

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONNIE GUTHERY and DEPARTMENT OF THE NAVY,
NAVAL AIR STATION, Alameda, CA

*Docket No. 03-1505; Submitted on the Record;
Issued October 20, 2003*

DECISION and ORDER

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

The issue whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective August 31, 2000 on the grounds that she no longer had any residuals of her January 15, 1992 and February 2, 1995 employment injuries.

On April 14, 1993 appellant, then a 34-year-old office automation clerk, filed an occupational disease claim alleging that on January 15, 1992 she first realized that her carpal tunnel syndrome was caused by factors of her federal employment. Appellant stated that her leg became numb and her arm ached.

By decision dated October 28, 1993, the Office found the evidence of record insufficient to establish that appellant's carpal tunnel syndrome was causally related to factors of her federal employment. In an October 23, 1993 letter, appellant requested an oral hearing before an Office hearing representative.

In a May 31, 1994 decision, the hearing representative set aside the Office's decision and remanded the case for further development of the medical evidence because appellant had submitted evidence indicating that she sustained a wrist injury causally related to factors of her federal employment.

On remand the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. Jack W. Tupper, a Board-certified orthopedic surgeon, for a second opinion medical examination. By letter dated August 2, 1994, the Office accepted appellant's claim for cervical myofascitis based on Dr. Tupper's July 25, 1994 report.

On April 12, 1995 appellant filed a claim alleging that she sustained a recurrence of disability of her January 15, 1992 employment injury on March 13, 1995. In a May 25, 1995 letter, the Office determined that this claim was a new occupational disease claim for an aggravation of the accepted condition and doubled it into the previous claim. The Office used

February 2, 1995 as the date of injury.¹ By letter dated June 2, 1995, the Office expanded the acceptance of appellant's claim to include cervical myofascitis and right wrist sprain/strain.

In letters dated June 16 and July 8, 1992, the Office advised appellant that her case record revealed that she was totally disabled due to her work-related injuries and that her case would be reviewed in October 1999 to determine if she had any continuing disability. By letter dated March 7, 2000, the Office referred appellant along with a statement of accepted facts, medical records and a list of specific questions to Dr. Robert S. Ferretti, a Board-certified orthopedic surgeon, for a second opinion medical examination to determine whether she remained totally disabled due to her accepted employment injuries.

Dr. Ferretti submitted an April 13, 2000 report finding that appellant had no residuals and resultant disability of her accepted employment injuries. In an accompanying work capacity evaluation, Dr. Ferretti indicated that appellant could work eight hours a day with no limitations.

In a May 19, 2000 letter, the Office requested that Dr. Jonathan Francis, a family practitioner and appellant's treating physician, review Dr. Ferretti's report and submit his assessment. Dr. Francis did not respond.

The Office issued a notice of proposed termination of compensation on July 27, 2000 based on Dr. Ferretti's report.

By decision dated August 31, 2000, the Office terminated appellant's compensation on the grounds that she no longer had any residuals and resultant disability due to her January 15, 1992 and February 2, 1995 employment injuries. In a September 8, 2000 letter, appellant requested an "oral interview."

In a November 14, 2000 response letter, the Office advised appellant that an oral interview was not one of her appeal rights. Rather, she was entitled to a hearing, reconsideration or an appeal to the Board. Subsequently, appellant requested a hearing before an Office hearing representative.

By decision dated April 5, 2001 and finalized on April 9, 2001, the hearing representative affirmed the Office's August 31, 2000 decision.

In decisions dated January 28, April 26 and August 14, 2002, the Office denied appellant's November 8, 2001, and February 18 and May 14, 2002 requests for modification respectively, based on a merit review of her claim.

In an August 30, 2002 letter, appellant, through her attorney, requested reconsideration accompanied by an August 20, 2002 report from Dr. Francis finding that her current carpal tunnel syndrome was caused by her February 2, 1995 employment injury.

¹ On her recurrence claim form, appellant indicated that she sought compensation for the period February 3 through June 1, 1995.

