

On August 15, 2001 appellant, then a 47-year-old clerk, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment. The Office accepted her claim for bilateral carpal tunnel syndrome on October 22, 2001. Dr. Lawrence A. Bircoll, a Board-certified orthopedic surgeon, performed a left surgical release on August 14, 2002 and right surgical release on October 22, 2003. Appellant returned to light-duty work eight hours a day on February 28, 2004. She was involved

in a nonemployment-related automobile accident on June 18, 2004 and stopped work on July 31, 2004. In a letter dated August 10, 2004, the employing establishment informed appellant that her light-duty restrictions could not be accommodated. Dr. Bircoll completed a form report on October 19, 2004 and advised that appellant could perform light-duty work with no throwing, lifting or bending of the neck.

The Office referred appellant for a second opinion evaluation with Dr. Harold Alexander, a Board-certified orthopedic surgeon. On November 1, 2004 Dr. Alexander found that appellant had a herniated cervical disc at C5-6 as well as continuing left carpal tunnel syndrome symptoms. He found that she could perform light-duty work with restrictions. The employing establishment offered appellant a light-duty position which Dr. Bircoll found exceeded her restrictions in a note dated December 14, 2004. Dr. Alexander reviewed the position on January 24, 2005 and stated that appellant required additional diagnostic testing to determine if her left carpal tunnel release was successful.

Appellant underwent a functional capacity evaluation which demonstrated the ability to work at the sedentary level eight hours a day. Dr. Bircoll concurred with the findings on June 20, 2005. The employing establishment offered appellant a light-duty position on September 15, 2005. She declined this position based on medical evidence from Dr. William Render, a Board-certified internist, who found that appellant could work four hours a day with restrictions.

In a letter dated October 7, 2005, the Office informed appellant that the offered position was suitable work and allowed 30 days for a response. Appellant underwent a nerve conduction study on November 2, 2005 which demonstrated mild bilateral medial nerve entrapment at the wrists.

In a November 9, 2005 decision, the Office finalized the termination of compensation.

Appellant requested reconsideration on January 12, 2006 and submitted a January 9, 2006 report from Dr. Render, who reiterated that she could work only four hours a day.

By decision dated January 25, 2006, the Office vacated the November 9, 2005 decision finding that the position exceeded appellant's sedentary work requirements. It reinstated compensation as of November 27, 2005.

Dr. Render completed a work restriction evaluation on October 17, 2006 and advised that appellant could only work four hours a day due to her bilateral carpal tunnel syndrome. On March 20 and 25, 2007 in response to inquiry by the Office, Dr. Render diagnosed bilateral carpal tunnel syndrome and cervical disc disease. He stated that due to these conditions appellant required light-duty work. Dr. Render opined that appellant's accepted condition had not resolved.

The Office referred appellant for a second opinion evaluation with Dr. Jeffrey Fried, a Board-certified orthopedic surgeon. Appellant did not attend the scheduled appointment. By letter dated June 7, 2007, the Office proposed to suspend her compensation benefits due to this failure and allowed her 14 days to explain her failure to appear.

In a decision dated June 26, 2007, the Office suspended appellant's compensation benefits effective July 8, 2007 due to her failure to cooperate with a scheduled medical examination.

Appellant requested a review of the written record on July 3, 2007. By decision dated November 6, 2007, the Branch of Hearings and Review affirmed the June 26, 2007 decision.

In a letter received December 19, 2007, appellant requested that the Office schedule an appointment with Dr. Fried or with another second opinion physician. On December 20, 2007 the Office referred her for a second opinion to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon. Appellant attended this examination and it reinstated her compensation benefits effective January 8, 2008. She requested a review of the written record regarding the January 8, 2008 decision. By decision dated March 25, 2008, the Branch of Hearings and Review determined that appellant was not entitled to a second hearing on the issue of her entitlement to compensation benefits.

In a January 8, 2008 report, Dr. Doman examined appellant and found that nerve conduction studies on that date revealed bilateral residual carpal tunnel syndrome. He also diagnosed cervical spondylosis. Dr. Doman advised that appellant could not return to her date-of-injury position due to her residual carpal tunnel syndrome. He suggested a repeat carpal tunnel release. Dr. Doman also stated that appellant was capable of full-time work.

