

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

TY B. HAZELTON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Van Nuys, CA, Employer**

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**Docket No. 04-1171
Issued: October 26, 2005**

Appearances:
Sally LaMaccia, Esq, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 5, 2004 appellant filed a timely appeal from a March 1, 2004 decision of the Office of Workers' Compensation Programs which affirmed the termination of his compensation benefits. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits.

FACTUAL HISTORY

On November 19, 1988 appellant, then a 31-year-old clerk, filed an occupational disease claim alleging that he developed carpal tunnel syndrome of the right wrist due to factors of his federal employment. On March 1, 1989 the Office denied the claim; however, following

reconsideration and subsequent medical development, the claim was accepted for a right wrist sprain.¹

In a July 23, 1990 decision, the Office terminated appellant's compensation benefits based on a second opinion medical evaluation performed by Dr. George W. Balfour, a Board-certified orthopedic surgeon. Appellant was subsequently referred to Dr. Ronald S. Levey, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In a January 30, 1991 report, Dr. Levey opined that there was no evidence of carpal tunnel syndrome or documentation of any neuropathies. He noted that appellant had degenerative disc disease of the cervical spine which caused cervical radiculopathy. Dr. Levey opined that the disc disease was aggravated by appellant's federal employment, stating: "I do believe that his posture at work probably contributed to aggravation of his underlying degenerative disc disease." By decision dated June 10, 1991, the Office set aside the May 14, 1990 termination decision and accepted the claim for a permanent aggravation of degenerative disc disease. Appellant received appropriate compensation benefits for his intermittent disability for work and was placed on the periodic rolls in receipt of total disability wage-loss.²

Appellant was followed for continuing complaints of bilateral hand and wrist pain. On October 4, 1991 Dr. Pablo M. Lawner, an attending Board-certified neurologist, noted that appellant diagnostic studies were normal, except for a soft cervical disc protrusion at C6-7 with mild degenerative changes at C5-6 without evidence of nerve root compression. He diagnosed asymptomatic cervical disc disease and bilateral hand pain of unknown etiology. Dr. Lawner recommended against cervical disc surgery. Dr. Leon G. Robb, an attending specialist in pain management, advised on September 9, 1992 that appellant was treated with bi-weekly physical therapy for paresthesias down both upper extremities. He indicated that there did not appear to be any progression of changes secondary to his preexisting degenerative disc disease and there were no findings on examination to corroborate this diagnosis.³ On March 25, 1998 Dr. Robb noted that appellant continued under physical therapy on a weekly to bi-monthly basis and currently experienced bilateral, upper extremity pain and weakness at multiple sites. He opined that appellant had cumulative trauma syndrome, a component of sympathetically mediated pain and a possible complex regional pain syndrome.

On May 22, 2001 the Office referred appellant to Dr. H. Harlan Bleecker, a Board-certified orthopedic surgeon, to obtain an updated report on his continuing disability and capacity for employment. In a June 26, 2001 report, he reviewed appellant's history of injury and medical treatment records. Findings on physical examination of the head, neck and shoulders revealed a full range of motion. Dr. Bleecker noted that appellant's complaint of a radiating type of achiness across the elbows and forearms could not be duplicated. Motor testing of the upper

¹ The claim was accepted based on the opinion of Dr. Jay A. Vogel, an attending orthopedic surgeon, who reported a negative Tinel's sign with full range of motion and no evidence on x-ray of fracture or dislocation. He returned appellant to limited-duty work. A magnetic resonance imaging (MRI) scan obtained on April 10, 1990 was found not diagnostic of carpal tunnel syndrome.

² Appellant stopped work as of August 3, 1991.

