

**United States Department of Labor
Employees' Compensation Appeals Board**

J.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bellmawr, NJ, Employer**

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**Docket No. 06-1179
Issued: November 30, 2006**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 24, 2006 appellant, through counsel, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' hearing representative dated January 4, 2006, which affirmed the decision finding that appellant had no continuing disability on and after September 16, 1998 due to her accepted employment injuries. The hearing representative also found the evidence insufficient to establish that appellant sustained an employment-related brachial plexus injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that she has any continuing disability on and after September 16, 1998; and (2) whether appellant has established that she sustained a brachial plexus injury causally related to her employment.

FACTUAL HISTORY

On February 13, 1996 appellant filed an occupational disease claim alleging that on February 12, 1996 she first realized that her carpal tunnel syndrome was employment related. The Office accepted the claim for bilateral carpal tunnel syndrome and authorized right carpal tunnel release surgery, which was performed on August 27, 1996 and left carpal tunnel release surgery, which was performed on January 7, 1997. On December 9, 1996 the Office placed appellant on the periodic rolls for temporary total disability until December 6, 1997.

In a decision dated September 16, 1998, the Office terminated appellant's compensation benefits effective that date on the grounds that she no longer had any residuals or disability due to her accepted employment injuries.

In a letter dated February 18, 1999, appellant, through counsel, requested an oral hearing which was held on March 30, 1999 and submitted a February 8, 1999 report by Dr. Fried in support of her request.

On May 27, 1999 appellant filed a claim for a recurrence of disability beginning May 26, 1999.

In a decision dated July 7, 1999 and finalized on July 8, 1999, an Office hearing representative affirmed the termination of appellant's compensation benefits, but remanded it for further development of the evidence on the issue of whether appellant continued to have any disability on and after September 16, 1998.

On August 9, 1999 referred appellant, along with the entire medical record and a statement of accepted facts, to Dr. Narni R. Giri, a Board-certified neurological surgeon, for a second opinion examination. In a report dated August 18, 1999, Dr. Giri concluded that appellant was "status postoperative bilateral carpal tunnel release and resolved musculo-ligamentous injury involving the cervical spine."

On October 14, 1999 the Office referred appellant to Dr. Dirk E. Skinner, a Board-certified neurologist, to resolve the conflict in the medical opinion evidence. In a report dated October 27, 1999, Dr. Skinner, based upon a review of the medical evidence, statement of accepted facts, concluded that there were no objective findings to support the diagnoses of residual carpal tunnel syndrome, brachial plexopathy, ulnar neuropathy and radial neuropathy. A physical examination revealed "exaggerated tenderness to mild tapping of the bilateral posterior neck and upper back regions," no upper extremity swelling and "neck range of motion was mildly and subjectively limited in all directions." He reported Tinel's test was useless as appellant was "highly suggestible." Based upon a physical and neurological examination, Dr. Skinner concluded that appellant "has *multiple* bilateral upper extremity symptoms, with 'obvious and significant' functional overlay for which there *is* a clear basis." (Emphasis in the original.) In concluding, he opined that appellant did not have residual carpal tunnel syndrome based on the lack of current objective evidence and "[r]esidual [c]arpal [t]unnel [s]yndrome following surgery is unusual" particularly in view of the borderline June 28, 1996 nerve conduction study. Dr. Skinner also reported a lack of specific median nerve distribution muscular weakness and thenar atrophy to support his conclusion. With regard to appellant's

brachial plexopathy, he stated that these types of “‘traction’ injuries typically require significant hyperabduction and would not be expected to occur bilaterally.” Dr. Skinner concluded that appellant’s injury did not fit “the typical scenario of a brachial plexus injury in which the head and neck are forced in an opposite direction from the shoulder and arm.”

In a decision dated November 22, 1999, the Office denied appellant’s claim for continuing compensation based upon the report of Dr. Skinner, the impartial medical examiner. The Office found that appellant had no permanent impairment of her upper extremities.

In a decision dated December 16, 1999, the Office denied appellant’s claim for a recurrence of disability based upon Dr. Skinner’s report.

In letters dated December 3 and 27, 1999, appellant, through counsel, requested an oral hearing on the November 22 and December 16, 1999 decisions, which was held on May 25, 2000.

In a report dated April 5, 2000, Dr. Fried diagnosed brachial plexus traction injury greater on the right side than the left, elbow ulnar neuropathy, C5-6 and C6-7 disc narrowing, status post bilateral median nerve decompression. He reported that appellant “definitely has remained with significant symptomatology and this has progressively increased.”

By decision dated August 14, 2000, the Office hearing representative affirmed the decisions dated November 22 and December 16, 1999.

In a letter dated October 17, 2000, appellant, through counsel, requested reconsideration of an August 14, 2000 decision by an Office hearing representative and enclosed a September 20, 2000 report by Dr. Fried in support of her request.

On November 15, 2000 the Office received a May 16, 2000 electroneuromyographic evaluation.

By decision dated January 9, 2001, the Office denied appellant’s request for modification.

On April 5, 2001 appellant, through counsel, filed an appeal with the Board. In a decision dated September 14, 2002, the Board set aside decisions dated August 14, 2000 and January 9, 2001 and remanded the case to the Office for reconstruction of the record as evidence was missing from the record on appeal.¹

In a decision dated January 4, 2006, the Office hearing representative affirmed the Office’s decision finding that appellant fail to establish that she has any continuing disability on and after May 25, 1999.² He also found the evidence insufficient to establish that she sustained brachial plexus injury condition causally related to her employment. In reaching these

¹ Docket No. 01-1349 (issued September 19, 2002).

