

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DONNA A. WERESYZNSKI and DEPARTMENT OF THE AIR FORCE,  
GRIFFISS AIR FORCE BASE, NY

*Docket No. 01-630; Submitted on the Record;  
Issued March 18, 2002*

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DECISION and ORDER

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

The issue is whether appellant established a recurrence of total disability on and after May 9, 1995 causally related to her accepted October 15, 1993 employment injury.

This is the second appeal in this case.<sup>1</sup> Previously, the case was remanded for further development because the Board found that there was a conflict in the medical evidence. Appellant's treating physician, Dr. Andrew C. Zaleski, a Board-certified orthopedic surgeon, opined that appellant was totally disabled as of May 9, 1995 due to her accepted lumbosacral strain and that she could not perform her light-duty job. However, the Office of Workers' Compensation Programs referral physician, Dr. Zafer Termanini, a Board-certified orthopedic surgeon, offered a second opinion that appellant could perform the duties of an office automation clerk, appellant's date-of-injury position, with initial lifting restrictions for six weeks. The Board directed the Office to refer appellant to an appropriate impartial medical specialist for an examination and opinion on whether appellant's disability on and after May 9, 1995 was causally related to her accepted employment injury. The complete facts of this case are set forth in the Board's July 11, 2000 decision and are herein incorporated by reference.

By letter dated August 28, 2000, the Office referred appellant, together with a statement of accepted facts and copies of medical records, to Dr. Edwin E. Mohler, a Board-certified orthopedic surgeon, for an evaluation as to whether appellant sustained an employment-related recurrence of disability, on or after May 9, 1995, such that she could no longer perform her light-duty job five hours a day.

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<sup>1</sup> Docket No. 99-112 (issued July 11, 2000).

In a report dated September 11, 2000, Dr. Mohler provided findings on examination and reviewed the medical records, relating that appellant had chronic low back pain with radiculopathy in the right lower extremity and recurring paresthesias and degenerative disc disease at L5-S1 with protrusion to the left neuroforamen. Dr. Mohler stated:

“Objective findings are that of sustained paravertebral muscle contraction on the left, diminished ankle reflex on the right, reduced lordosis and the right calf being less in girth than the left. This lumbosacral sprain has aggravated the degenerative disc disease and has progressed to subluxation with having a preexisting condition of spondylolysis. That is how the objective findings are still related to the onset of symptoms on October 15, 1993, without relief of those symptoms.

“There is no recurrence of disability from the light-duty work that she was doing as a supply clerk for five hours a day. Because she was not getting any better with injections, physical therapy treatments and still on medication during this time period, her physician took her out of work on May 9, 1995 without any stated worsening. It was just that they were not getting any better. Her degeneration has progressed over the ensuing years and at this point in time, she would not be able to do the supply clerk work for five hours a day.

“There is remaining injury-related disability and she is capable of working four hours a day in broken segments of two hours in the morning and two hours in the afternoon. Limitations have been set forth on the OWCP-5c form. Her limitations are permanent unless she is identified as a surgical candidate and undergoes successful surgery without complications and with a good result. If she does not have a surgical indication or does not have a successful surgery, then these restrictions would be on a permanent basis.

“The problems hindering her recovery are the preexisting spondylolysis, progressive deterioration of the disc of L5-S1, the smoking of a pack a day and her own response to pain.

“There is a direct causation of her present condition to October 15, 1993 unless medical records by Dr. Mark Griffing where she had been a patient for 20 years reflects otherwise.”

An accompanying OWCP-5c work capacity evaluation form echoed Dr. Mohler's narrative comments and further indicated that appellant was currently restricted from lifting or pulling more than 20 pounds.<sup>2</sup>

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<sup>2</sup> The physical requirements of appellant's limited-duty job as a supply clerk are: moderate lifting 13 to 44 pounds, moderate use of fingers, moderate standing and she is allowed to change position and walk around when necessary. Appellant was scheduled to be relocated, effective June 25, 1995, to the Rome Lab at the base as a secretary (office automation). This job required mostly sitting with occasional lifting of a 10- to 20-pound box of computer paper.

By decision dated November 15, 2000, based on the weight of the medical evidence, as represented by the report of Dr. Mohler, the Office expanded its acceptance of appellant's claim to include the condition of aggravation of spondylolysis. The Office further noted that Dr. Mohler had stated that appellant was not capable of performing the duties of a supply clerk as of the date of his examination and, therefore, provided that appellant was not working due to her accepted conditions, invited appellant to submit a Form CA-7 to claim wage-loss benefits beginning on September 11, 2000, the date of Dr. Mohler's examination. The Office informed appellant that, upon receipt of the form, she would be paid the difference between partial and total wage loss from the date of the examination through the ending period being claimed. The Office denied appellant's claim for a recurrence of disability beginning May 9, 1995, however, as the well-rationalized opinion of Dr. Mohler explained that appellant had not ceased work due to a worsening of her condition as of that date, but had stopped work simply because her condition was not improving.

The Board finds that appellant failed to establish a recurrence of total disability beginning May 9, 1995 causally related to her accepted October 15, 1993 employment injury.

In situations when there exist 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 upon a proper factual background, must be given special weight.<sup>3</sup>

Because of the conflict in medical opinion between Drs. Zaleski and Termanini, and pursuant to section 8123(a) of the Federal Employees' Compensation Act and the Board's June 11, 2000 decision, the Office referred appellant to a third physician for an impartial medical examination.<sup>4</sup> Dr. Mohler examined appellant on September 11, 2000. He provided an accurate and comprehensive review of appellant's medical and work history and on the basis of this review and his examination, found that, while appellant was unable, at the date of his September 11, 2000 examination, to perform the duties of her light-duty job, there was no objective evidence to substantiate that appellant had sustained a recurrence of disability, causally related to her employment-related conditions, beginning May 9, 1995.

The Board finds that Dr. Mohler's opinion is well rationalized and is based on a proper medical and factual background and must therefore be accorded special weight on the issue of whether appellant sustained an employment-related recurrence of disability beginning May 9, 1995.

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<sup>3</sup> *Mary A. Moultry*, 48 ECAB 566 (1997); *Charles M. David*, 48 ECAB 543 (1997).

<sup>4</sup> Section 8123(a) of the Act provides that: "[I]f there is disagreement between the physician making the examination for the United States and the physician for the employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

The decision of the Office of Workers' Compensation Programs dated November 15, 2000 is hereby affirmed.

Dated, Washington, DC  
March 18, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member