



October 16, 2003 due to lifting a stack of files. In mid 2004, the Office accepted that appellant sustained bilateral carpal tunnel syndrome due to performing repetitive work duties over time. Appellant stopped work for various periods and the Office paid her disability compensation.<sup>1</sup>

In September 2001, appellant began to be treated by Dr. Steven W. Hallstrom. The findings of December 10, 2003 electromyogram (EMG) and nerve conduction testing of appellant's upper extremities showed normal results with borderline prolonged right distal median motor latency. On November 4, 2004 Dr. Hallstrom stated that appellant has positive Tinsel's test bilaterally and diagnosed bilateral carpal tunnel syndrome, severe right thumb pain, left lateral epicondylitis and repetitive stress syndrome.

On January 20, 2005 Dr. Hallstrom diagnosed bilateral carpal tunnel syndrome, repetitive work syndrome, lateral epicondylitis and status postsurgery for right trigger thumb.<sup>2</sup> On May 6, 2005 he diagnosed paresthesias in both arms, bilateral positive Tinsel's tests, repetitive work syndrome and neck pain. On May 31, 2005 Dr. Hallstrom stated that when he saw appellant on April 19, 2005 she reported having paresthesias in both arms since April 15, 2005 and exhibited bilateral positive Tinsel's tests. He indicated that she was totally disabled for the period April 18 to May 9, 2005 and stated that when he saw her on April 19, 2005 he "did not feel that she could work at that time related to her employment condition, that namely being a repetitive work syndrome." On September 8, 2005 Dr. Hallstrom indicated that appellant had bilateral positive Tinsel's tests, right greater than left.

On August 21, 2005 Dr. Wayne Thompson, a Board-certified orthopedic surgeon, who served as an Office referral physician, noted on examination that appellant exhibited normal range of motion of her fingers and hands. He found that appellant did not exhibit any clinical signs of left wrist tendinitis or tendinitis of her right third and fourth fingers. Dr. Thompson stated that appellant had a positive Phalen's test on right and a negative on the left and indicated that EMG testing was normal with respect to bilateral carpal tunnel syndrome. He concluded that the work-related conditions of tendinitis of the right third and fourth fingers (sustained on September 12, 2001) and left wrist tendinitis (sustained on October 16, 2003) had resolved. Dr. Thompson indicated that appellant only had mild symptoms of carpal tunnel syndrome on the right.

The Office determined that there was a conflict in the medical evidence and referred appellant to Dr. Gary E. Wyard, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on whether she continued to have residuals of his accepted employment injuries. On February 8, 2006 Dr. Wyard detailed appellant's accepted employment injuries and noted that she complained of pain in her arms and hands. On examination appellant had normal motor and sensory testing in the upper extremities. There was no intrinsic atrophy or thenar atrophy of the hands but there was tenderness in both forearms and evidence of arthritis in both hands with joint swelling and mild subluxations. Dr. Wyard stated that appellant had a questionable positive Phalen's test on the right and noted that he did not have "any actual EMG

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<sup>1</sup> Appellant periodically returned to work in light-duty positions for the employing establishment. She generally worked for two days per week.

<sup>2</sup> On December 15, 2004 appellant underwent a surgical release of her right trigger thumb.

report available for review.”<sup>3</sup> He agreed with the findings of Dr. Thompson and concluded that the accepted conditions of tendinitis of the right third and fourth fingers and left wrist tendinitis had resolved. Dr. Wyard noted that appellant had nonwork-related degenerative disc disease of the neck and stated that she could perform her usual light-duty work on a full-time basis.

In a May 10, 2006 letter, the Office advised appellant of its proposed termination of her compensation based on the opinion of Dr. Wyard. It provided appellant 30 days to submit additional evidence if she felt the termination was unwarranted. In a June 13, 2006 letter, appellant argued that she continued to have residuals of her three accepted employment injuries.

In a June 27, 2006 decision, the Office terminated appellant’s compensation effective June 27, 2006 on the grounds that she had no residuals of her employment injuries after that date. It based its termination on the opinion of Dr. Wyard, the impartial medical specialist. The Office terminated appellant’s compensation for both wage-loss and medical benefits.

In July 2007, the Office requested that Dr. Wyard provide “medical reasoning to support your conclusion that the bilateral [carpal] tunnel syndrome has resolved.” In an August 8, 2007 report, Dr. Wyard stated that appellant did not consistently exhibit objective signs of carpal tunnel syndrome such as through positive Phalen’s tests or validation of numbness over the thumb, index, long and radial half of the ring fingers. He stated that thenar atrophy had not been documented and indicated that it was never clearly documented that appellant had carpal tunnel syndrome. Dr. Wyard stated that appellant had two EMG tests which did not show carpal tunnel syndrome and stated that it is “nearly impossible to make a diagnosis of carpal tunnel syndrome without a positive EMG.”

In a September 14, 2007 decision, the Office affirmed its June 27, 2006 termination decision.

