

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

G.F., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Drexel Hill, PA, Employer)

**Docket No. 06-1848
Issued: January 23, 2007**

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 August 8, 2006 appellant filed a timely appeal from a March 1, 2006 Office of Workers' Compensation Programs' decision, denying her claim for a recurrence of disability and terminating her compensation and medical benefits. 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 sustained a recurrence of total disability between July 22 and October 16, 2003; and (2) whether the Office met its burden of proof in terminating her compensation and medical benefits effective March 4, 2005.

FACTUAL HISTORY

On November 9, 2002 appellant, then a 49-year-old distribution clerk, filed an occupational disease claim alleging that she developed carpal tunnel syndrome due to repetitive tasks at work. The Office accepted her claim for right carpal tunnel syndrome. On March 12, 2003 appellant underwent a right carpal tunnel release.

In a May 27, 2003 report, Dr. Herbert N. Avart, an attending Board-certified physiatrist, stated that appellant returned to light-duty work on March 27, 2003 following her carpal tunnel surgery. In a July 29, 2003 disability certificate, Dr. Avart indicated that appellant was unable to work due to pain and sympathetic dystrophy. On July 29, 2003 he indicated that appellant was totally disabled for two weeks due to increased pain in her right hand. In an August 11, 2003 report, Dr. Avart indicated that an electromyogram (EMG) and nerve conduction study were essentially normal. There was no evidence of recurrent median nerve entrapment neuropathy. In a disability certificate dated August 20, 2003, he indicated that appellant was unable to work from July 22 to August 27, 2003. In a September 5, 2003 disability certificate, Dr. Avart indicated that appellant was disabled due to right hand median neuritis. In reports dated September 5 and October 4, 2003, he provided findings on physical examination which included weakness of palmar abduction and finger flexion of the second and third digits of the right hand and a positive Tinel's sign. Dr. Avart stated that a September 3, 2003 magnetic resonance imaging (MRI) scan revealed evidence of median nerve hypersensitivity consistent with carpal tunnel syndrome and the possibility of persistent median neuritis.¹ He stated that appellant left work on July 22, 2003 due to the worsening of her right carpal tunnel syndrome and persistent median nerve neuropathy. Dr. Avart stated that, due to right median nerve hypersensitivity as revealed on MRI scan and EMG tests, appellant's ability to lift, carry, reach, push, pull and perform repetitive hand movements prevented her from performing her job. He indicated that appellant was totally disabled beginning July 22, 2003.

Appellant filed a claim for a recurrence of total disability from July 22 to October 16, 2003.²

In an August 20, 2003 report, Dr. David J. Bozentka, an attending Board-certified orthopedic surgeon specializing in hand surgery, stated that an x-ray, bone scan and repeat EMG on August 11, 2003 were all reported as normal. He noted that appellant had not worked since July 22, 2003 but her right hand and forearm symptoms had persisted. Dr. Bozentka provided findings on physical examination which included subjective complaints of tenderness in the palm and forearm. He indicated that there was no evidence of a peripheral compression neuropathy.

In an October 30, 2003 report, Dr. Anthony W. Salem, a Board-certified orthopedic surgeon and an Office referral physician, stated that appellant had no residuals of her right carpal tunnel syndrome and was able to perform her regular job

The Office found a conflict in medical opinion between Dr. Avart and Dr. Salem. On January 5, 2004 it referred appellant, together with a statement of accepted facts and copies of medical records, to Dr. William H. Kirkpatrick, a Board-certified orthopedic surgeon, for an examination and evaluation as to whether she had any work-related residual disability or medical condition.

¹ In the September 3, 2003 MRI scan report, the radiologist stated that some slight signal hypersensitivity of the median nerve was demonstrated but this was not uncommon in patients with a history of carpal tunnel syndrome.

² On October 16, 2003 appellant returned to work in a different modified position.

In a report dated February 4, 2004, Dr. Kirkpatrick provided a history of appellant's condition and findings on physical examination. He noted a positive Tinel's sign. The September 3, 2003 MRI scan was "essentially noncontributory." Dr. Kirkpatrick stated:

"[Appellant] underwent [carpal tunnel] surgery on [March 12, 2003]. This condition was subsequently resolved as a result of her surgery in that she had no further numbness or tingling in her hand and her subsequent electrodiagnostic studies demonstrated normal findings with regards to the median nerve. Therefore, she saw a full recovery from her carpal tunnel syndrome.

"However, [appellant] states that she developed pain in the right distal forearm similar to what she had prior to her surgery after returning to work following her surgical treatment. This pain condition is subjective in that I cannot get a clear diagnosis based upon my evaluation and examination. I have no objective findings to substantiate a diagnosis for this pain.... I, therefore, have no objective findings to identify ongoing pathology.