By decision dated December 20, 2002, the Office denied appellant's request for a merit review of her claim on the grounds that the evidence submitted was repetitious, and thus, insufficient to warrant a merit review of its prior decision.²

The Board finds that the Office properly terminated appellant's compensation benefits on the grounds that she no longer had any residuals and resultant disability due to her January 15, 1992 and February 2, 1995 employment injuries.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.⁴

In this case, the Office relied on the opinion of Dr. Ferretti, a second opinion physician, to conclude that appellant no longer had any residuals and disability due to her January 15, 1992 and February 2, 1995 employment injuries. In his April 13, 2000 report, he provided a history of appellant's employment injuries, medical treatment, social background and employment. Dr. Ferretti noted appellant's complaints regarding her right thumb and other joints in her right hand, neck, shoulder and right arm. He reviewed appellant's medical records and provided his findings on physical examination. Dr. Ferretti stated that appellant had a history of probable repetitive strain injury with cervical strain and tendinitis involving the distal right upper extremity related to the February 2, 1995 employment injury. He also stated that appellant had a history of cervical myofascitis related to her January 15, 1992 employment injury. Dr. Ferretti opined that there was no objective evidence of residuals of appellant's diagnosed conditions which were most likely related to work activities in the past. He further opined that there were no nonindustrial preexisting factors to be considered for disability. Dr. Ferretti's prognosis for improvement was poor due to possible chronic pain syndrome which was not supported by objective findings. He stated that based on his evaluation, he had no recommendations for additional medical treatment. Dr. Ferretti noted that appellant stated that she had been totally disabled since her last day at work on March 15, 1995 and stated that he could not estimate when total disability ceased since he had no contact with appellant. He opined that appellant had no physical limitations resulting from a work-related disability and that she could be gainfully employed and should be considered a candidate for vocational rehabilitation and reemployment in the future. Dr. Ferretti stated that appellant continued to suffer residuals of her employment

² Although the Office indicated that its December 20, 2002 decision was a nonmerit denial of appellant's request for reconsideration, the Office actually conducted a merit review of the evidence submitted by appellant on reconsideration as the claims examiner stated that "[a]fter reviewing the medical record I find that there is still insufficient evidence to establish that the currently diagnosed carpal tunnel syndrome is causally related to the accepted work activities of 1995. Thus while the new evidence presented disagrees with that already of record, it is of insufficient weight to overcome the conclusions of the medical examiners already of record. It is less thorough, lacking in detail, and is less well rationalized than the evidence upon which the prior decisions were based."

³ *Betty Regan*, 49 ECAB 496, 501 (1998).

⁴ *Raymond C. Beyer*, 50 ECAB 164, 168 (1998).

injuries on a subjective basis. He concluded that appellant should be able to perform the duties of her position as an automation clerk.

Dr. Ferretti offered medical reasoning to support his conclusion that appellant did not have any residuals and resultant disability due to her January 15, 1992 and February 2, 1995 employment injuries and the medical record, together with the statement of accepted facts, provided him a proper factual foundation to evaluate appellant. His report provided a sufficient basis for the Office's decision to terminate appellant's compensation. Thus, the Office met its burden of proof in terminating compensation benefits.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability that continued after termination of compensation benefits.⁵

Following the termination decision, appellant submitted additional medical evidence regarding her continuing residuals. The evidence is not, however, of sufficient probative value to establish a continuing employment-related condition or disability after August 31, 2000. In an August 20, 2002 report, Dr. Francis diagnosed carpal tunnel syndrome and opined that it "is extremely likely that [appellant's] current medical problems are the result of her work-related injury of February 2, 1995."

The Board finds that the evidence from Dr. Francis concerning the causal relationship between appellant's current condition and her accepted employment injuries is speculative and is, therefore, of diminished probative value. Medical opinions that are speculative and not supported by medical rationale are generally entitled to little probative value and are insufficient to meet appellant's burden of proof.⁶ Dr. Francis did not provide a reasoned medical opinion establishing a disabling condition as of August 31, 2000 causally related to the February 2, 1995 employment injury.

The Board finds that the evidence submitted after the August 31, 2000 decision is insufficient to establish that appellant had a continuing employment-related condition or disability after that date; the date compensation benefits were terminated.

⁵ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

⁶ *Carolyn F. Allen*, 47 ECAB 240 (1995).

The December 20 and August 14, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
October 20, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member