

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

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C.G., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Bronx, NY, Employer )

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**Docket No. 07-1645  
Issued: December 19, 2007**

*Appearances:*  
Paul Kalker, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 4, 2007 appellant, through counsel, filed a timely appeal of an April 10, 2007 merit decision of the Office of Workers' Compensation Programs denying modification of the termination of her compensation for wage-loss and medical benefits effective April 15, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this termination case.

**ISSUES**

The issues are: (1) whether the Office properly terminated appellant's compensation for wage-loss and medical benefits effective April 15, 2006 on the grounds that she no longer had any residuals or disability causally related to her April 22, 2000 employment-related injuries; and (2) whether appellant had any continuing employment-related residuals or disability after April 15, 2006.

## **FACTUAL HISTORY**

On April 25, 2000 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim, alleging that on April 22, 2000 she sustained a right wrist sprain while putting mail into a mailbox.<sup>1</sup> She stopped work on April 24, 2000. By letter dated June 29, 2000, the Office accepted the claim for a sprain and tendinitis of the right wrist. It paid appellant appropriate compensation.

The Office received several medical records covering intermittent dates during the period May 9, 2000 through March 6, 2003 from Dr. Richard E. Memoli, an attending orthopedic surgeon. He stated that appellant continued to have residuals and disability related to her accepted employment injuries.

By letter dated April 16, 2003, the Office referred appellant, together with the case record, a statement of accepted facts and a list of questions to be addressed, to Dr. Alvin M. Bregman, a Board-certified orthopedic surgeon, for a second opinion medical examination. In a June 30, 2003 medical report, Dr. Bregman diagnosed de Quervain's tenosynovitis. He opined that appellant's employment-related sprain and tendinitis of the right wrist had resolved. Dr. Bregman stated that her current disability represented an aggravation of a preexisting condition related to repetitive stress experienced during the course of normal employment. He found that appellant was partially disabled but able to work eight hours per day with limitations.

On August 20, 2003 the employing establishment offered appellant a modified carrier position based on the restrictions set forth by Dr. Bregman. By letter dated August 29, 2003, the Office found that the offered position was suitable. On September 26, 2003 appellant rejected the job offer based on Dr. Memoli's September 22, 2003 report which found that she was totally disabled for work.

By letter dated December 12, 2003, the Office advised appellant that a conflict in medical opinion existed between Dr. Memoli and Dr. Bregman regarding whether she had any continuing employment-related residuals and disability. It referred her, together with a statement of accepted facts, the case record and a list of questions, to Dr. Kenneth E. Seslowe, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a January 29, 2004 report, Dr. Seslowe reviewed the history of appellant's April 22, 2000 employment injury and medical background, including the reports of Dr. Memoli and Dr. Bregman. On physical examination, appellant removed a wrist splint and Dr. Seslowe reported no swelling or deformity about the right hand or wrist with symmetrical measurements to the right and left. Dr. Seslowe noted her complaint of pain about the thenar eminence and the palm of the right hand. On palpation, appellant claimed tenderness in the mid palm and about the thenar eminence. Dr. Seslowe found no specific tenderness about the first extensor compartment and full dorsiflexion and volar flexion of the wrist. Appellant had full radial and ulnar deviation of the wrist, negative Tinel's and Phalen's signs and full metacarpal-phalangeal

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<sup>1</sup> Appellant filed a claim for a back injury sustained on October 2, 1990 which was accepted by the Office for lumbar strain. She also filed a claim for a right wrist injury sustained on November 24, 1995 which was accepted for right wrist sprain.

(MP) and interphalangeal (IP) joint motion of the fingers of the right hand. Dr. Seslowe stated that she exhibited weakness of the right hand in power grasp, flexion and extension of the fingers and abduction and adduction of the fingers. She had a glove-stocking pattern of diminished sensation over the entire palm and the ulnar and median distribution of the palmar aspect of the hand and a negative Finklestein's sign. Dr. Seslowe opined that appellant's right wrist sprain and tenosynovitis had resolved. He did not see any level of disability. Dr. Seslowe stated that appellant could return to work as a letter carrier with no restrictions. He concluded that she did not require further orthopedic care.

By letter dated February 23, 2006, the Office issued a notice of proposed termination of compensation based on Dr. Seslowe's medical opinion. The Office provided 30 days in which appellant could respond to this notice.

In a March 21, 2006 report, Dr. Memoli stated that there was no change in appellant's complaints and his physical findings. She still had persistent pain in the right hand with radiating pain and numbness. Dr. Memoli's examination findings continued to reveal restricted range of motion of the right wrist with weakness. He diagnosed a right wrist sprain and extensor tendinitis at the first dorsal extensor tendon. Dr. Memoli noted appellant's medical treatment plan and opined that she was permanently disabled.

