

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROLLAND P. CONNELL and GOVERNMENT PRINTING OFFICE,
OFFICE OF THE PUBLIC PRINTER, Washington, DC

*Docket No. 98-1346; Submitted on the Record;
Issued December 2, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden to terminate appellant's benefits effective August 5, 1996.

On November 29, 1994 appellant, then a 37-year-old book binder, filed a claim alleging that he injured his right elbow on that same date when he fell in the course of his federal employment. The Office accepted the claim for a contusion of the right wrist and right ulnar neuropathy. The Office approved surgery for the conditions on November 2, 1995 and appellant received compensation for total temporary disability.

On September 19, 1995 Dr. Frederic K. Cantor, a Board-certified anesthesiologist, psychiatrist and neurologist, reviewed appellant's history of injury and his symptomology. Dr. Cantor also noted the history of treatment appellant received and the objective evidence of record. On examination he noted weakness of the biceps and triceps. Dr. Cantor indicated that there was weakness of hand grip and fingers with production of pain with the maneuvers. He noted that wrist movement caused pain and that there was swelling of the dorsal portion of the forearm just above the wrist. Dr. Cantor indicated that appellant's wrist was tender and that there was irritation on the radial aspect of the thumb and on the dorsum of the hand consistent with compression from his wrist splint. He stated that the reflexes were hypoactive, but symmetrical in the arms. Dr. Cantor opined that appellant still had a residual wrist pathology related to his work accident. He indicated that this was evidenced by the pain and swelling on examination. Dr. Cantor noted a joint and ligament problem and symptoms of paresthesias in the right fourth and fifth fingers consistent with an ulnar nerve injury. He stated that appellant's return to work aggravated his wrist problem. Dr. Cantor noted that his electromyography demonstrated a right elbow abnormality. He noted an ulnar neuropathy from injury at the elbow. Dr. Cantor stated that work restrictions included an avoidance of pressure on the elbow and marked limited use of the right hand and wrist. He concluded that appellant had not reached full recovery.

On December 28, 1995 Dr. E. Masoud Pour, appellant's treating physician and a general surgeon, diagnosed appellant as status post synovectomy right wrist and elbow. He indicated that appellant was totally disabled from his usual work and that this was due to his accepted injury. Dr. Pour subsequently provided numerous reports documenting his treatment of appellant's complaints, but which did not address the causal relationship of the complaints to appellant's accepted injury or employment.

On February 1, 1996 the Office referred appellant to Dr. Edward J. Bieber, a Board-certified orthopedic surgeon specializing in hand surgery.

On February 23, 1996 Dr. Bieber reviewed the history of appellant's injury and the treatment he received. He noted that appellant complained of stiffness and numbness in the hands. Dr. Bieber also stated that appellant experienced pain in the wrist and elbow. Dr. Bieber conducted a physical examination and reviewed x-rays of the elbow and wrist. He indicated that appellant was status post ulnar nerve transposition and synovectomy of the wrist and ulnar release. Dr. Bieber stated he was uncertain whether the surgery was effective. He found no atrophy of the muscles in the arm and hand. Dr. Bieber concluded that appellant had not yet fully recovered from his November 1995 surgery. He, however, indicated that appellant could return to full-time work on light-duty status lifting nothing greater than 20 pounds.

The Office found a conflict in medical opinion. On May 14, 1996 the Office referred appellant to Dr. Edward C. Rabbitt, a Board-certified orthopedic surgeon, to provide a referee examination.

On June 7, 1996 Dr. Rabbitt reviewed the history of appellant's injury and his treatment. He performed a physical examination and reviewed appellant's x-rays. Dr. Rabbitt stated that appellant suffered a work-related contusion and ulnar neuropathy at the elbow and wrist with a synovial hypertrophy of the wrist. He indicated that appellant underwent successful surgery and his symptoms lessened. Dr. Rabbitt diagnosed "resolving ulnar neuropathy with surgery." He stated that appellants symptoms included primarily pain and that there has been a good resolution of appellant's symptoms. Dr. Rabbitt stated he expected appellant to reach maximum improvement by July 1, 1996. He stated that appellant could resume light duty with a weight restriction of lifting 40 pounds which would increase to 60 pounds on July 1, 1996. Dr. Rabbitt indicated that there was no known etiology for appellant's continued complaints of pain and no objective evidence to support the complaints. He indicated that appellant could return to his full duties on July 1, 1996.