³ By letter dated December 17, 1997, the Office advised appellant that there were no current medical reports of file and requested a report from his attending physician.

extremities was reported as normal with normal sensory examination to light touch in the fingers of both hands. Measurements of the upper extremities were equal with no atrophy. Circulation was noted as strong and equal and the skin appeared normal. Dr. Bleecker discussed the medical treatment records, noting the varying diagnoses rendered by examining physicians. He diagnosed subjective hand and forearm pain of undetermined etiology with asymptomatic degenerative arthritis of the cervical spine. Dr. Bleecker noted that appellant had normal electromyograms (EMG), nerve conduction studies and MRI scans. He noted the MRI scan of the cervical spine showed degenerative changes at C5-6 and C6-7, but that appellant had no symptoms in reference to his neck and no true radicular pain in the upper extremities. Dr. Bleecker stated that there did not appear to be any significant changes since Dr. Robb's 1998 report. He stated, "I do not believe that the patient had an aggravation of cervical degenerative disc disease as his symptoms are not related to his cervical spine. The only objective findings [appellant] has, at this time, is a mildly positive Phalen's sign at both wrists.... He has not worked now for 11 years without any significant change in his symptoms other than temporary relief that he gets from the neuroprobe treatments." Dr. Bleecker did not believe that any work-related diagnosis was established and he could not make a diagnosis other than asymptomatic degenerative arthritis of the cervical spine. He noted that appellant's subjective complaints did not correlate to objective findings. Dr. Bleecker noted that the statement of accepted facts stated that there was a permanent aggravation of underlying degenerative disc disease of the cervical spine, but opined that there was no ongoing aggravation as appellant's symptoms did not correlate to his cervical spine. Dr. Bleecker found that appellant could work full time subject to specified work restrictions but was a poor candidate for vocational rehabilitation given the duration of his subjective complaints.

In an August 27, 2001 report, Dr. Robb noted that appellant continued under medical treatment, noting that various diagnoses had been made by examining physicians. He opined that appellant was totally disabled due to cumulative trauma disorder, overwork syndrome and repetitive strain syndrome. Dr. Robb had considered reflex sympathetic dystrophy but this diagnosis was not able to be verified. On examination appellant complained of bilateral hand and arm pain and weakness and recurrent tension headaches. Dr. Robb indicated that he had transient relief of his symptoms following neuro-stimulation. He opined that appellant remained totally disabled for work.

The Office found a conflict in medical opinion between Dr. Robb, for appellant, and Dr. Bleecker, the second opinion referral. It referred him, together with a statement of accepted facts, to Dr. Gerald M. Paul, a Board-certified orthopedic surgeon, selected as the impartial medical examiner. The Office directed him to the statement of accepted facts and inquired as to the established diagnosis and, if aggravation was found, to explain whether it was permanent or temporary in nature.

In an August 16, 2002 report, Dr. Paul reviewed appellant's history of injury and medical treatment. He noted the chief complaints of pain in both hands and wrists radiating to the elbows and up to the shoulders and neck, alleviated with physical therapy. Findings on examination revealed a full range of cervical spine motion with slight tenderness in the posterior paraspinal musculature with no palpable spasm. Axial traction and compression did not cause discomfort and foramina compression tests were negative bilaterally. Upper extremity examination revealed some mottling of the fingertips of both hands with slight coolness. Adson's test, Finkelstein's

test, Tinel's test were reported as negative. Phalen's test on the right extremity was equivocal. Appellant described hyperesthesia involving the entire right forearm and hand, but no motor or reflex abnormality was found. X-rays of the cervical spine demonstrated reversal of the normal lordotic curve as well as disc space narrowing with degenerative changes at C4-5, C5-6 and C6-7. Foramina osteophytic development was noted bilaterally at these levels.