By decision dated April 13, 2006, the Office terminated appellant's compensation for wage-loss and medical benefits with regard to her April 22, 2000 employment injury, effective April 15, 2006.

The Office received medical reports dated June 13, November 7 and December 5, 2006 of Dr. Michael Palmeri, a Board-certified orthopedic surgeon. On physical examination of the right wrist, Dr. Palmeri reported a healed wound without evidence of infection, good capillary refill in all digits and mild swelling and tenderness to palpation at the basal joint with a slight shoulder deformity. He also reported positive carpometacarpal grind test, mild swelling and tenderness to palpation over the first dorsal compartment and a positive Finkelstein's test. There was no significant restriction in range of motion in the right wrist although there was significant weakness with resisted pinch and grip strength testing. There was also altered two point discrimination in the median nerve distribution, diffuse tenderness over the medial and lateral epicondyle and pain with resisted wrist flexion and extension. Dr. Palmeri opined that appellant suffered from continued pain and median nerve dysfunction in the right wrist after a work-related injury. Appellant also suffered from flexor tendinitis and persistent weakness in the right hand and de Quervain's tenosynovitis and extensor tendinitis in the right wrist. In the November 7 and December 5, 2006 reports, Dr. Palmeri found that appellant also suffered from possible internal derangement of the right wrist such as a triangular fibrocartilage tear. He opined that she was totally disabled for work for three to four weeks.

In a December 28, 2006 letter, appellant, through counsel, requested reconsideration of the Office's April 13, 2006 decision. Counsel contended that the evidence of record established that she sustained more serious work-related conditions such as, median nerve dysfunction and de Quervain's tenosynovitis of the right wrist, than the conditions accepted by the Office. He further contended that the Office engaged in doctor shopping by referring appellant to a second opinion and an impartial medical specialist while the evidence she submitted was sufficient to

establish her continuing work-related disability. Counsel argued that Dr. Bregman's June 30, 2003 report did not have any probative value as it was deficient and inconclusive and lacked the necessary medical rationale. He further argued that Dr. Bregman acknowledged that he did not review appellant's complete file. Counsel stated that his report did not create a conflict in the medical opinion evidence as he found that appellant's right wrist tendinitis had not resolved and that her disability was based on the aggravation of a preexisting condition related to her employment. Counsel argued that the Office's referral of appellant to Dr. Seslowe for an impartial medical examination was inappropriate and his report should be discounted. Alternatively, counsel contended that Dr. Seslowe's report was not rationalized as he noted appellant's ongoing symptoms yet failed to provide any objective findings to support his opinion that appellant no longer had any employment-related disability. Lastly, counsel argued that Dr. Palmeri's accompanying December 4, 2006 report established that appellant was totally disabled due to her accepted employment-related injury. Dr. Palmeri reiterated his prior findings on physical examination. He also reported a positive Watson sign. Dr. Palmeri reiterated his prior diagnoses of persistent pain in the right wrist secondary to chronic median nerve dysfunction, de Quervain's tenosynovitis, flexor and extensor tenosynovitis and possible internal derangement in the right wrist with a possible tear in the triangular fibrocartilage complex or scapholunate ligament. He opined that appellant was permanently totally disabled from the employing establishment's position due to persistent pain, weakness and paresthesia caused by the work-related right wrist and hand injury.

In an April 10, 2007 decision, the Office denied modification of the April 13, 2006 termination decision. It found that the evidence submitted by appellant was insufficient to outweigh Dr. Seslowe's January 29, 2004 impartial medical opinion.

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

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>2</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup>

In situations where there are opposing medical reports of virtually equal weight and rationale 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 on a proper factual background, must be given special weight.<sup>4</sup>

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<sup>2</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>3</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>4</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

## ANALYSIS -- ISSUE 1

The Board finds that the Office properly determined that a conflict in the medical opinion evidence arose between Dr. Memoli, an attending physician, and Dr. Bregman, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to her accepted April 22, 2000 employment-related injuries. Her claim for the April 22, 2000 employment injury was accepted for a wrist sprain and tendinitis of the right wrist. Dr. Memoli opined that appellant had continuing employment-related residuals and disability. Dr. Bregman opined that appellant's April 22, 2000 employment injuries had resolved and she was capable of working eight hours a day with restrictions.

