United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 07-600**
	)	**Issued: August 6, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Wilmington, DE, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 27, 2006 appellant filed a timely appeal from a November 9, 2006 Office of Workers' Compensation Programs' decision, denying his claim for a recurrence of total disability. The Board also has jurisdiction over a December 12, 2006 decision, terminating his wage-loss compensation benefits. 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 appellant sustained a recurrence of total disability on April 25, 2006; and (2) whether the Office met its burden of proof in terminating his wage-loss compensation benefits effective December 12, 2006.

FACTUAL HISTORY

This case was previously before the Board. By decision dated September 22, 2006, the Board affirmed Office decisions dated September 28, 2005 and February 14, 2006, terminating appellant's compensation and schedule award benefits effective August 8, 2004 for refusing a

suitable job offer.[1] The September 22, 2006 decision of the Board is herein incorporated by reference.

On June 24, 2002 appellant, then a 42-year-old mail clerk, filed an occupational disease claim that was accepted for bilateral carpal tunnel syndrome.[2] He underwent carpal tunnel release surgery on March 20 and September 17, 2003 and received compensation for temporary total disability. Appellant returned to work in a full-time modified position in August 2004. On September 8, 2005 his work hours were reduced by his physician to 24 hours a week due to a worsening of his accepted conditions. On January 4, 2006 appellant's work hours were reduced by his physician to 16 hours a week. He stopped work completely on April 25, 2006. Appellant returned to his modified position in a full-time capacity on November 20, 2006.

On March 13 and July 17, 2006 Dr. Robert A. Smith, a Board-certified orthopedic surgeon and an Office referral physician, reviewed a history of appellant's condition and provided findings on physical examination. He stated that appellant had some mild electrodiagnostic findings of residual carpal tunnel syndrome but clinical examination revealed that he had good results from his carpal tunnel surgeries and could perform his modified-duty work. Dr. Smith indicated that appellant's right ulnar nerve lesion was mild and did not prevent him from performing modified work. On August 17, 2006 he stated that appellant underwent an EMG (electromyogram) on August 10, 2006 which was reported as a "very unimpressive residual dysfunction of the bilateral median nerves at the level of the wrists." There was no evidence of ulnar neuropathy. Dr. Smith stated:

> "Given these findings, I would conclude that [appellant] is at maximum medical improvement, has an excellent prognosis and does not require any further treatment such as surgery to the ulnar nerves since[,] according to the recent EMG study, there is no evidence of any work-related ulnar nerve compression present. Given these minor residual findings, I would conclude also that [appellant] could return to his regular-duty activities."

On April 18, 2006 Dr. Scott M. Fried, an attending orthopedic surgeon, provided findings on physical examination and the results of electrodiagnostic testing. He diagnosed bilateral ulnar neuropathy, bilateral median neuropathy, bilateral plexopathy and cervical radiculopathy and bilateral repetitive strain injury of the upper extremities (cumulative trauma disorder). On April 27, 2006 Dr. Fried stated that appellant was unable to work due to an exacerbation of his symptoms. On August 3, 2006 he stated that appellant was experiencing bilateral upper extremity pain and was unable to work.

On July 17, 2006 appellant filed a claim for a recurrence of total disability on April 25, 2006.

On October 4, 2006 the Office referred appellant to Dr. Andrew J. Gelman, a Board-certified orthopedic surgeon, in order to resolve the conflict in the medical opinion evidence

[1] Docket No. 06-1028 (issued September 22, 2006).

[2] The Office also accepted a claim for a right ulnar nerve lesion and combined the two cases.

between Dr. Fried and Dr. Smith as to whether appellant had any residuals from his accepted upper extremity conditions. Dr. Gelman was provided with a copy of appellant's case file and the statement of accepted facts which included a detailed description of appellant's modified mail processor position. He performed a thorough physical examination and reviewed the factual and medical history of appellant's condition. In an October 23, 2006 report, Dr. Gelman stated:

