

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARLESIA BARNES and DEPARTMENT OF THE NAVY,  
NAVY PUBLIC WORKS CENTER, NORFOLK, Va.

*Docket No. 96-673; Submitted on the Record;  
Issued July 23, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation benefits effective December 10, 1995.

On May 23, 1994 appellant, then a 43-year-old<sup>1</sup> management assistant, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on May 18, 1994 she injured her back, shoulder, right leg and knee and her left leg and arm when she lost her balance, while standing on a box in the supply room and fell to the floor. The Office accepted the claim for low back strain on August 8, 1994. The Office previously accepted appellant's claim for reflex sympathetic dystrophy. On December 14, 1994 was placed on the periodic rolls. On June 19, 1995 the Office of Personnel Management approved appellant's application for disability retirement.

In notes dated July 18 and September 22, 1994, Dr. Lorenzo P. Archer, appellant's treating physician, indicated that he was treating appellant for reflex sympathetic dystrophy and that she would be unable to "return to work an indefinite period of time."

In a supplemental report dated November 7, 1994, Dr. Archer, appellant's treating physician, noted that appellant "returned to work, but had to leave because of the significant pain even while doing the simplest things." Dr. Archer also noted the following:

"She is still having pain in the right shoulder, lower back and right leg with significant swelling of the right side as compared to the left. She had an MRI [magnetic resonance imaging] which showed a tear of the meniscus. I do not suggest operative intervention at this time. She has had the sympathectomy and also had steroid injections, but none of these has afforded her any relief. I feel

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<sup>1</sup> There is a discrepancy regarding appellant's age. On the CA-1 form dated May 23, 1994 appellant listed August 17, 1950 as the date of her birth, while on a copy of her marriage certificate her date of birth is listed as August 17, 1952.

that her restrictions are permanent. I do not think she will be able to return to any type of gainful employment especially the type that she had before.”

In a supplemental report dated November 29, 1994, Dr. Archer again opined that appellant was totally disabled due to her reflex sympathetic dystrophy. Dr. Archer noted that [t]he swelling, the unrelenting pain and her symptoms are getting progressively severe.”

In a consultation report dated November 30, 1994, Dr. John P. Clarke, a Board-certified surgeon, diagnosed reflex sympathetic dystrophy. Dr. Clarke opined that appellant has been experiencing the “causalgia” for nine years. Dr. Clarke also opined that appellant was permanently disabled due to her reflex sympathetic dystrophy.

By letter dated July 20, 1995, the Office referred appellant, along with a statement of accepted facts and her medical records, to Dr. Colin Hamilton, a Board-certified orthopedic surgeon, for a second opinion.

In a report dated September 20, 1995, Dr. Hamilton, based upon a review of the medical record, statement of accepted facts and physical examination, opined that appellant had no disability related to her employment injury. Dr. Hamilton stated that there was no objective data to support a finding of disability. Dr. Hamilton stated he believed that appellant’s uncooperative behavior during her physical examination “was consistent with either a mental problem, such as a so-called compensation neurosis, or gross malingering.”

On November 7, 1995 the Office issued a notice of proposed termination. The Office found the opinion of Dr. Archer to be of diminished probative value as his reports contained no objective findings to support his conclusion that appellant is totally disabled.

In a letter dated November 20, 1995, appellant disagreed with the Office’s proposal to terminate her wage-loss compensation. Appellant also requested to be referred to a reflex sympathy dystrophy specialist.

In a decision dated December 19, 1995, the Office terminated appellant’s wage loss compensation on the basis that she is no longer disabled due to her employment injury of May 18, 1994. The Office found that the medical evidence of record was insufficient to show how her reflex sympathetic dystrophy is related to her May 18, 1994 employment injury. The Office found the weight of the medical evidence to rest with Dr. Hamilton to whom appellant was referred for a second opinion. The Office terminated benefits effective December 10, 1995.

The Board finds that the Office properly terminated appellant’s wage-loss compensation benefits effective December 10, 1995.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits by establishing that the accepted disability has ceased or that it is no longer related to the employment.<sup>2</sup>

The Board finds that the reports of Drs. Archer and Clarke are not well rationalized and are insufficient to outweigh Dr. Hamilton's medical opinion. In his reports, Dr. Archer does not provide any explanation for how appellant's reflex dystrophy syndrome is related to her accepted employment injury. Dr. Clarke's opinion is similarly insufficient as he fails to provide any rationale relating appellant's disability to her accepted employment injury. Furthermore, Dr. Clarke indicated that appellant had been suffering from reflex dystrophy syndrome prior to her accepted employment injury. As such, these opinions are outweighed by the thorough report of Dr. Hamilton and are not sufficient to establish a conflict in the evidence.

Dr. Hamilton, a Board-certified orthopedic surgeon and Office referral physician, opined that there was no objective data to support a finding that appellant was disabled due to her accepted employment injury. That Board finds that the opinions of Drs. Archer and Clarke are insufficient to establish a conflict in the medical opinion evidence. The Board thus finds that the weight of the medical opinion rests with Dr. Hamilton's opinion. Therefore, the Office met its burden to terminate appellant's compensation benefits effective December 10, 1995.

The decision of the Office of Workers' Compensation Programs dated December 19, 1995 is affirmed.

Dated, Washington, D.C.  
July 23, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>2</sup> *David W. Green*, 43 ECAB 883 (1992); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *Harold S. McGough*, 36 ECAB 332 (1984); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).