

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

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**Y.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
New York, NY, Employer**

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**Docket No. 09-1248  
Issued: December 18, 2009**

*Appearances:*

*Paul Kalker, Esq., for the appellant*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

COLLEEN DUFFY KIKO, Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 16, 2009 appellant, through her attorney, filed a timely appeal of the September 12, 2008 and March 30, 2009 Office of Workers' Compensation Programs' merit decisions. 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 the Office met its burden of proof to terminate appellant's compensation and medical benefits effective September 12, 2008; and (2) whether appellant has met her burden of proof in establishing any continuing disability or medical residuals on or after September 12, 2008 due to her accepted employment injuries.

**FACTUAL HISTORY**

On November 26, 2001 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim alleging that she sustained a right wrist sprain when a restroom door slammed on her right hand. The Office accepted her claim for right thumb sprain, right wrist and hand

contusions. It entered appellant on the periodic rolls on February 19, 2002. Appellant returned to limited-duty work on February 19, 2002.

Appellant filed a notice of recurrence of disability on March 19, 2002 alleging that on February 26, 2002 she developed extensive arm pain. The Office accepted that appellant sustained a recurrence of total disability by letter dated July 9, 2002. It entered appellant on the periodic rolls on August 6, 2002. The Office authorized a right carpal tunnel release on August 24, 2002. Appellant's attending physician, Dr. Sanghum Song, a Board-certified surgeon, continued to recommend surgery for right carpal tunnel syndrome and to diagnose cervical radiculopathy. Dr. Jerry Ellstein, Board-certified, performed a right carpal tunnel release on February 7, 2003.

The Office referred appellant to Dr. William Healy, a Board-certified orthopedic surgeon, to act as an impartial medical examiner on February 27, 2003 to determine whether appellant was able to return to work. In a report dated March 11, 2003, Dr. Healy opined that appellant's traumatic contusion caused her carpal tunnel syndrome, that she received appropriate treatment and excellent relief from her carpal tunnel symptoms. He stated that appellant's degenerative disc disease of the cervical spine was not related to her employment injury. Dr. Healy opined that appellant could return to work in a light-duty capacity working four hours a day. Appellant did not return to work and Dr. Steven S. Parry, an osteopath and Board-certified family practitioner, continued to support her total disability for work.

On October 26, 2004 the Office stated that appellant's accepted conditions were right hand sprain and mononeuritis of the upper extremity. Appellant continued to submit medical evidence supporting her claim for right carpal tunnel syndrome, the need for physical therapy and total disability for work.

Appellant submitted a form report dated May 30, 2008, which diagnosed right carpal tunnel syndrome. She also submitted a work capacity evaluation from Dr. Parry, which provided appellant's work restrictions and stated that she was unable to use her hands for fine motor skills.

The Office referred appellant for a second opinion evaluation on June 10, 2008. In a report dated June 24, 2008, Dr. Michael J. Katz, a Board-certified orthopedic surgeon, noted appellant's history of injury and on physical examination found no swelling or erythema. He reported that appellant had negative Tinel's sign and no tenderness at the triangular fibrocartilage complex. Dr. Katz opined that appellant had a successful right carpal tunnel release with no need for physical therapy or orthopedic care as appellant had no positive orthopedic findings. He stated, "This individual is currently not disabled."

Dr. Parry completed a form report on July 14, 2008 diagnosing right carpal tunnel syndrome. He opined that appellant was unable to lift, grasp or use finger motion.

The Office requested a supplemental report from Dr. Katz on July 18, 2008. Dr. Katz replied on July 28, 2008 and stated that appellant's right carpal tunnel syndrome was related to her accepted employment injury, but that this condition had ceased.

In a letter dated August 12, 2008, the Office proposed to terminate appellant's compensation and medical benefits based on Dr. Katz' reports. It allowed appellant 30 days for

a response. Appellant submitted a form report dated August 19, 2008 from Dr. Parry, which continued to diagnose right carpal tunnel syndrome, and opined that appellant was unable to perform her job responsibilities as she could not lift or grip more than five pounds with her right hand.

By decision dated September 12, 2008, the Office terminated appellant's compensation benefits and medical benefits effective that date. It opined that Dr. Katz' reports were entitled to the weight of the medical evidence and established that appellant had no continuing medical residuals or disability due to her accepted employment injury.

Appellant submitted a work capacity evaluation dated November 6, 2008 from Dr. Parry, who diagnosed right carpal tunnel syndrome and opined that appellant was not capable of performing her date-of-injury position as she could not grasp, reach and sort repeatedly. Dr. Parry completed an undated narrative report received by the Office on November 12, 2008 based on a September 16, 2008 physical examination. He reported full range of motion of the right upper extremity, but positive Tinel's sign and positive Phalen's tests suggestive of carpal tunnel syndrome. Dr. Parry diagnosed right carpal tunnel syndrome and opined that this condition was due to appellant's employment injury. He recommended pain management and physical therapy. Dr. Parry opined that appellant could not work as a letter carrier and that she was permanently partially disabled. Appellant, through her attorney, requested reconsideration on December 25, 2008.

By decision dated March 30, 2009, the Office reviewed appellant's claim on the merits and denied modification of the September 12, 2008 decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.<sup>2</sup> The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement of 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 further medical treatment.<sup>4</sup>

The Federal Employees' Compensation Act provides that, 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.<sup>5</sup> The

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<sup>1</sup> *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

<sup>2</sup> *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

<sup>3</sup> *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001).

<sup>4</sup> *Mary A. Lowe*, *supra*, note 2.

<sup>5</sup> 5 U.S.C. §§ 8101-8193, 8123.

implementing regulations states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician of an Office medical adviser or consultant, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted that appellant sustained a right upper extremity injury on November 26, 2001, which resulted in right thumb sprain, right wrist and hand contusions. It expanded appellant's claim to include mononeuritis of the upper extremity and right carpal tunnel surgical release. Appellant did not return to work. Her attending physician, Dr. Parry, an osteopath and a Board-certified family practitioner, continued to support appellant's disability for work stating that she was unable to lift, grasp or use finger motion and need for continued physical therapy due to her right carpal tunnel syndrome.

The Office referred appellant to Dr. Katz, a Board-certified orthopedic surgeon, for a second opinion evaluation on June 24, 2008. In this report, Dr. Katz found that appellant had negative Tinel's sign and no tenderness at the triangular fibrocartilage complex. He opined that appellant had a successful right carpal tunnel release with no need for physical therapy or orthopedic care as she had no positive orthopedic findings. Dr. Katz concluded that appellant was not disabled.

The Board finds that there is an unresolved conflict of the medical opinion evidence. Dr. Parry, appellant's physician, and Dr. Katz, the second opinion physician for the Office, disagreed regarding appellant's physical findings, her need for additional treatment and her ability to work. Due to this resolved conflict of medical opinion evidence, the Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation and medical benefits effective September 12, 2008.

### **CONCLUSION**

The Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation and medical benefits effective September 12, 2008.<sup>7</sup>

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<sup>6</sup> 20 C.F.R. § 10.321.

<sup>7</sup> Due to the Board's resolution of this issue, it is not necessary for the Board to address the second issue on appeal.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 30, 2009 and September 12, 2008 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: December 18, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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