, his report is entitled to special weight and the Office properly relied upon it in denying appellant's claim.

Following Dr. Brody's December 21, 1994 report, appellant submitted additional reports from Dr. Ruth. These reports included diagnoses of knee and back conditions and continued to support light duty. As Dr. Ruth was on one side of the conflict that Dr. Brody resolved, the additional report from Dr. Ruth is insufficient to overcome the weight accorded Dr. Brody's report as the impartial medical specialist or to create a new conflict with it.<sup>4</sup>

On appeal, appellant's attorney alleged that the statement of accepted facts was defective as appellant's age was incorrect, as appellant's date-of-injury job requirements were not specified and as appellant's recurrence of disability in January 1992 and subsequent work restrictions were not accurately described. The Board finds that the errors in the statement of accepted facts are not sufficient to constitute reversible error. The second opinion and impartial medical examiner were aware within five years of appellant's age, the statement of accepted facts put them on notice that appellant was working reduced hours due to her physician's restrictions and both physicians clearly stated that appellant had no objective findings supporting either disability or medical residuals due to her accepted condition. As appellant had no

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<sup>2</sup> 5 U.S.C. §§ 8101-8193, 8123(a).

<sup>3</sup> *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

<sup>4</sup> *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

restrictions, the lack of physical requirements for her date-of-injury position is not reversible error.

Appellant's attorney also alleges that the Office failed to develop the "neuropsychiatric condition" Dr. Mattei diagnosed as a consequence of appellant's accepted employment injuries. The Board notes that Dr. Mattei's February 1, 1994 work restriction evaluation indicated with a checkmark "yes" that appellant's interpersonal relations were effected because of a neuropsychiatric condition. In his narrative report dated February 14, 1994, Dr. Mattei concluded that appellant did not have a disabling condition. As Dr. Mattei is an orthopedic surgeon and as there is no other indication in his report that appellant had an emotional condition, the Board finds that the Office was not required to undertake further development of this issue. However, appellant submitted narrative statements indicating that she felt she had developed an emotional condition due to actions of her supervisor. If so, appellant should file a claim for this condition with the Office.

The June 2 and January 26, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.  
March 16, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member