> "Today's examination reveals an alert, comfortable-appearing, right hand dominant male who is in no acute distress. His shoulders, elbows, wrists, and fingers move well. Residual following volar left wrist and mid palm incisions are noted. There is a healed right dorsal wrist wound site which has healed well and a healed right carpal tunnel midpalmar incision which has also healed well. There are no detectable wounds…. The fingers including the thumb and wrist move fully including assessment of all flexor and extensor tendons. There is no evidence of limb redness, warmth, edema or atrophy.
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> "Tinel's is equivocal through both carpal tunnels and equivocal through both cubital tunnels at the elbow. Equivocal in the sense that there is some sensitivity which I would describe as a dysthesia, though the radiating pattern is not extensive and clearly consistent with a significant entrapment. Phalen's test is provocative only for wrist discomfort while there is no radiating, tingling, or numbness sensation. There is no discomfort in the region of the triangular fibrocartilage complex. Finkelstein's is negative bilaterally. There is no digital triggering.
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> Summary: [Appellant] has had hand difficulties … dating back now over a 15-year period. He has had extensive conservative treatment as well as operative intervention addressing a joint contracture at the left index finger and having undergone carpal tunnel release procedures bilaterally. [Appellant] … also had cysts removed, one from the volar aspect of the left wrist and another from the dorsal aspect of the right wrist.
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> "[T]he accepted [conditions] in this case include bilateral carpal tunnel syndrome and right ulnar nerve entrapment syndrome. Recent electrophysiologic data … have identified mild features of ulnar nerve entrapment bilaterally at the elbows with rather unimpressive or absent median nerve entrapment through the carpal tunnels. The electrical findings across the elbow would be supportive of [appellant's] subjective complaints. Objectively[,] I am impressed only with the surgical wounds while again, the Tinel's is equivocal/borderline across the elbows.
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> "With regard to the question of total disability, I am not impressed that [appellant] has [at] any time been totally disabled. I have reviewed the … modified mail processor [position]…. The duties as outlined appear to be within the capability of [appellant]…. I personally believe that this position can be performed on a full-time basis. Any inability to do so would be purely based on the subjective nature of [appellant's] complaints.

> "As to the issue of surgical treatment, the decision to proceed would ultimately be up to … [appellant]. With equivocal findings, I would not be particularly anxious to proceed as [the] outcome may not necessarily reach [the] expectations of [appellant]. Surgery for nerve entrapment is a recognized alternative, typically as a last resort for individuals with significant symptomatology and who have failed conservative treatment. Short of a surgery, [appellant] has long ago reached maximum medical improvement. His decision to proceed will need to be independently made. If, in fact, [appellant] does not proceed with surgical treatment he should plan on returning to his position as a mail processor. If, in fact, he claims that his job duties cannot be fully performed, permanent job modification would need to be planned."

Dr. Gelman indicated that appellant was able to perform his modified position for eight hours a day.

By decision dated November 9, 2006, the Office denied appellant's recurrence claim on the grounds that the evidence did not establish that he sustained a recurrence of total disability on April 25, 2006 causally related to his accepted upper extremity conditions. On November 9, 2006 the Office also sent appellant a notice of proposed termination of his wage-loss compensation benefits.

By decision dated December 12, 2006, the Office terminated appellant's wage-loss compensation benefits on the grounds that the weight of the medical evidence of record, represented by the opinion of Dr. Gelman, established that he was not totally disabled due to residuals of his accepted bilateral carpal tunnel syndrome and right ulnar lesion.[3]

LEGAL PRECEDENT -- ISSUE 1

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and that he cannot perform the light-duty position. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[4]

To establish a causal relationship between a claimant's medical conditions and his employment, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.[5] Rationalized medical opinion

[3] Subsequent to the December 12, 2006 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

[4] *Bryant F. Blackmon*, 57 ECAB ___ (Docket No. 04-564, issued September 23, 2005); *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] *Michael S. Mina*, 57 ECAB ___ (Docket No. 05-1763, issued February 7, 2006).

evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's 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.[6] Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7]

Section 8123(a) of the Federal Employees' Compensation Act provides that, "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination."[8] Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[9]

ANALYSIS -- ISSUE 1

Appellant has the burden to provide medical evidence establishing that he was totally disabled on April 25, 2006 due to a worsening of his accepted work-related conditions, bilateral carpal tunnel syndrome and a right ulnar lesion, or a change in his job duties such that he was unable to perform his light-duty work. He alleged a worsening of his accepted conditions.

Dr. Fried, appellant's attending physician, determined that appellant could not perform his modified job. Dr. Smith, the Office referral physician, opined that appellant was capable of performing his modified-duty work. Due to the conflict in the medical opinion evidence, the Office referred appellant to Dr. Gelman for an independent medical examination regarding appellant's claim that he was totally disabled on April 25, 2006 due to a recurrence of total disability.

