U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN E. MORALES and U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY

Docket No. 00-1136; Oral Argument Held May 2, 2001; Issued September 25, 2001

Appearances: *Carolyn E. Morales, pro se*; *Thomas Giblin,* for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM, BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective January 25, 1999 on the grounds that she had no disability after that date due to her employment injury.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation effective January 25, 1999 on the grounds that she had no disability after that date due to her employment injury.

Under the Federal Employees' Compensation Act,[1] once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[2] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[3] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

In mid 1993 the Office accepted that appellant, then a 35-year-old distribution clerk, sustained bilateral carpal tunnel syndrome due to working on a letter sorting machine. Appellant underwent carpal tunnel release surgeries of both wrists in 1990 and 1991, which were

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Charles E. Minniss,* 40 ECAB 708, 716 (1989); *Vivien L. Minor,* 37 ECAB 541, 546 (1986).

[3] *Id.*

[4] *See Del K. Rykert,* 40 ECAB 284, 295-96 (1988).

authorized by the Office.[5] The Office paid appellant compensation for various periods of disability. In May 1995 appellant began working in a limited-duty position for the employing establishment for four hours per day and the Office adjusted her compensation accordingly.[6] After a period off work, appellant returned to the employing establishment on January 12, 1997 in a limited-duty job within her restrictions for four hours per day. By decision dated January 25, 1999, the Office terminated appellant's compensation effective that date on the grounds that she had no disability after that date due to her employment injury. The Office based its termination on a March 7, 1998 report of Dr. Andrew J. Dowd, a Board-certified hand surgeon who served as an Office referral physician.

In a report dated March 7, 1998, Dr. Dowd reported appellant's factual and medical history and detailed the results of his examination. He stated:

> "Examination of both hands revealed bilateral carpal tunnel scars, well healed. There was no hypertrophic scarring noted. There was no tenderness. She has bilaterally negative Tinel's, bilaterally negative Phalen's test. She has normal light touch sensation to both median nerve distributions of each hand."

Dr. Dowd indicated that appellant's upper extremity motor power and sensation was intact and diagnosed status post bilateral carpal tunnel release. He stated, "There are no objective findings. In my opinion this claimant his reached maximum medical improvement. Thus there is no need for orthopedic treatment or physical therapy." Dr. Dowd indicated that appellant was not disabled and that she could work full duty as a letter sorting machine distribution operator without restrictions.

In contrast, Dr. Joseph L. Paul, an attending Board-certified orthopedic surgeon, noted that appellant continued to have disabling residuals of her employment-related condition. In a report dated June 4, 1998, Dr. Paul stated that appellant exhibited bilateral wrist pain and swelling and had limited range of motion in her hands. He diagnosed status post carpal tunnel release of both hands and lumbosacral spine derangement and indicated that appellant had limited use of both hands, mainly on the right. In a work restriction form report dated December 1, 1998, Dr. Paul indicated that appellant could not engage in lifting, pushing or pulling. He further noted that appellant had hand restrictions and could only work for four hours per day.

The Board finds that there is a conflict in the medical evidence between the referral physician, Dr. Dowd, and appellant's physician, Dr. Paul, regarding whether appellant continues

[5] Appellant had filed her claim in 1990 and the Office denied her claim on two occasions before accepting it.

[6] In September 1996 appellant filed a claim alleged that she sustained an employment-related back injury on September 11, 1995. This claim is set worth in the Office file numbered A2-719039 and is not the subject of the present appeal.

to have residuals of her employment injury after January 25, 1999.[7] The Board further finds that since the Office relied on the opinion of Dr. Dowd to terminate appellant's compensation benefits effective January 25, 1999 without having resolved the existing conflict, the Office has failed to meet its burden of proof in terminating appellant's benefits.[8]

The January 25, 1999 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, DC
September 25, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[7] Section 8123(a) of the Act provides in pertinent part: "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." 5 U.S.C. § 8123(a). When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence. *William C. Bush*, 40 ECAB 1064, 1975 (1989).

[8] *See Gail D. Painton*, 41 ECAB 492, 498 (1990); *Craig M. Crenshaw, Jr.*, 40 ECAB 919, 922-23 (1989).