

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNE L. AYERS and U.S. DEPARTMENT OF LABOR,
MINE SAFETY & HEALTH ADMINISTRATION, Beckley, W.Va.

*Docket No. 95-2160; Oral Argument Held July 8, 1998;
Issued November 2, 1998*

Appearances: *Anne L. Ayers, pro se; Catherine P. Carter, Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether Office of Workers' Compensation Programs properly found that the evidence of record failed to establish that appellant's left thoracic outlet syndrome was causally related to her accepted November 2, 1988 employment injury; and (2) whether the Office properly terminated appellant's compensation benefits on the basis that appellant's accepted conditions of left shoulder sprain, contusion of the left middle and ring finger, and crush injury of the middle and ring finger had resolved.

On November 3, 1988 appellant, then a 40-year-old education specialist, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on November 2, 1988 she injured the tips of her left fingers and strained her muscles/nerves in her left arm when a van door shut on her left hand. No claim for compensation for wage loss was ever filed.

In a decision dated January 11, 1994, the Office found the evidence insufficient to establish that appellant's left thoracic syndrome and left shoulder sprain was causally related to her accepted employment injury of November 2, 1988. In denying appellant's benefits, the Office determined that the opinion of Dr. White had more probative value than the opinion of Dr. Unger.

In a decision dated January 4, 1995, the hearing representative vacated the Office's January 11, 1994 decision as he found there was a conflict in the medical evidence between Drs. Leffert, Stephens and Unger and Drs. Poppa and White as to whether appellant suffers from thoracic outlet syndrome.

In a report dated April 26, 1995, Dr. Frank G. Nisenfeld, a Board-certified orthopedic surgeon, based upon a review of the 450-page medical record, medical history and physical examination, opined that appellant's accepted condition of left shoulder sprain, contusion of the left middle and ring finger, and crush injury of the middle and ring finger had resolved. On physical examination, Dr. Nisenfeld noted:

“Muscle strength, sensory reflex and circulatory exam[ination]s to the upper extremities were normal. Phalen's test at the elbow and at the carpal tunnel was negative. Phalen's test at the wrist was negative. There were no sensory disturbances in either hand. The peripheral circulation to the hands was normal. Adson's test for thoracic outlet syndrome was negative, both in its shoulders back, chest out version and in the neck turning to the opposite side version. There were no symptoms elicited by either of these maneuvers, and there was no diminution of the radial pulse by either of these maneuvers.”

Dr. Nisenfeld noted that the “etiology of thoracic outlet syndrome is very controversial and is still very much a subject of debate amongst medical practitioners.” In concluding that appellant did not have thoracic outlet syndrome, Dr. Nisenfeld based his opinion upon the objective evidence. Dr. Nisenfeld noted that the physical finds were normal and the electromyograph (EMG) and magnetic resonance imaging (MRI) tests he reviewed were negative.

By decision dated May 10, 1995, the Office terminated appellant's compensation for medical and wage-loss benefits. The Office also found that the weight of the evidence, as represented by the opinion of Dr. Nisenfeld, the independent medical examiner, was insufficient to establish a causal relationship between appellant's accepted November 2, 1988 employment injury and her left thoracic outlet syndrome.

The Board finds that the Office properly found that the evidence of record failed to establish that appellant's left thoracic outlet syndrome was causally related to her accepted November 2, 1988 employment injury.

Section 8123(a) of the Federal Employees' Compensation Act provides that “[i]f there is a 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.”¹ Because of the conflict of opinion with respect to whether or not appellant's left thoracic outlet syndrome was causally related to her accepted November 2, 1988 employment injury, the Office referred appellant to Dr. Nisenfeld, a Board-certified orthopedic surgeon. Dr. Nisenfeld concluded that appellant did not have left thoracic outlet syndrome based upon the objective evidence and appellant's physical examination.

¹ 5 U.S.C. § 8123(a).

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 upon a proper factual background, is entitled to special weight.²

In the instant case, appellant's attending physician, Dr. Leffert, a Board-certified orthopedic surgeon of professorial rank, related the left thoracic outlet syndrome to appellant's accepted employment injury of November 2, 1988. An Office district medical adviser, Dr. Zimmerman, an internist, negated a causal relationship between appellant's artery occlusion and his work duties. Because of the conflict in medical opinion between Drs. Leffert, Stephens and Unger and Drs. Poppa and White, and pursuant to section 8123(a) of the Act, the Office referred appellant to a third doctor for an impartial medical examination.³ Dr. Nisenfeld, a Board-certified orthopedic surgeon who served as the impartial medical specialist, provided a comprehensive report dated April 26, 1995, by which he reviewed 450 pages of medical record, and physical of appellant. He noted that there was no objective evidence to indicate that appellant suffered from left thoracic outlet syndrome. Dr. Nisenfeld provided rationale for his opinion on causal relationship, which included the normal findings on physical examination and the EMG and MRI tests he reviewed were negative.

In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background, and must be supported by medical rationale which establishes that the diagnosed condition resulted from the specific employment activities.⁴ A medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, but neither can the opinion be speculative or equivocal.⁵ The Board finds that Dr. Nisenfeld's report is based on a complete and accurate factual and medical background, with full rationale for his opinion on causal relationship. Accordingly, the weight of the medical evidence rests with the reports of Dr. Nisenfeld, the impartial medical specialist, and establish that appellant's left thoracic outlet syndrome was not caused by her federal employment.

The Board also finds that the Office properly terminated appellant's compensation benefits on the basis that appellant's accepted conditions of left shoulder sprain, contusion of the left middle and ring finger, and crush injury of the middle and ring finger had resolved.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁶ After it has determined that an employee has disability causally related to his or her federal

² *Jack R. Smith*, 41 ECAB 691, 701 (1990); *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

³ Section 8123(a) of the Act provides that, "[i]f there is a 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." 5 U.S.C. § 8123(a).

⁴ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

⁵ *See Philip J. Deroo*, 39 ECAB 1294 (1989).

⁶ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

employment, the Office may not terminate compensation without establishing that the disability has ceased or that it

is no longer related to the employment.⁷ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁸ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.⁹

The Office, based upon Dr. Nisenfeld's report, found that appellant no longer had any residuals from her accepted conditions of left shoulder sprain, contusion of the left middle finger and ring finger, and crush injury of the middle and ring finger. The Office properly found that appellant's accepted conditions had resolved.

In the present case, the Office terminated appellant's compensation after determining that appellant's disability had ceased. As used in the Act,¹⁰ the term disability means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury. The Office properly terminated appellant's benefits after determining that her accepted conditions had resolved and she did not have any residuals from her accepted employment condition

The decision of the Office of Workers' Compensation Programs dated May 10, 1995 is hereby affirmed.

Dated, Washington, D.C.
November 2, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁷ *Id.*

⁸ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁹ *Id.*

¹⁰ 5 U.S.C. §§ 8103-8193, 8102.