

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

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**J.H., Appellant**

**and**

**DEPARTMENT OF THE NAVY,  
NELLIS AIR FORCE BASE, NV, Employer**

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**Docket No. 10-2223  
Issued: August 24, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 1, 2010 appellant filed a timely appeal from the August 13, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied modification of the termination of his compensation. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 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 OWCP properly terminated appellant's compensation; and if so (2) whether appellant has established that he continues to suffer residuals of the accepted employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On September 5, 2000 appellant, a 48-year-old carpenter and woodcrafter, filed a claim for workers' compensation benefits alleging that his bilateral carpal tunnel syndrome was a result of using his hands with tools for the past 23 years. OWCP accepted his claim for bilateral carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on April 6, 2006 and a left carpal tunnel release on May 11, 2006. He received a schedule award for a 9 percent permanent impairment of his left upper extremity and an 11 percent permanent impairment of his right.

On January 11, 2010 Dr. James W. Vahey, the attending orthopedic surgeon, examined appellant and found that he had fully recovered from his carpal tunnel syndrome. Findings on musculoskeletal and neurological system examination were normal except for enlargement of finger joints consistent with degenerative arthritis. Dr. Vahey found that appellant's current complaints of generalized hand pain and weakness were most likely caused by degenerative arthritis.

OWCP issued a notice of proposed termination on February 9, 2010, advising that Dr. Vahey's report established that appellant no longer suffered from his employment-related condition. It allotted appellant 30 days to submit any opposing evidence. Appellant did not respond within the allotted time.

On March 16, 2010 OWCP terminated appellant's compensation on the grounds that the weight of the medical opinion evidence established that he no longer suffered residuals of his work-related bilateral carpal tunnel syndrome.

Dr. Mary Angela Thomas, a Board-certified physiatrist, obtained electrodiagnostic studies on April 6, 2010. She interpreted the studies as normal on the right but showing a slightly delayed nerve conduction velocity across the carpal tunnel on the left. Dr. Thomas concluded that testing revealed a mild median sensory neuropathy on the left, demyelinating in nature and consistent with a clinical diagnosis of carpal tunnel syndrome.

Appellant requested reconsideration on May 17, 2010 and referenced Dr. Thomas' diagnostic studies when contending that his employment-related carpal tunnel syndrome had not resolved.

In a decision dated August 13, 2010, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision to terminate compensation. It reasoned that Dr. Thomas did not give a specific diagnosis based on clinical and test findings, did not explain the source of her clinical studies or test results and did not provide a reasoned medical opinion causally connecting the findings to appellant's work injury.

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

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.<sup>2</sup> Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>3</sup>

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

When OWCP terminated appellant's compensation on March 16, 2010, the weight of the medical opinion was clear: appellant had fully recovered from his bilateral carpal tunnel syndrome. Dr. Vahey, the orthopedic surgeon, who operated on appellant's wrists, reported a completely normal musculoskeletal and neurologic examination except for enlargement of finger joints, which was consistent with degenerative arthritis.

There was no medical opinion evidence to the contrary. As the clear weight of the medical opinion evidence rested with appellant's own physician, the Board finds that OWCP met its burden of proof to terminate compensation for bilateral carpal tunnel syndrome.

### **LEGAL PRECEDENT -- ISSUE 2**

When OWCP meets its burden of proof to justify terminating compensation benefits, the burden switches to the claimant to establish that any subsequent condition or disability is causally related to the accepted employment injury.<sup>4</sup>

FECA provides compensation only for as long as there exists a proven physical or related impairment attributable to the injury. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury, and must explain from a medical perspective how the current condition is related to the injury.<sup>5</sup>

### **ANALYSIS -- ISSUE 2**

Shortly after the termination of appellant's compensation, Dr. Thomas, a Board-certified psychiatrist, obtained electrodiagnostic studies confirming Dr. Vahey's opinion that appellant had fully recovered from his right carpal tunnel syndrome. She interpreted the studies as showing a

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>4</sup> *Maurice E. King*, 6 ECAB 35 (1953); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

<sup>5</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

mild median sensory neuropathy on the left, however, consistent with a clinical diagnosis of carpal tunnel syndrome.

OWCP discounted Dr. Thomas' report because she offered no reasoned medical opinion causally connecting the positive test results to the accepted carpal tunnel syndrome. However, when OWCP terminates compensation on the grounds that appellant has fully recovered from and no longer suffers residuals of carpal tunnel syndrome, and testing contemporaneous to that termination confirms the presence of carpal tunnel syndrome on the left, the findings are significant. Dr. Vahey based his opinion on a normal physical examination; he did not obtain current electrodiagnostic studies. So although Dr. Thomas did not offer a fully rationalized discussion of how a positive clinical finding of left carpal tunnel syndrome was causally connected to the accepted carpal tunnel injury, the finding appears consistent with the accepted injury and is not directly contradicted by Dr. Vahey's findings on physical examination.

Dr. Thomas' report is not sufficient to discharge appellant's burden of proof to establish that he continues to suffer residuals of the accepted employment injury, but the Board finds that it is sufficient to warrant further development of the issue.<sup>6</sup> The Board will set aside OWCP's August 13, 2010 decision on the issue of left carpal tunnel syndrome and will remand the case for further development of the medical opinion evidence. After such further development as may be necessary, OWCP shall issue an appropriate final decision on whether appellant continues to suffer residuals of the accepted left carpal tunnel syndrome, and if so, whether he is entitled to compensation for any resulting medical expense or disability for work.

### **CONCLUSION**

The Board finds that OWCP properly terminated appellant's compensation for bilateral carpal tunnel syndrome. The Board also finds that this case is not in posture for decision on whether appellant continues to suffer residuals of the accepted left carpal tunnel syndrome. Further development of the medical opinion evidence is warranted.

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<sup>6</sup> *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 345, 358 (1989) (finding that the medical evidence was not sufficient to discharge the claimant's burden of proof but remanding the case for further development of the medical evidence).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further action consistent with this opinion.

Issued: August 24, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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