

bilateral carpal tunnel syndrome was caused by his federal employment.¹ He stated that Dr. Carl L. Unsicker, a Board-certified orthopedic surgeon, diagnosed this condition after diagnostic testing was performed on his hands. Dr. Unsicker explained to appellant that the diagnosed condition was caused by constant use of power, air and hand tools and bending, twisting and pounding. By letter dated August 6, 1991, the Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized carpal tunnel release. The Office paid him appropriate compensation.²

By letter dated April 2, 2004, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Michael T. Giovanniello, a Board-certified physiatrist, for a second opinion medical examination to assess continuing disability. In an April 19, 2004 medical report, Dr. Giovanniello found that appellant had a history of Dupuytren's contractures and was status post surgeries for carpal tunnel syndrome and bilateral hand osteoarthritis that were work related. He stated that the multiple surgeries appellant underwent for the Dupuytren's contractures were unsuccessful with regard to restoring his functions. Dr. Giovanniello stated that appellant continued to be disabled despite not working since his medical retirement in 1991,³ due to residual functional deficits from his employment-related injury. As a result, appellant was permanently disabled due to his Dupuytren's contractures condition. Dr. Giovanniello further opined that appellant developed bilateral osteoarthritis of the hands due to his former work duties. Appellant's carpal tunnel syndrome was mild as there was no electrodiagnostic evidence of median motor neuropathy at the wrist which probably represented mild median nerve neuritis. Dr. Giovanniello concluded that appellant was unable to perform his date-of-injury job secondary to impairment from his work-related Dupuytren's contractures which prevented him from using both hands. He stated that appellant could perform sedentary work eight hours per day with restrictions. Dr. Giovanniello restricted him from lifting more than 10 pounds, engaging in repetitive lifting and data entry activities, pushing or pulling more than 20 pounds and significant writing and fine manipulation activities with his bilateral upper limbs.

On August 19, 2005 the employing establishment offered appellant a telephone operator position based on the restrictions set forth in Dr. Giovanniello's April 19, 2004 report. The modified operator assistance position included performing switchboard operations and answering incoming and outgoing calls routinely within one minute. It also required telephone directory and help desk assistance. The physical requirements of the offered position were sedentary in nature but possibly involved some standing and walking to consult directories or manuals and required lifting no more than 20 pounds.

¹ Prior to the instant claim, appellant filed a CA-2 form on February 11, 1991 alleging that his Dupuytren's contractures were aggravated by his use of hand, power and air tools in his federal employment. On June 4, 1991 the Office accepted his claim for aggravation of Dupuytren's contractures.

² By decision dated January 22, 1992, the Office granted appellant a schedule award for a 52 percent impairment of the third finger on the right hand and a 17 percent impairment of the third finger on the left hand.

³ The record indicates that appellant retired from the employing establishment effective June 10, 1991.

On September 20, 2005 appellant submitted a September 19, 2005 medical opinion of Dr. Marc O. Anderson, an attending Board-certified family practitioner. He reviewed a description of the offered position and stated that appellant was unable to perform the duties of this position due to Dupuytren's contractures. Dr. Anderson further stated that appellant was unable to use a mouse or computer. In a June 16, 2003 report, he diagnosed carpal tunnel syndrome, Dupuytren's contracture and osteoarthritis. Dr. Anderson opined that appellant had physical limitations due to severe pain and problems in his lower back, hips and other joints.

The Office found a conflict in the medical opinion evidence between Dr. Giovanniello and Dr. Anderson as to whether appellant was totally disabled for work due to his accepted employment-related conditions. By letter dated October 20, 2005, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Robert P. Hansen, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a November 22, 2005 report, Dr. Hansen reviewed a history of appellant's employment-related injuries and medical treatment. He reported normal findings on physical examination and diagnosed bilateral hand Dupuytren's contractures status post multiple partial palmar fasciectomy. Dr. Hansen noted a history of bilateral carpal tunnel release with no apparent current evidence of median nerve entrapment. He opined that appellant's current Dupuytren's contractures precluded him from performing heavy labor and using both hands. Dr. Hansen opined that this condition was not due to the employment-related aggravated Dupuytren's contractures that appellant sustained more than 10 years ago. Dr. Hansen stated that, according to the American Academy of Orthopedic Surgeons, there was insufficient evidence from epidemiologic and clinical studies to confirm that manual work either hastened the onset or the progress of Dupuytren's disease. There were no controlled studies that linked acute trauma to the disease. Dr. Hansen noted that etiologic factors associated with Dupuytren's disease included diabetes, alcohol consumption, cigarette smoking, epilepsy, possible neoplastic and probable genetic factors. He stated that appellant's current condition was due to the nonemployment-related Dupuytren's disease process. It appeared that appellant's carpal tunnel surgery was successful and that he did not have any ongoing carpal tunnel problems at the time of examination. Dr. Hansen related that appellant's previous work as a mechanic may have caused a temporary aggravation of his Dupuytren's disease but this would be limited and currently would not be considered an aggravating factor. He found no objective evidence of any radiographic confirmation of osteoarthritis or appellant's inability to work as a telephone operator. Appellant seemed reasonably able to use his thumb, index and long fingers to perform the described duties of the offered position. Dr. Hansen stated that appellant would be unable to perform extensive keyboard work but limited keyboard work with the thumb, index and long fingers was certainly possible. He concluded that appellant could use a computer mouse. In a work capacity evaluation dated November 10, 2005, Dr. Hansen stated that appellant was unable to perform his usual job but he could work eight hours per day with physical restrictions.