On July 1, 1996 the Office issued a notice of proposed termination of compensation." The Office indicated that effective July 1, 1996, the accepted medical conditions no longer caused disability from work. The Office indicated that it relied on the opinion of Dr. Rabbitt in reaching its conclusion. Appellant was given 30 days to submit additional argument or evidence.

By decision dated August 5, 1996, the Office terminated benefits effective August 5, 1996 because appellant no longer had total disability from work causally related to the accepted conditions in this case.

On October 15, 1996 Dr. Pour indicated that appellant reached maximum medical improvement. He stated that appellant's wrist demonstrated a 5 percent impairment due to limitation of flexion, 5 percent impairment due to limitation of extension, a 5 percent impairment due to lack of radial deviation, a 5 percent impairment due to lack of ulnar deviation and an additional 10 percent impairment due to lack of endurance. Dr. Pour, therefore, found a 30 percent permanent disability of the right wrist. For lack of endurance, lack of function and weakness, he gave appellant a 20 percent permanent, disability of the right elbow. He combined the disability findings to determine that appellant had a 50 percent permanent, partial disability to the right, upper extremity.

On January 10, 1997 Dr. Pour treated appellant for a swollen wrist, a weak hand and elbow pain. On examination he found a tender medial epicondyle and mild swelling of the wrist. Dr. Pour also found that appellant had a weak grip. On April 4, 1997 he treated appellant for pain in the right elbow, wrist and hand. Dr. Pour noted tenderness in the medial epicondyle and swelling in the forearm, wrist and hand. On April 23, 1997 he repeated his report of October 15, 1996 indicating that appellant had a 50 percent impairment of the right upper extremity.

Pursuant to appellant's request, a hearing was held on July 22, 1997.

By decision dated January 21, 1998, the Office hearing representative affirmed the Office's August 5, 1996 decision, terminating benefits for total disability. The hearing representative found that the weight of the medical evidence rested with the opinion of Dr. Rabbitt, the referee examiner.

The Board finds that the Office failed to meet its burden to terminate appellant's benefits effective August 5, 1996.

In the present case, the Office terminated appellant's benefits based on the report of Dr. Rabbitt, a Board-certified orthopedic surgeon selected to resolve the conflict in the medical evidence concerning whether appellant had residuals from his accepted employment injuries.

In situations where 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 on a proper factual background, must be given special weight.¹ The Board finds, however, that Dr. Rabbitt's medical opinion is not well rationalized and is not entitled to special weight.

Dr. Rabbitt opined that he found no objective evidence supporting appellant's complaints of pain in the upper extremities and that he found no etiology for these complaints. Dr. Rabbit, however, failed to support his opinion with sufficient medical rationale. Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.² Moreover, Dr. Rabbitt failed to explain his opinion in light of the fact that he also maintained that appellant's condition was still "resolving" and that appellant had not yet reached

¹ *Terrance R. Stath*, 45 ECAB 412 (1994).

² *William C. Thomas*, 45 ECAB 591 (1994); *Marilyn D. Polk*, 44 ECAB 673 (1993).

maximum improvement. Consequently, Dr. Rabbitt's opinion is unclear concerning the issue of whether appellant has residuals from his accepted injury and is, therefore, not sufficiently rationalized to meet the Office's burden of terminating benefits.³

Accordingly, the decision of the Office of Workers' Compensation Programs dated January 21, 1998 is reversed.

Dated, Washington, D.C.
December 2, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Terrance R. Stath, supra* note 1.