"It is, therefore, my opinion that [appellant] is fully recovered from her carpal tunnel syndrome which was accepted as a work[-]related condition. I cannot explain her continued subjective right distal forearm pain.

"[Appellant] did not suffer a recurrence of her accepted condition on [July 22, 2003]. In other words, her carpal tunnel syndrome was fully resolved as the result of her surgical treatment.

"[Appellant] did, however, have a subjective pain syndrome, which was not a recurrence of her accepted condition. As a result of this pain syndrome, she would have been partially disabled from [July 22] through [October 16, 2003] in that she was able to fully use her left hand and could have performed modified duties with her right."

* * *

"[Appellant's] period of total disability due to her work[-]related carpal tunnel syndrome would have been from her surgery of [March 12, 2003] to when she returned to work on April 23, 2003. Total disability would have ceased after that date."

On March 8, 2004 the Office advised appellant that it proposed to terminate her compensation and medical benefits on the grounds that the weight of the medical evidence, represented by Dr. Kirkpatrick, established that appellant's right carpal tunnel had resolved. On April 15, 2004 the Office finalized its termination decision.

Appellant requested an oral hearing and submitted additional evidence. In a May 17, 2004 report, Dr. Randall W. Culp, a Board-certified orthopedic surgeon, stated that he treated appellant between December 4, 2002 and September 10, 2003. Dr. Culp indicated that appellant still had symptoms of her right carpal tunnel syndrome and stopped work on July 22, 2003 due to a worsening of her condition.

By decision dated November 5, 2004, an Office hearing representative vacated the April 15, 2004 decision and remanded the case for a supplemental report from Dr. Kirkpatrick addressing the positive MRI scan and positive Tinel's sign.

In a supplemental report dated December 20, 2004, Dr. Kirkpatrick stated that appellant had fully recovered from her right carpal tunnel syndrome based on her successful surgical procedure and her subsequent electrodiagnostic study, which was normal and complete recovery from the numbness and tingling which she had prior to surgery. He indicated that her present right hand symptoms were not due to her carpal tunnel syndrome. Dr. Kirkpatrick stated:

“The MRI [scan] results of [September 3, 2003] were essentially noncontributory, with a finding of a slight hyperintensity of a median nerve which was noted by the radiologist as no[t] uncommon in patients with a history of carpal tunnel syndrome. This could represent a median neuritis which is not the same as carpal tunnel syndrome. The hyperintensity of the median nerve was slight and is hardly an objective finding to explain any continuing complaints.

“I did describe a positive Tinel's sign over the median nerve but this is commonly seen after a successful carpal tunnel release. A Tinel's test is a nonspecific finding.

“With regards to the alleged presence of a median neuritis, I would have expected such a condition to have resolved when [appellant] was out of work from [July 22 to October 16, 2003].

“[Appellant's] occurrence of disability of [July 22, 2003] was not caused by the [November 3, 2002] work injury. Her work injury was that of a carpal tunnel syndrome from which she had fully recovered. Her symptoms of [July 22, 2003] are not due to a recurrent carpal tunnel syndrome.”

In a February 7, 2005 memorandum, the district medical director stated that Dr. Kirkpatrick's medical rationale for his opinion was reasonable and accurate.

On January 3, 2005 the Office advised appellant that it proposed to deny her claim for a recurrence of total disability and terminate her compensation and medical benefits. By decision dated March 4, 2005, the Office denied appellant's claim for a recurrence of disability on July 22, 2003 and terminated her compensation and medical benefits.

Appellant requested an oral hearing that was held on December 13, 2005.

By decision dated March 1, 2006, the Office hearing representative affirmed the March 4, 2005 decision.

LEGAL PRECEDENT -- ISSUE 1

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish

by the weight of the reliable, probative and substantial evidence a recurrence of total disability and that she cannot perform the light-duty position. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³

ANALYSIS -- ISSUE 1

Appellant has the burden to provide medical evidence establishing that she was totally disabled from July 22 to October 16, 2003 due to a worsening of her accepted work-related condition, right carpal tunnel syndrome or a change in her job duties such that she was unable to perform her light-duty work. Appellant alleged a worsening of her accepted right carpal tunnel syndrome.

