

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA F. COLLINS and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Monterey Park, CA

*Docket No. 01-341; Submitted on the Record;
Issued November 16, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation on October 18, 2000.

On August 15, 1996 appellant, then a 34-year-old agent, filed an occupational disease claim and submitted an accompanying statement, alleging that factors of employment caused carpal tunnel syndrome, blurred vision and stress. By letter dated October 15, 1996, the Office accepted that she sustained employment-related bilateral carpal tunnel syndrome, right epicondylitis and bilateral shoulder tendinitis and stated that, as she had submitted no medical evidence indicating that she had been diagnosed with either blurred vision or an emotional condition, these conditions were not accepted. Appellant submitted medical evidence regarding her emotional condition and, in a letter dated March 18, 1997, the Office advised her to file a separate claim for this condition.¹

The Office continued to develop the claim and, on July 14, 1997, referred appellant, along with the medical record, a statement of accepted facts and a set of questions, to Dr. William Boeck, a Board-certified orthopedic surgeon, for a second opinion evaluation. Dr. Boeck provided reports dated August 12 and October 10, 1997, and June 26, 1998. Appellant submitted a September 8, 1997 report from Dr. Michael J. Einbund, a Board-certified orthopedic surgeon. Appellant returned to work in August 1998 for six hours per day in a modified position.

By decision dated February 16, 1999, the Office credited the opinion of Dr. Boeck and denied the claim on the grounds that appellant had no disability or residuals. Appellant timely requested a hearing and, in a decision dated June 3, 1999, an Office hearing representative remanded the case to the Office, finding that a conflict in the medical opinion evidence existed

¹ The record indicates that appellant filed an emotional condition claim that was later denied by the Office. It further indicates that appellant received no wage-loss compensation in the instant case.

between the opinions of Drs. Einbund and Boeck regarding the extent and duration of any employment-related residuals and regarding specific diagnoses causally related to factors of federal employment.

On July 20, 1999 the Office referred appellant, along with the medical record, a statement of accepted facts and a set of questions, to Dr. Paul Bouz, a Board-certified orthopedic surgeon for an independent medical evaluation. By report dated August 25, 1999, Dr. Bouz, noted that appellant was left-hand dominant and diagnosed resolved tendinitis of the left wrist and slight tendinitis of the right wrist and right shoulder. He recorded subjective factors of slight occasional right shoulder pain with repetitive overhead reaching and heavy pushing and pulling with her right upper extremity, tenderness on the right shoulder and pain with range of motion of the right shoulder, occasional minimal right elbow pain, occasional slight right wrist pain with repetitive typing and repetitive use of her right wrist, feeling weakness in both hands, and tenderness on the radial and volar aspect of the right wrist. He found no objective factors of disability, advised that she could work eight hours per day and provided physical restrictions of no repetitive overhead reaching or heavy pushing, pulling or carrying with her right upper extremity and she was to refrain from repetitive use of her right wrist. Typing was restricted to 30 minutes at a time with a 30-minute rest and lifting was limited to 20 pounds.

On October 22, 1999 the Office requested that Dr. Bouz provide a supplementary report because he had not indicated whether he had reviewed the medical record. When a report from Dr. Bouz was not forthcoming, by letter dated April 12, 2000, the Office referred appellant, along with the medical record, a statement of accepted facts and a set of questions, to Dr. Thomas O. Bryan, a Board-certified orthopedic surgeon, for an independent medical evaluation.

The Office was then unsuccessful in obtaining Dr. Bryan's report. Thus, on August 22, 2000, appellant, along with a statement of accepted facts, a set of questions and the medical record, was referred to Dr. Daniel W. Gobaud, a Board-certified orthopedic surgeon, for an independent medical evaluation. In a report dated September 20, 2000, Dr. Gobaud advised that orthopedic examination of both shoulders, right elbow and both wrists was normal. He found no positive objective findings of clinical significance and concluded that, while appellant initially sustained the employment-related upper extremity conditions due to repeated data entry, these had resolved and she had no work restrictions. Dr. Gobaud concluded that appellant had no need for future medical care.

On September 26, 2000 the Office received a report dated May 9, 2000 in which Dr. Bryan advised that he had reviewed the medical record and examined appellant. Diagnoses included mild right carpal tunnel syndrome and mild bilateral wrist tendinitis which he advised were related to chronic repetitive motion of the wrists at work. He provided work restrictions of no repetitive gripping and grasping with her right hand and wrist and limited typing to half the workday. He opined that appellant continued to have permanent residuals. Dr. Bryan also provided a work capacity evaluation dated July 7, 2000 in which he indicated that appellant should limit repetitive wrist movement to four hours per day.

By decision dated October 18, 2000, the Office found that the record established that appellant had recovered from her employment-related conditions without residuals and

terminated wage-loss compensation and medical benefits, effective that day. The Office credited the opinion of Dr. Gobaud who advised that appellant's employment-related conditions had resolved. The instant appeal follows.

The Board finds that the Office met its burden of proof to terminate appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.² Furthermore, 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.³

In this case, appellant was first referred to Dr. Bouz for an independent medical evaluation. When the Office requested that he furnish a supplementary report, Dr. Bouz did not respond. Thus, on April 12, 2000, the Office referred appellant to Dr. O. Bryan for an independent medical evaluation. Dr. Bryan, however, did not respond to Office requests for his medical report and, on August 22, 2000, the Office referred appellant to Dr. Gobaud for an independent medical evaluation.

By report dated September 20, 2000, Dr. Gobaud advised that examination was normal with no positive objective findings of clinical significance. He concluded that, while appellant initially sustained the employment-related upper extremity conditions due to repeated data entry, these had resolved and she had no work restrictions. On September 26, 2000 the Office received Dr. Bryan's report.

The Board finds that, when, as here, medical reports are not forthcoming when requested by the Office, the Office may refer an injured employee for another independent medical evaluation.⁴ Thus, the referral to Dr. Gobaud was valid at the time it was made and the Board finds that the weight of the medical evidence in this case is represented by his thorough, well-rationalized opinion. He provided the most recent independent medical evaluation and advised that appellant had a normal orthopedic examination and that her work-related conditions had

² See *Patricia A. Keller*, 45 ECAB 278 (1993).

³ See *Kathryn Haggerty*, 45 ECAB 383 (1994); *Edward E. Wright*, 43 ECAB 702 (1992).

⁴ The Office procedure manual provides that, if the report of an independent medical examiner is vague, speculative, incomplete or unrationalized, it is the responsibility of the Office to secure a supplemental report from the referee specialist to correct the defect. However, if the impartial specialist is unable or unwilling to give a supplemental report, or the supplemental report is also defective, the Office should arrange for another impartial evaluation. Federal (FECA) Procedure Manual, Part 2, Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11(c)(2) (April 1993).

resolved. Lastly, he provided no restrictions to physical activity.⁵ The Office, therefore, properly terminated appellant's compensation on October 18, 2000.⁶

The decision of the Office of Workers' Compensation Programs dated October 18, 2000 is hereby affirmed.

Dated, Washington, DC
November 16, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁵ The most recent medical report submitted by appellant is the report dated September 8, 1997 from Dr. Michael J. Einbund.

⁶ The instant case can be distinguished from those in which the Office's referral of appellant to a second physician instead of securing a supplemental report from the first which can lead to the suspicion that the Office shopped around for the purpose of securing a medical opinion favorable to its view. *Carlton L. Owens*, 36 ECAB 608 (1985); *Delia W. Paranich*, 33 ECAB 239 (1981).