### **LEGAL PRECEDENT**

Under the Federal Employees’ Compensation Act,<sup>4</sup> once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>5</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>6</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup>

Section 8123(a) of the Act provides in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee,

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<sup>3</sup> Dr. Wyard indicated that other physicians had mentioned that appellant had normal EMG findings.

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>6</sup> *Id.*

<sup>7</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

the Secretary shall appoint a third physician who shall make an examination.”<sup>8</sup> In situations where there exist 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 upon a proper factual background, must be given special weight.<sup>9</sup>

### ANALYSIS

The Office accepted that on September 12, 2001 appellant, then a 54-year-old personal assistant, sustained traumatic tendinitis of her right third and fourth fingers when she caught her right hand in a file cabinet. It also accepted that she sustained left wrist tendinitis on October 16, 2003 due to lifting a stack of files. In mid 2004, the Office accepted that appellant sustained bilateral carpal tunnel syndrome due to performing her repetitive work duties over time. The Office terminated appellant’s compensation effective June 27, 2006 on the grounds that she had no residuals of her employment injuries after that date. It based its termination on the February 8, 2006 report of Dr. Wyard, a Board-certified orthopedic surgeon who served as an impartial medical specialist.

The Office properly determined that there was a conflict in the medical opinion between Dr. Thompson, a Board-certified orthopedic surgeon acting as an Office referral physician, and Dr. Hallstrom, an attending Board-certified family practitioner, on the issue of whether appellant continued to have residuals of her employment injuries.<sup>10</sup> In order to resolve the conflict, it properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Wyard for an impartial medical examination and an opinion on the matter.<sup>11</sup>

The Board finds that the February 8, 2006 report of Dr. Wyard is not sufficiently rationalized to constitute the weight of the medical evidence regarding the question of whether appellant continued to have residuals of her employment injuries.<sup>12</sup> In his February 8, 2006 report, Dr. Wyard indicated that appellant had some normal findings on examination including normal motor and sensory testing in the upper extremities and the lack of intrinsic atrophy or thenar atrophy of the hands. However, he also reported tenderness in both forearms, a questionable positive Phalen’s test on the right and evidence of arthritis in both hands with joint swelling and mild subluxations. Dr. Wyard concluded that the accepted conditions of tendinitis of the right third and fourth fingers and left wrist tendinitis had resolved but he did not provide any explanation for this opinion. He did not explain why appellant exhibited tenderness in her

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<sup>8</sup> 5 U.S.C. § 8123(a).

<sup>9</sup> *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

<sup>10</sup> On August 21, 2005 Dr. Thompson concluded that the work-related conditions of tendinitis of the right third and fourth fingers and left wrist tendinitis had resolved and that appellant only had mild symptoms of carpal tunnel syndrome on the right. In contrast, Dr. Hallstrom indicated in reports dated between late 2004 and late 2005 that appellant continued to have employment-related bilateral carpal tunnel syndrome.

<sup>11</sup> *See supra* note 8 and accompanying text.

<sup>12</sup> *See supra* note 9 and accompanying text.

arms or explain when he felt the accepted tendinitis conditions had resolved.<sup>13</sup> In addition, Dr. Wyard did not provide a clear opinion that appellant did not have any residuals of bilateral carpal tunnel syndrome.<sup>14</sup> He indicated that other physicians had mentioned that appellant had normal EMG findings, but he acknowledged that he did not have “any actual EMG report available for review.

After the June 27, 2006 termination of appellant’s compensation, the Office requested that Dr. Wyard provide “medical reasoning to support your conclusion that the bilateral [carpal] tunnel syndrome has resolved.” In an August 8, 2007 report, Dr. Wyard stated that appellant did not consistently exhibit objective signs of carpal tunnel syndrome such as through positive Phalen’s tests or validation of numbness over the thumb, index, long and radial half of the ring fingers. He stated that appellant had two EMG tests which did not show carpal tunnel syndrome and stated that it is “nearly impossible to make a diagnosis of carpal tunnel syndrome without a positive EMG.”

The Board notes that Dr. Wyard’s provision of additional medical opinion in August 2006 did not cure the deficiencies in the medical evidence at the time of the termination of appellant’s compensation in June 2006. The Office has the responsibility to present evidence supporting termination of compensation at the time the termination is effectuated. For these reasons, it did not meet its burden of proof to terminate appellant’s compensation effective June 27, 2006.

### **CONCLUSION**

The Board finds that the Office did not meet its burden of proof to terminate appellant’s compensation effective June 27, 2006 on the grounds that she had no residuals of her employment injuries after that date.

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<sup>13</sup> Dr. Wyard indicated that appellant had swelling in her hands but did not explain why he felt it was due to arthritis rather than due to a work-related condition.

<sup>14</sup> Dr. Wyard did not indicate why he felt that appellant had a questionable positive Phalen’s test on the right.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' September 14, 2007 decision is reversed.

Issued: October 3, 2008  
Washington, DC

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

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

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