

The issues are: (1) whether the Office properly terminated appellant's compensation effective July 24, 2007 on the grounds that she no longer had any residuals or disability causally related to her March 21, 2006 employment-related injury; (2) whether she had any continuing employment-related residuals or disability after July 24, 2007; and (3) whether the Office properly found that she abandoned her request for a hearing.

### **FACTUAL HISTORY**

On March 22, 2006 appellant, then a 42-year-old clerk, filed a traumatic injury claim alleging that on March 21, 2006 she fractured and dislocated her right wrist as a result of pushing a postcon. She stopped work on March 21, 2006. By letter dated May 15, 2006, the Office accepted the claim for fracture of the distal radius of the right wrist. Appellant returned to full-time limited-duty work on May 31, 2006. A January 20, 2007 operative report of Dr. Daniel A. Caligiuri, an attending Board-certified orthopedic surgeon, indicated that appellant underwent right wrist surgery on January 12, 2007. By letter dated February 2, 2007, the Office accepted that she sustained a recurrence of disability on January 12, 2007 causally related to her March 21, 2006 employment injury.

In a January 30, 2007 medical report, Dr. Caligiuri noted that appellant was 18 days status post right wrist surgery. Appellant had been performing her own daily exercises as instructed and was satisfied with her status overall. Dr. Caligiuri removed appellant's coaptation splint and postoperative dressings. On physical examination, he reported mild swelling over the dorsal aspect of the right wrist and hand. Appellant's wound was clean and well healed and there was no evidence of any infection. Dr. Caligiuri also reported decreased active range of motion of the right wrist and elbow. The digits of the right hand had nearly full active range of motion and neurovascularly, the extremity remained intact. Dr. Caligiuri opined that appellant was recovering satisfactorily from her surgery, however, due to the noted immobilization, her wound was redressed and a new coaptation splint was applied. He provided instructions for positioning her right upper extremity. Dr. Caligiuri stated that appellant could perform her usual daily activities with restrictions.

By letter dated April 17, 2007, the Medical Consultants Network, a company that schedules medical examinations on behalf of the Office, advised appellant that she was being referred to Dr. Robert M. Israel, a Board-certified orthopedic surgeon, for a second opinion medical examination. Appellant was referred along with a statement of accepted facts, the case record and a list of questions to be addressed.

In an April 27, 2007 report, Dr. Israel reviewed a history of the March 21, 2006 employment injury and appellant's medical treatment and social background. He noted that, at the time of injury, she was working as a clerk at the employing establishment. Dr. Israel also noted that his medical assistant was present at the time of the examination. He stated that appellant was in no acute distress or discomfort and she denied taking any medication prior to the examination. On physical examination, Dr. Israel reported appellant's weight and height measurements and the color of her eyes. He found no evidence of swelling, tenderness and synovitis of the right wrist. Dr. Israel noted a one and one-half inch irregular incision. He reported his range of motion measurements based on a visual scale and goniometer, which included pronation and supination to 90degrees, dorsiflexion to 70 degrees, palmar flexion to 80 degrees, ulnar deviation to 30degrees and radial deviation to 20 degrees. Dr. Israel stated that appellant had a healed fracture of the right distal radius of the right wrist. He further stated that there were no objective findings on examination. Dr. Israel opined that appellant's accepted employment-related condition had completely resolved. He further opined that she was

not suffering from any medical conditions at that time. Dr. Israel stated that appellant was capable of performing full-time full-duty work as a mail processor without restrictions and that no other condition prevented her from doing so. He concluded that additional orthopedic care and a functional capacity evaluation or work hardening program were not necessary.

On May 4, 2007 appellant returned to full-time limited-duty work based on Dr. Caligiuri's May 1, 2007 recommendation.

By letter dated May 25, 2007, the Office issued a notice of proposed termination of compensation based on Dr. Israel's April 27, 2007 medical opinion. It provided 30 days in which appellant could respond.

In a June 7, 2007 letter, appellant disagreed with Dr. Israel's April 27, 2007 report, but submitted no medical evidence.

By decision dated July 24, 2007, the Office terminated appellant's compensation benefits effective that date. It accorded weight to Dr. Israel's medical opinion. On August 14, 2007 appellant requested a telephonic oral hearing before an Office hearing representative.

The Office received Dr. Caligiuri's September 11, 2007 form report, which provided appellant's restrictions. Appellant also submitted a duplicate copy of Dr. Caligiuri's January 20, 2007 operative report.

By letter dated August 17, 2007, the Office informed appellant that her telephonic oral hearing would be held on December 4, 2007 at 2:00 p.m. Eastern Time. It instructed her to call the provided toll free number a few minutes before the hearing time and enter the pass code to gain access to the conference call. The letter was mailed to appellant at her address of record.

On December 4, 2007 the date of the hearing, appellant did not call the toll free number to join the telephonic hearing.

The Office received Dr. Caligiuri's October 30, 2007 progress note, which reiterated his prior opinion that appellant's right wrist was recovering satisfactorily. He stated that appellant had right radiculopathy at C7.

In a decision dated December 21, 2007, the Office found that appellant had abandoned her request for an oral hearing. It noted that she had received written notification of the hearing 30 days in advance of the hearing and had failed to appear. The Office found that there was no evidence of record that appellant contacted it, either prior or subsequent to the scheduled hearing, to explain her failure to appear.