Dr. Avart stated that appellant was totally disabled between July 22 and October 16, 2003 due to a worsening of her accepted right carpal tunnel syndrome, increased pain in her right hand. However, he indicated that an EMG and nerve conduction study were essentially normal. Dr. Avart stated that a September 3, 2003 MRI scan revealed evidence of median nerve hypersensitivity consistent with carpal tunnel syndrome and the possibility of persistent median neuritis. However, his interpretation of this MRI scan differs from that of the radiologist who stated that some slight signal hypersensitivity of the median nerve was demonstrated but this was not uncommon in patients with a history of carpal tunnel syndrome. Dr. Avart also stated that there was no evidence of recurrent median nerve entrapment neuropathy. Additionally, in two disability certificates, he attributed appellant's disability between July 22 and October 16, 2003 to the conditions of sympathetic dystrophy and median neuritis, which have not been accepted by the Office as work-related conditions. Dr. Avart provided insufficient explanation as to how appellant's claimed recurrence of disability from July 22 to October 16, 2003 was causally related to her accepted right carpal tunnel syndrome. Another attending physician, Dr. Bozentka, stated that an x-ray, bone scan and an EMG were all reported as normal. He indicated that there was no evidence of a peripheral compression neuropathy.

In reports dated February 4 and December 20, 2004, Dr. Kirkpatrick provided a history of appellant's condition and findings on physical examination. He noted that, following appellant's March 12, 2003 surgery, subsequent electrodiagnostic studies demonstrated normal findings in the median nerve, demonstrating a full recovery from her carpal tunnel syndrome. The September 3, 2003 MRI scan finding of a slight hyperintensity of the median nerve was noted by the radiologist as not uncommon in patients with a history of carpal tunnel syndrome. Dr. Kirkpatrick stated that the finding could represent a median neuritis, a different condition from carpal tunnel syndrome. He stated that the hyperintensity of the median nerve was slight and insufficient to explain any continuing complaints. Dr. Kirkpatrick could find no objective findings to substantiate a diagnosis for appellant's pain. He stated that appellant did not have a recurrence of total disability on July 22, 2003 causally related to her accepted right carpal tunnel syndrome.

³ *Bryant F. Blackmon*, 57 ECAB ____ (Docket No. 04-564, issued September 23, 2005); *Terry R. Hedman*, 38 ECAB 222 (1986).

The Board finds that appellant failed to establish that she was disabled from July 22 to October 16, 2003 due to a change in the nature and extent of her injury-related right carpal tunnel syndrome or a change in the nature and extent of her light-duty job requirements. Therefore, the Office properly denied her claim for a recurrence of total disability.

LEGAL PRECEDENT -- ISSUE 2

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶ Furthermore, 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 that require further medical treatment.⁷

Section 8123(a) of the Federal Employees' Compensation Act provides that "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination."⁸ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁹

ANALYSIS -- ISSUE 2

Effective April 15, 2004, the Office finalized its termination of appellant's wage-loss compensation and medical benefits on the grounds that the accepted condition had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.¹⁰

Due to the conflict in medical opinion between Dr. Avart and Dr. Salem, the Office referred appellant to Dr. Kirkpatrick for an impartial medical evaluation.

⁴ *Barry Neutach*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁷ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁸ 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁹ *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

¹⁰ *Willa M. Frazier*, 55 ECAB 379 (2004).

In reports dated February 4 and December 20, 2004, Dr. Kirkpatrick provided a history of appellant's condition and findings on physical examination. He noted that, following appellant's March 12, 2003 surgery, subsequent electrodiagnostic studies demonstrated normal findings with regard to the median nerve, demonstrating a full recovery from her carpal tunnel syndrome. Dr. Kirkpatrick stated that the findings of a September 3, 2003 MRI scan were "essentially noncontributory." The September 3, 2003 MRI scan finding of a slight hyperintensity of the median nerve was noted by the radiologist as not uncommon in patients with a history of carpal tunnel syndrome. The MRI scan finding could represent a median neuritis rather than carpal tunnel syndrome. Dr. Kirkpatrick stated that the hyperintensity of the median nerve was not sufficient to explain appellant's continuing complaints. He indicated that appellant's pain in the right distal forearm was subjective. Dr. Kirkpatrick could find no objective findings to substantiate a diagnosis for her pain or any ongoing pathology. He stated that appellant had fully recovered from her right carpal tunnel syndrome based on her successful surgical procedure and her subsequent electrodiagnostic study which was normal and complete recovery from the numbness and tingling which she had prior to surgery. Dr. Kirkpatrick stated that his finding of a positive Tinel's sign over the median nerve was commonly seen after a successful carpal tunnel release and was a nonspecific finding. He stated that she had fully recovered from her accepted right carpal tunnel syndrome.

The Board finds that the reports of Dr. Kirkpatrick are based upon a complete and accurate factual background and are sufficiently well rationalized. Therefore, his opinion is entitled to special weight and establishes that appellant had no residuals of her accepted right carpal tunnel syndrome after March 4, 2005, the date the Office terminated her compensation and medical benefits.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a recurrence of total disability between July 22 and October 16, 2003 causally related to her employment-related right carpal tunnel syndrome. The Board further finds that the Office met its burden of proof in terminating her compensation and medical benefits effective March 4, 2005.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 1, 2006 is affirmed.

Issued: January 23, 2007
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