Dr. Gelman was provided with a copy of appellant's case file and the statement of accepted facts which included a detailed description of appellant's modified mail processor position. He performed a thorough physical examination and reviewed the factual and medical history of appellant's condition. Dr. Gelman stated:

> "[Appellant's] shoulders, elbows, wrists, and fingers move well…. The fingers including the thumb and wrist move fully including assessment of all flexor and

[6] *Steven S. Saleh,* 55 ECAB 169 (2003); *Gary J. Watling,* 52 ECAB 278 (2001).

[7] *Michael S. Mina, supra* note 5.

[8] 5 U.S.C. § 8123(a); *see also Raymond A. Fondots,* 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan),* 45 ECAB 207 (1993).

[9] *See Roger Dingess,* 47 ECAB 123 (1995); *Glenn C. Chasteen,* 42 ECAB 493 (1991).

extensor tendons. There is no evidence of limb redness, warmth, edema, or atrophy.

"Tinel's is equivocal through both carpal tunnels and … both cubital tunnels at the elbow … in the sense that there is some sensitivity which I would describe as a dysthesia, though the radiating pattern is not extensive and clearly [not] consistent with a significant entrapment. Phalen's test is provocative only for wrist discomfort while there is no radiating, tingling, or numbness sensation. There is no discomfort in the region of the triangular fibrocartilage complex. Finkelstein's is negative bilaterally. There is no digital triggering."

* * *

"[T]he accepted [conditions] in this case include bilateral carpal tunnel syndrome and right ulnar nerve entrapment syndrome. Recent electrophysiologic data … have identified mild features of ulnar nerve entrapment bilaterally at the elbows with rather unimpressive or absent median nerve entrapment through the carpal tunnels. The electrical findings across the elbow would be supportive of [appellant's] subjective complaints….

"With regard to the question of total disability, I am not impressed that [appellant] has [at] any time been totally disabled. I have reviewed the … modified mail processor [position]…. The duties as outlined appear to be within the capability of [appellant]…. I personally believe that this position can be performed on a full-time basis. Any inability to do so would be purely based on the subjective nature of [appellant's] complaints."

Dr. Gelman determined that appellant was able to perform his modified position for eight hours a day.

The Board finds that Dr. Gelman's thorough and well-rationalized report is based on a complete and accurate factual and medical background and is entitled to special weight. His report establishes that appellant was not totally disabled on April 25, 2006 due to a change in the nature and extent of his employment-related bilateral carpal tunnel syndrome or right ulnar nerve lesion, or a change in the nature and extent of his light-duty job requirements. Dr. Gelman found that appellant was capable of performing his modified position. Therefore, the Office properly denied his claim for a recurrence of total disability.

LEGAL PRECEDENT -- ISSUE 2

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[10] The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.[11] The

[10] *Barry Neutach,* 54 ECAB 313 (2003); *Lawrence D. Price,* 47 ECAB 120 (1995).

[11] *Id.*

Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[12]

ANALYSIS -- ISSUE 2

The Office accepted appellant's claim for bilateral carpal tunnel syndrome and a right ulnar nerve lesion. Effective December 12, 2006, the Office finalized its termination of his wage-loss compensation. The Office, therefore, bears the burden of proof to justify a termination of benefits.[13]

Dr. Gelman was provided with a copy of appellant's case file and the statement of accepted facts. He performed a thorough physical examination and reviewed the factual and medical history of appellant's condition. Dr. Gelman found no objective evidence that appellant was unable to work due to his accepted bilateral carpal tunnel syndrome and right ulnar nerve lesion. He indicated that electrodiagnostic studies revealed only mild ulnar nerve entrapment and mild or absent median nerve entrapment at the carpal tunnel.

The Board finds that the weight of the medical evidence, represented by the comprehensive report of Dr. Gelman, which is based on a complete and accurate factual and medical background and findings on physical examination, establishes that appellant's disability for work causally related to his accepted bilateral carpal tunnel syndrome and right ulnar lesion had ceased. Based on Dr. Gelman's report, the Office met its burden of proof in terminating appellant's wage-loss compensation effective December 12, 2006.[14]

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of total disability on April 25, 2006 causally related to his accepted bilateral carpal tunnel syndrome and right ulnar lesion. The Board further finds that the Office met its burden of proof in terminating appellant's wage-loss compensation benefits effective December 12, 2006.

[12] *See Del K. Rykert*, 40 ECAB 284 (1988).

[13] *Willa M. Frazier*, 55 ECAB 379 (2004).

[14] As noted, appellant returned to his modified position full time on November 20, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 12 and November 9, 2006 are affirmed.

Issued: August 6, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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