² This appears to be a typographical error as appellant’s benefits were terminated effective September 16, 1998 and she filed a claim for a recurrence of disability beginning May 26, 1999.

determinations, the hearing representative found the opinion of Dr. Skinner, the impartial medical specialist, to constitute the weight of the evidence.

LEGAL PRECEDENT -- ISSUE 1

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant.³ In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors.⁴ The opinion of the physician must be based on a complete factual and medical background of appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.⁵

Section 8123(a), in pertinent part, provides: if 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.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Office properly found that a conflict existed in the medical opinion evidence between appellant's physician, Dr. Fried and the second opinion physician, Dr. Garni, with regard to whether she had any continuing residuals and disability related to her accepted carpal tunnel work injury. Dr. Giri concluded that appellant had recovered from the accepted conditions while Dr. Fried concluded that she continued to have residuals of an employment work injury, including a brachial plexus injury. Accordingly, the Office referred her to Dr. Skinner to resolve the conflict.

³ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis-Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

⁴ *Juanita Pitts*, Docket No. 04-1527 (issued October 28, 2004).

⁵ *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ 5 U.S.C. § 8123(a).

⁷ *Darlene R. Kennedy*, 57 ECAB ____ (Docket No. 05-1284, issued February 10, 2006).

In a report dated October 14, 1999, Dr. Skinner reviewed the evidence of record and reported his findings upon examination. He opined that appellant had recovered from her work-related carpal tunnel syndrome as there was no objective evidence to support it. Dr. Skinner pointed out that appellant's response to the physical examination revealed "exaggerated" tenderness to mild tapping of the bilateral posterior neck and upper back regions," that the Tinel's test was "useless" as it was "highly suggestible" and that functional overlay explained the symptoms about the bilateral upper extremity. He also noted that appellant had a borderline June 28, 1996 nerve conduction study. Dr. Skinner reported a lack of specific median nerve distribution muscular weakness and thenar atrophy to support his opinion that appellant no longer had any residuals of her carpal tunnel syndrome following her surgery.

The Board finds that the Office properly relied on the impartial medical examiner's report in determining that appellant had no residuals or continuing disability due to her accepted employment injury. Dr. Skinner's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed her medical records. Dr. Skinner properly explained that the objective evidence did not support any continuing residual carpal tunnel syndrome following appellant's surgery.

Accordingly, the Office properly accorded special weight to the impartial medical specialist's findings. Dr. Fried's April 5, 2000 report is insufficient to overcome the weight given the impartial medical specialist that appellant had no continuing disability or residuals. He essentially reiterated his earlier opinion that appellant continued to have residuals from her accepted employment injury and noted her increased symptoms as support, which helped to create the conflict.

As the special weight of the medical evidence, as represented by Dr. Skinner, establishes that appellant no longer had any residuals or disability due to her accepted work-related condition, appellant has not met her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Federal Employees' Compensation Act⁸ has the burden of establishing the essential elements of her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁹

In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment activities.¹⁰

⁸ 5 U.S.C. §§ 8101-8193.

⁹ *Frankie A. Farinacci*, 56 ECAB ____ (Docket No. 05-1282, issued September 2, 2005); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *Roy L. Humphrey*, 57 ECAB ____ (Docket No. 05-1928, issued November 23, 2005); *Gary L. Fowler*, 45 ECAB 365 (1994).

Section 8123(a), in pertinent part, provides: If 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.¹¹ 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.¹²

ANALYSIS -- ISSUE 2

As noted above, the Office properly found a conflict in the medical opinion evidence between Drs. Fried and Giri. In a report dated October 14, 1999, Dr. Skinner reviewed the evidence of record and reported his findings upon examination. He concluded that there was insufficient objective evidence to support the diagnosis of a brachial plexus injury. Dr. Skinner noted that with regard to brachial plexus injuries that these types of traction injuries would not be expected to occur bilaterally and typically required significant hyperabduction. He concluded that appellant's injury did not fit "the typical scenario of a brachial plexus injury in which the head and neck are forced in an opposite direction from the shoulder and arm."

The Board finds that the Office properly relied on the impartial medical examiner's report in determining that appellant did not sustain a brachial plexus injury causally related to her employment. Dr. Skinner's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed her medical records. Dr. Skinner properly explained that the objective evidence did not support a diagnosis of brachial plexus injury due to her employment.

Accordingly, the Office properly accorded special weight to the impartial medical specialist's findings. Dr. Fried's April 5, 2000 report is insufficient to overcome the weight given the impartial medical specialist that appellant did not sustain an employment-related brachial plexus injury. He essentially reiterated his earlier opinion that appellant continued to have residuals from her accepted employment injury and noted her increased symptoms as support that she sustained a brachial plexus injury.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she had any employment-related disability or medical condition after September 16, 1998 causally related to her accepted employment injury. The Board further finds the evidence insufficient to establish that appellant sustained a brachial plexus injury causally related to her employment.

¹¹ 5 U.S.C. § 8123(a).

¹² *Darlene R. Kennedy*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 4, 2006 is affirmed.

Issued: November 30, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board