Dr. Paul provided an extensive review of the medical treatment records and commented upon the various diagnoses provided by the examining physicians. He could not explain the diagnosis of carpal tunnel syndrome as the May 1990 diagnostic studies were normal. Dr. Paul noted Dr. Levey's diagnosis of degenerative cervical disc disease and the fact that an MRI scan did demonstrate a small disc herniation at C6-7 and smaller bulge at C5-6 with some foramina stenosis. Dr. Robb, in turn, listed diagnoses including cumulative trauma, cervical disc disease, carpal tunnel syndrome and complex regional pain syndrome. Dr. Paul also noted that the June 1991 decision of the Office had accepted a permanent aggravation of degenerative cervical disc disease. He addressed appellant's current symptoms, noting that there was no evidence of any active carpal tunnel syndrome and that the mottling of appellant's fingertips did not come about until years after he had stopped working. Dr. Paul stated that it was difficult to accept any type of reflex sympathetic dystrophy or vascular problem as work related. He stated:

"Therefore, at this point in time it is my opinion that the degenerative cervical disc disease is not currently symptomatic, nor does [appellant] have any evidence of carpal tunnel syndrome. What he seems to currently have is a reflex sympathetic type dystrophy which I cannot in any sense relate to his industrial activities.

"I did have the opportunity to review the duties as a video coding system technician. This occupation specifically does not require the use of [appellant's] hands or manual mail handling. It is in an indoor environment and certainly he could be performing those duties a[t] this time."⁴

In a December 16, 2002 decision, the Office terminated appellant's compensation benefits, finding that the weight of medical opinion was represented by the opinion of Dr. Paul, the impartial medical specialist. The termination of benefits was made effective December 28, 2002.

On December 16, 2002 appellant, through his attorney, requested reconsideration. A June 3, 2003 report was submitted from Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, who reported findings on examination of appellant on April 8, 2003. He diagnosed degenerative disc disease of the cervical spine, permanently aggravated; clinical evidence of peripheral nerve entrapment, not confirmed electronically and complex regional pain syndrome/reflex sympathetic dystrophy. Dr. Tauber stated that "individuals with degenerative disc disease in the cervical spine can, in fact, develop peripheral nerve entrapments via a

⁴ The position description noted that the worker read addresses into a headset microphone as pieces of mail were displayed on a computer screen.

mechanism recognized as the double crush syndrome.”⁵ He recommended continuing medical treatment under Dr. Robb.

By decision dated March 1, 2004, the Office denied modification of the December 16, 2002 termination decision.

LEGAL PRECEDENT

Once the Office has made a determination that a claimant is totally disabled due to the results of an employment injury and pays compensation benefits, it has the burden of proof to justify a subsequent reduction or termination of benefits.⁶ This includes the necessity of furnishing rationalized medical opinion evidence which is based on a proper factual and medical background.⁷ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition which require medical care.⁸

It is well established that where there exists a conflict in medical opinion 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, is entitled to special weight.⁹

ANALYSIS

The record reflects that appellant’s claim was initially accepted for a right wrist sprain and subsequently for a permanent aggravation of degenerative disc disease of the cervical spine. Appellant was treated by Dr. Robb, who reported that he continued to be totally disabled for work and described symptoms of paresthesias down both upper extremities. He also opined that he had a cumulative trauma syndrome, a component of sympathetically mediated pain, and a complex regional pain syndrome. Appellant was referred for examination in 2001 by Dr. Bleecker, a Board-certified orthopedic surgeon. He noted that his complaints of pain across the elbows and forearms could not be duplicated on examination. Dr. Bleecker noted normal motor and sensory examination of the upper extremities and diagnosed subjective pain of the hands and forearms of undetermined etiology. As to the accepted condition of degenerative disease of the cervical spine, he opined that the condition was asymptomatic with no true radicular pain in the upper extremities. The Office found a conflict between Dr. Robb and

⁵ An EMG and nerve conduction study obtained for Dr. Tauber on April 25, 2003 was reported as normal with no evidence of entrapment neuropathy or radiculopathy.

⁶ See *Frances J. Carter*, 53 ECAB 497 (2002); *Jorge E. Sotomayor*, 52 ECAB 105 (2000); *Nathaniel Davis*, 50 ECAB 378 (1999).

⁷ See *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁸ See *Manuel Gill*, 52 ECAB 282 (2001); *Leonard M. Burger*, 51 ECAB 369 (2000).