By letter dated January 25, 2006, the Office issued a notice of proposed termination of appellant's compensation based on Dr. Hansen's November 22, 2005 impartial medical report. The medical evidence established that his current medical condition was not caused by his work duties or accepted employment injuries. The Office provided 30 days in which appellant could respond to this notice.

In a February 3, 2006 letter, appellant disagreed with the Office's proposed termination. He contended that there was no conflict in the medical opinion evidence between Dr. Anderson and Dr. Giovanniello. He contended that the physicians were in agreement about his Dupuytren's contractures condition. Appellant argued that Dr. Hansen's report was insufficient to terminate his compensation benefits because the physician failed to conduct a thorough medical examination. He stated that Dr. Hansen refused to examine the papers he brought along to the examination and had informed him that he had already spoken to the Office and explained the report to be submitted. Appellant alleged that on June 14, 2004 an Office claims examiner told him that it was her job to see that his compensation benefits were terminated.

By decision dated February 27, 2006, the Office terminated appellant's compensation benefits effective that date on the grounds that he no longer had any employment-related residuals or disability. The Office accorded special weight to Dr. Hansen's November 22, 2005 medical opinion as an impartial medical specialist.

LEGAL PRECEDENT

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 his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.⁴ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

Section 8123(a) of the Federal Employees' Compensation Act⁶ 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.⁷

ANALYSIS

Appellant's claim was for bilateral carpal tunnel syndrome and Dupuytren's contractures. The Board notes that a conflict in the medical opinion evidence was created between Dr. Anderson, an attending physician and Dr. Giovanniello, an Office referral physician, as to whether appellant had any continuing residuals or total disability causally related to his accepted employment-related Dupuytren's contractures and bilateral carpal tunnel syndrome. Dr. Anderson opined that appellant was totally disabled for work due to his work-related conditions. Dr. Giovanniello opined that, despite having residuals of the accepted employment injuries, appellant could perform sedentary work with restrictions.

⁴ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁵ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ 5 U.S.C. § 8123(a).

⁷ *See Robert V. Disalvatore*, 54 ECAB 351 (2003).

The Office properly referred appellant to Dr. Hansen, selected as the impartial medical specialist. After conducting a thorough physical examination and reviewing appellant's medical records, on November 22, 2005, Dr. Hansen diagnosed bilateral hand Dupuytren's contractures status post multiple partial palmar fasciectomy and a history of carpal tunnel release bilaterally with no current evidence of median nerve entrapment. Dr. Hansen found that, although appellant's current Dupuytren's contractures precluded him from performing heavy labor and the use of both hands, this condition was not due to the employment-related aggravated Dupuytren's contractures he sustained more than 10 years prior. He stated that there was insufficient evidence from epidemiologic and clinical studies to confirm that manual work either hastened the onset or the progress of Dupuytren's disease and that there were no controlled studies that linked acute trauma to the disease. Dr. Hansen noted etiologic factors associated with Dupuytren's disease and opined that appellant's current condition was due to a disease process not related to his employment. He further opined that it appeared appellant's carpal tunnel surgery was successful and that he did not have any ongoing carpal tunnel problems at the time of examination. Dr. Hansen related that appellant's previous work as a mechanic may have caused a temporary aggravation of his Dupuytren's disease but this would be limited and currently would not be considered an aggravating factor. He concluded that there was no objective evidence that appellant could not work as a modified telephone operator as he seemed reasonably able to use his thumb, index and long fingers to perform the described duties of the offered position. Dr. Hansen stated that appellant would be unable to perform extensive keyboard work but limited keyboard work with the thumb, index and long fingers was certainly possible and he could use a computer mouse.

The Board finds that Dr. Hansen's opinion is entitled to the special weight of an impartial medical specialist in finding that appellant no longer has any residuals or disability due to his accepted employment-related bilateral carpal tunnel syndrome and aggravation of Dupuytren's contractures. The report is sufficiently rationalized and based on a proper factual and medical background.⁸

On appeal appellant also contends that Dr. Hansen's report is insufficient to serve as a basis for the termination of his compensation benefits because he failed to conduct a thorough medical examination. Appellant contends that Dr. Hansen refused to examine certain papers that he brought to the examination and that the doctor informed him of having spoken to the Office. The Board, however, finds that a review of Dr. Hansen's November 22, 2005 report refutes appellant's assertion. As previously noted, Dr. Hansen provided an accurate history of appellant's work-related injuries and medical treatment. After a thorough examination, he noted that appellant's accepted conditions had resolved and that the ongoing disease process was not employment related. Dr. Hansen provided a proper analysis of the factual and medical history, provided findings on examination and reached conclusions regarding appellant's ability to work which comported with this analysis.⁹ Moreover, appellant has not submitted evidence as to the papers Dr. Hansen purportedly refused to examine or explain their relevance to the examination.

⁸ *Id.*

⁹ *Pamela K. Guesford*, 53 ECAB 726 (2002).

Appellant further contends that on June 14, 2004 an Office claims examiner told him that it was her job to see that his compensation benefits were terminated. The Board finds that appellant's assertion is not established by the record. Appellant did not submit any evidence establishing that the claims examiner erroneously threatened to terminate his compensation benefits. The Office properly determined that Dr. Hansen's impartial medical opinion was entitled to special weight in establishing that appellant has no employment-related residuals or disability.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits effective February 27, 2006 on the grounds that he no longer had any residuals or disability causally related to his employment-related injuries.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 31, 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