On December 23, 2008 the Office referred appellant for a second opinion evaluation with Dr. Joseph Tatum, a Board-certified orthopedic surgeon, who completed a report on January 20, 2009 describing her medical treatment. Dr. Tatum noted that appellant's 2005 nerve conduction studies demonstrated "mild bilateral median nerve entrapment at the wrists." He reviewed Dr. Doman's 2008 report, noting that he did not feel that appellant had reached maximal medical improvement and that she might be able to work with restrictions or seek evaluation by vocational rehabilitation. On physical examination, Dr. Tatum found no evidence of muscular weakness or atrophy in the upper extremities or wrists or hands with normal sweat patterns in the pads of all ten fingers. He concluded that appellant had no symptoms or signs of either nerve root compression or median nerve compression in either wrist. Dr. Tatum found that appellant's symptoms were not supported by objective findings and were excessive. He opined that her condition had resolved, that there were no objective findings to support her complaints and that she could return to "any type of work that a person of her sex, age and build would otherwise be able to do." Dr. Tatum recommended no further medical treatment. He completed a work capacity evaluation, finding that appellant could perform her usual job and had reached maximum medical improvement.

The Office proposed to terminate appellant's compensation benefits by letter dated May 18, 2009 based on the January 20, 2009 report from Dr. Tatum.¹ It allowed 30 days for a response. Appellant responded in a letter dated June 5, 2009 and disagreed with the proposed termination. She stated that she was submitting additional medical evidence contradicting

¹ In an Order Dismissing Appeal dated April 5, 2010, the Board dismissed appellant's appeal of this letter finding that the letter did not constitute a final decision of the Office. Docket No. 09-1712 (issued April 5, 2010).

Dr. Tatum's report. Appellant submitted a report dated March 25, 2009 from Dr. Kingsley E. Agbeyegbe, an internist, which was identical to Dr. Render's March 20, 2007 report.

By decision dated June 22, 2009, the Office terminated appellant's medical and compensation benefits effective July 5, 2009 noting that she had not responded to the proposed termination. Appellant requested a review of the written record on June 30, 2009. She resubmitted a January 9, 2006 note from Dr. Render describing her work restrictions.

In an October 14, 2009 decision, the Branch of Hearings and Review affirmed the June 22, 2009 termination decision finding that Dr. Tatum's report was entitled to the weight of the medical evidence and established that appellant's employment-related condition resolved by July 5, 2009.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

ANALYSIS

The Office terminated appellant's medical and wage-loss compensation benefits based on the January 20, 2009 report from Dr. Tatum, a Board-certified orthopedic surgeon and Office referral physician, who listed appellant's medical history including the 2005 nerve conduction studies which demonstrated mild bilateral median nerve entrapment at the wrists. Dr. Tatum mentioned the 2008 report from Dr. Doman, a Board-certified orthopedic surgeon and Office referral physician, but did not discuss his nerve conduction findings. He also failed to discuss Dr. Doman's recommendation that appellant investigate additional surgery. Dr. Tatum found no objective findings supporting carpal tunnel syndrome on physical examination. He concluded that appellant had no symptoms or signs of either nerve root compression or median nerve compression in either wrist.

The Board finds that this report is not sufficient to meet the Office's burden of proof to terminate appellant's medical and compensation benefits. Dr. Doman examined appellant in 2008 and reported positive findings on nerve conduction studies. Dr. Tatum dismissed

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

appellant's continuing employment-related bilateral carpal tunnel condition noting that there were no objective findings on his physical examination, but did not address these objective test results or administer further studies to determine whether the objective findings were still present 14 months later. In terminating appellant's medical and compensation benefits, Dr. Tatum should have addressed these test results and explained why the positive nerve conduction studies were not objective evidence of continuing medical residuals due to the accepted condition of bilateral carpal tunnel syndrome. Furthermore, Dr. Tatum should have addressed whether such medical residuals, if present, would result in any disability for work. The Board finds that based on Dr. Tatum's report the Office did not meet its burden of proof to terminate appellant's medical and compensation benefits.

CONCLUSION

The Board finds that the weight of the medical evidence does not establish that appellant has no medical residuals and disability due to the accepted condition of bilateral carpal tunnel syndrome and that the Office did not meet its burden of proof to terminate appellant's medical and wage-loss compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2009 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 23, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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