⁹ See *Michael Hughes*, 52 ECAB 387 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

Dr. Bleecker and properly referred appellant for examination by Dr. Paul, selected as the impartial medical specialist.

Dr. Paul provided an extensive medical report in which he reviewed appellant's description of pain to both hands and wrists which radiated to the elbows, shoulders and neck. He reported findings on examination of the cervical spine and upper extremities, noting that x-rays revealed the reversal of the normal lordotic curve as well as disc space narrowing and degenerative changes at C4-5, C5-6 and C6-7, with foramina osteophytic development. Dr. Paul reviewed the prior medical reports of record, noting the various diagnoses provided by the physicians who had examined appellant. Based on the diagnostic tests of record and his physical examination, Dr. Paul determined that the accepted aggravation of appellant's degenerative cervical disc disease was not currently symptomatic. He attributed his ongoing upper extremity complaints to a reflex sympathetic-type dystrophy, but opined that this condition was not causally related to appellant's employment as a mail clerk. Dr. Paul stated that appellant could return to full-time employment in modified duty, subject to specified physical limitations.

The Board finds that the report of Dr. Paul, the impartial medical specialist, constitutes the special weight of the medical opinion evidence. As noted, where there are opposing medical reports of virtually equal weight, the opinion of an impartial medical specialist is entitled to special weight if well rationalized and based upon a proper medical and factual background.¹⁰

The Board also finds, however, that the report of Dr. Paul is not sufficient to establish that appellant no longer has residuals due to the accepted permanent aggravation of degenerative disc disease. The Office terminated his medical benefits, relying on the report of the impartial medical specialist. The report of Dr. Paul did not find that appellant's accepted conditions had resolved without residuals; rather, he noted that at the time of examination he was not symptomatic from the underlying degenerative disease process. Dr. Paul noted the diagnosis as set forth by Dr. Levey and the fact that an MRI scan did demonstrate a small disc herniation at C6-7 and C5-6 with foramina stenosis. For this reason, the Board finds that the report of Dr. Paul does not support the Office's determination to terminate medical benefits in this case.

On appeal, counsel for appellant presented arguments concerning the inadequacy of the statement of accepted facts prepared in this case. She also contended that the opinions of Dr. Bleecker and Dr. Paul were not supported by clinical findings. The Board respectfully disagrees. The medical reports noted the disagreement that arose between Dr. Robb and Dr. Bleecker pertaining to appellant's disability and capacity for employment. The case was properly referred to Dr. Paul, selected as the impartial medical specialist. He provided a thorough evaluation of the case, premised on an accurate factual and medical background. Dr. Paul credited appellant's ongoing upper extremity complaints to a reflex sympathetic dystrophy, but found that the condition was not causally related to his accepted injury or to other factors of his federal employment. The report of Dr. Tauber was submitted in support of appellant's contention that he had ongoing employment-related disability due to a peripheral nerve entrapment mechanism. The Board finds, however, that Dr. Tauber did not provide a well-rationalized medical opinion on the issue of causal relationship. He noted that individuals with

¹⁰ See *Solomon Polen*, 51 ECAB 341 (2000); *Edward E. Wright*, 43 ECAB 702 (1992).

degenerative disc disease of the cervical spine could develop such conditions recognized as a double crush syndrome and that appellant's condition was likely an evolution of cumulative trauma to his upper extremities. This stated conclusion on causal relationship was not adequately explained with reference to the evidence in his claim. Appellant last worked in 1991 and Dr. Tauber did not sufficiently address the "evolution of cumulative trauma" to his upper extremities in light of this history. His report is of diminished probative value and insufficient to sustain appellant's burden of proof on this aspect of the claim.

CONCLUSION

The Board finds that the Office properly terminated appellant wage-loss benefits. The Office improperly terminated appellant's medical benefits based on his accepted permanent aggravation of degenerative cervical disc disease. He has not established that he has a peripheral nerve entrapment condition causally related to his accepted cervical condition

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2004 decision is affirmed, in part and reversed, in part.

Issued: October 26, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board