The Office referred appellant to Dr. Seslowe, selected as the impartial medical specialist. In a January 29, 2004 report, Dr. Seslowe reviewed a history of appellant's April 22, 2000 employment injuries and medical background. On physical examination, he reported no swelling or deformity about the right hand or wrist with symmetrical measurements to the right and left and no specific tenderness about the first extensor compartment. Appellant had full dorsiflexion and volar flexion of the wrist, full radial and ulnar deviation of the wrist, full MP and IP joint motion of the fingers of the right hand and negative Tinel's, Phalen's and Finklestein's signs. Dr. Seslowe noted appellant's complaint of pain about the thenar eminence and the palm of the right hand and tenderness in the mid palm and about the thenar eminence on palpitation. He stated that she exhibited weakness of the right hand in power grasp, flexion and extension of the fingers and abduction and adduction of the fingers. Appellant had a glove-stocking pattern of diminished sensation over the entire palm and the ulnar and median distribution of the palmar aspect of the hand. Dr. Seslowe opined that appellant's right wrist sprain and tenosynovitis had resolved. He did not see any level of disability. Dr. Seslowe further opined that appellant was partially disabled but she could return to work as a letter carrier with no restrictions. In addition, appellant did not require further orthopedic care.

The Board finds that Seslowe's January 29, 2004 opinion is based on a proper factual and medical background and is entitled to special weight. Based on his review of the case record and essentially normal findings on physical examination, Dr. Seslowe found that appellant no longer had any residuals or disability causally related to the April 22, 2000 employment-related sprain and tendinitis of the right wrist. For this reason, Dr. Seslowe's report constitutes the special weight of the medical opinion evidence afforded an impartial medical specialist.

Dr. Memoli's March 21, 2006 report found no change in appellant's complaints and his physical findings. He stated that she still had persistent pain in the right hand with radiating pain and numbness and restricted range of motion of the right wrist with weakness. Dr. Memoli diagnosed right wrist sprain and extensor tendinitis at the first dorsal extensor tendon. He opined that appellant was permanently disabled. However, Dr. Memoli did not address whether there was a causal relationship between appellant's current conditions and disability and her April 22, 2000 employment injuries. Therefore, his report lacks probative value.<sup>5</sup> Furthermore, Dr. Memoli was part of the conflict in medical opinion for which appellant was referred to

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<sup>5</sup> *Mary A. Ceglia*, 56 ECAB \_\_\_\_ (Docket No. 04-113, issued July 22, 2004).

Dr. Seslowe.<sup>6</sup> Therefore, his report is insufficient to overcome or to create a conflict with the well-rationalized medical opinion of Dr. Seslowe.<sup>7</sup>

The Board finds that the special weight of the medical evidence which is represented by Dr. Seslowe's January 29, 2004 impartial medical report, establishes that appellant no longer has any residuals or disability causally related to her April 22, 2000 employment injuries.

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

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.<sup>8</sup> To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>9</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>10</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>11</sup>

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

The relevant medical evidence regarding continuing employment-related residuals and disability after April 15, 2006 includes Dr. Palmeri's June 13, November 7 and December 5, 2006 reports which found that appellant suffered from continued pain and median nerve dysfunction in the right wrist after a work-related injury. He further found that she suffered from flexor tendinitis and persistent weakness in the right hand, de Quervain's tenosynovitis, extensor tendinitis and possible internal derangement of the right wrist such as a triangular fibrocartilage tear. Dr. Palmeri opined that appellant was totally disabled for three to four weeks. In a December 4, 2006 report, he reiterated his prior diagnoses and opined that appellant was permanently totally disabled from the employing establishment's position due to the persistent pain, weakness and paresthesia caused by the work-related right wrist and hand injury. He,

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<sup>6</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict).

<sup>7</sup> *Michael Hughes*, 52 ECAB 387 (2001).

<sup>8</sup> See *Manuel Gill*, 52 ECAB 282 (2001).

<sup>9</sup> *Id.*

<sup>10</sup> *Elizabeth Stanislav*, 49 ECAB 540 (1998).

<sup>11</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

however, failed to explain, with medical rationale, how and why appellant's diagnosed conditions and disability were causally related to the accepted April 22, 2000 employment-related conditions.<sup>12</sup> The Board finds that Dr. Palmeri's reports are insufficient to establish appellant's burden of proof.

Appellant has not submitted sufficient rationalized medical evidence establishing that she has any continuing residuals or disability causally related to her accepted employment-related conditions.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation effective April 15, 2006 on the grounds that she no longer had any residuals or disability causally related to her April 22, 2000 employment-related injuries. The Board further finds that appellant failed to establish that she had any continuing employment-related residuals or disability after April 5, 2006.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 10, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>12</sup> *Richard A. Neidert*, 57 ECAB \_\_\_\_ (Docket No. 05-1330, issued March 10, 2006); *Alice J. Tysinger*, 51 ECAB 638 (2000) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).