### **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>1</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>2</sup>

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

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits based on the opinion of Dr. Israel, an Office referral physician, who reviewed a history of her employment-related fracture of the distal radius of the right wrist. Dr. Israel noted that at the time of injury appellant was working as a clerk. He reported no evidence of swelling, tenderness and synovitis of the right wrist. Dr. Israel further reported normal range of motion measurements regarding the right wrist. He opined that appellant's employment-related condition had resolved. Dr. Israel explained that there were no objective findings on examination, pointing out that the fracture of the right distal radius of the right wrist had healed and that appellant was not suffering from any related medical conditions. He concluded that appellant was able to return to full-time full-duty work as a mail processor with no restrictions.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>3</sup> Dr. Israel fully discussed the history of injury and explained that there were no objective findings to establish that appellant had any continuing employment-related residuals or disability. The Board finds that his opinion is detailed, well rationalized and based upon a complete and accurate history. The Board finds that Dr. Israel's opinion represents the weight of the medical evidence. It established that appellant no longer has any residuals or disability causally related to her employment-related fracture of the distal radius of the right wrist. The Office has met its burden of proof to terminate compensation.

Dr. Caligiuri's January 30, 2007 report stated that appellant had mild swelling over the dorsal aspect of the right wrist and hand and she had decreased active range of motion of the right wrist and elbow. He opined that she was recovering satisfactorily from her January 2, 2007 surgery, although her wound was redressed and a new coaptation splint was applied due to immobilization. Dr. Caligiuri stated that appellant could perform her usual daily activities with restrictions. However, his January 30, 2007 report was prepared two and a half weeks after the surgery and was not relevant to appellant's condition four months later, when the Office proposed termination of

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<sup>1</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>2</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>3</sup> *See Ann C. Leanza*, 48 ECAB 115 (1996).

compensation. Appellant submitted no current medical evidence prior to the July 24, 2007 termination.

### **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>4</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>5</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>6</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>7</sup>

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

Appellant submitted medical reports from Dr. Caligiuri regarding her continuing employment-related residuals or disability after March 7 and July 24, 2007. In a September 11, 2007 report, Dr. Caligiuri provided appellant's restrictions. His October 30, 2007 progress note stated that appellant's right wrist was recovering satisfactorily and that she had right radiculopathy at C7. Dr. Caligiuri did not specifically state that appellant's restrictions and cervical condition were causally related to her March 21, 2006 employment injury. The Board notes that, as the cervical condition was not accepted by the Office, appellant has the burden of proof to establish causal relationship, which she has not done. Further, Dr. Caligiuri did not state that appellant was experiencing any problems with her recovery from the employment-related right wrist injury. Moreover, he did not identify any period of total disability due to appellant's employment-related injury.

Dr. Caligiuri's January 20, 2007 operative report predates the termination of appellant's compensation and does not address the issue of whether she had any continuing employment-related residuals or disability after July 24, 2007.

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<sup>4</sup> See *Manuel Gill*, 52 ECAB 282 (2001).

<sup>5</sup> *Id.*

<sup>6</sup> *Elizabeth Stanislav*, 49 ECAB 540 (1998).

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The Board finds that appellant did not submit the necessary rationalized medical evidence to substantiate that the claimed continuing residuals or disability on or after July 24, 2007 were causally related to her accepted employment-related injury.

### **LEGAL PRECEDENT -- ISSUE 3**

Section 8124(b)(1) of the Federal Employees' Compensation Act provides:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on h[er] claim before a representative of the Secretary.”<sup>8</sup>

The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.<sup>9</sup>

Office procedures state:

“(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

“Under these circumstances, H&R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [district Office]. In cases involving prerecoupment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.

“(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H&R should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.

“This course of action is correct even if H&R can advise the claimant far enough in advance of the hearing that the request is not approved and that

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<sup>8</sup> 5 U.S.C. § 8124(b)(1).

<sup>9</sup> 20 C.F.R. § 10.616(a) (1999).

the claimant is therefore expected to attend the hearing and the claimant does not attend.”<sup>10</sup>

### **ANALYSIS -- ISSUE 3**

Appellant made her request for an oral hearing within 30 days of the Office’s July 24, 2007 decision terminating her compensation. Her request was timely and entitled her to a hearing as a matter of right. The Office notified appellant that a telephonic oral hearing was to be held on December 4, 2007 and provided a telephone number and pass code. On appeal, appellant acknowledged that she failed to attend the scheduled hearing as she did not call in on December 4, 2007. She contends that, by letter dated November 10, 2007, she advised the Office that she could not attend the December 4, 2007 hearing and that she wished to reschedule it. The Board notes that there is no copy of a November 10, 2007 letter. Further, there is no evidence of record indicating that appellant telephoned the Office within 10 days of December 4, 2007 to explain her failure to call in for the scheduled hearing. As noted, appellant must provide an explanation for her failure to appear within 10 days of the December 4, 2007 hearing. There is also no evidence that she requested a postponement.

The evidence establishes that appellant did not request a postponement of the hearing, failed to appear at the hearing and failed to provide adequate explanation for her failure to appear within 10 days. The Board therefore finds that appellant abandoned her request for a hearing in this case.

### **CONCLUSION**

The Board finds that the Office properly terminated appellant’s compensation effective July 24, 2007 on the grounds that she no longer had any residuals or disability causally related to her accepted March 21, 2006 employment injury. The Board further finds that appellant failed to establish that she had any continuing employment-related residuals or disability after July 24, 2007. Lastly, the Board finds that the Office properly found that appellant abandoned her request for a hearing.

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<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e. (January 1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 21 and July 24, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 11, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board