

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

T.G., Appellant	)	
	)	
and	)	<b>Docket No. 10-118</b>
	)	<b>Issued: October 1, 2010</b>
<b>DEPARTMENT OF THE NAVY, MILITARY</b>	)	
<b>SEALIFT COMMAND, Oakland, CA, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 16, 2009 appellant filed a timely appeal from a July 16, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office met its burden of proof to terminate compensation for wage loss effective May 10, 2009.

**FACTUAL HISTORY**

The case was before the Board on a prior appeal. By decision dated March 9, 1998, the Board found that appellant's May 15, 1995 occupational disease claim was timely filed.<sup>1</sup> Following development of the evidence, the Office accepted the claim for right carpal tunnel syndrome. Appellant received compensation based on a loss of wage-earning capacity as determined by actual earnings in private employment.<sup>2</sup> On July 25, 2007 he underwent a right

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<sup>1</sup> Docket No. 96-1256 (issued March 9, 1998).

<sup>2</sup> Appellant worked in federal employment as an able-bodied seaman, resigning in April 1993.

carpal tunnel release surgery, performed by Orthopedic Surgeon Dr. Robert Bowles. The Office placed appellant on the periodic rolls and he began receiving compensation for temporary total disability.

In a work capacity evaluation (Form OWCP-5c) dated December 5, 2007, Attending Osteopath Dr. Karynn Lindsey indicated appellant could work eight hours with restrictions, including no repetitive wrist or elbow movements and a 20-pound lifting restriction. In an OWCP-5c form dated February 7, 2008, Dr. Bowles checked boxes “yes” that appellant could perform his usual job and had reached maximum medical improvement. He noted a 10 percent right arm impairment and, with respect to specific limitations, stated “no limitations.”

By letter dated April 10, 2008, the Office requested that Dr. Lindsey provide an opinion regarding appellant’s work capacity. In a letter dated April 3, 2009, it notified appellant that it proposed to terminate compensation for wage loss. The Office stated that the February 7, 2008 form report from Dr. Bowles was the basis for the termination and appellant was advised to submit relevant evidence within 30 days.

By decision dated May 7, 2009, the Office terminated wage-loss compensation effective May 10, 2009. Appellant requested reconsideration of his claim. He submitted a May 13, 2009 report from Dr. Richard Gordon, who noted appellant complained of numbness and tingling of his hands. Dr. Gordon diagnosed moderate right and severe left carpal tunnel syndrome.

In a decision dated July 16, 2009, the Office reviewed the merits of the claim and denied modification of the termination decision.

### **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.<sup>3</sup>

The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.<sup>4</sup> A rationalized medical opinion is an opinion based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale.<sup>5</sup>

### **ANALYSIS**

The Office based its termination of wage-loss compensation on the February 7, 2008 OWCP-5c report from Dr. Bowles, who performed the July 2007 carpal tunnel release. Dr. Bowles did not provide a history or results on examination. On the form report, Dr. Bowles

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<sup>3</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

<sup>4</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

<sup>5</sup> *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

checked a box “yes” that appellant was capable of performing his regular job and wrote “no limitations” without further explanation.

As noted above, a rationalized medical opinion is one based on a complete factual and medical background and supported by medical rationale. Dr. Bowles did not provide a complete factual and medical background or a rationalized medical opinion on the issue presented.<sup>6</sup> It is the Office’s burden of proof to terminate compensation for wage loss, and the Office cannot meet its burden with an unrationalized medical report that is of little probative value. The weight of medical evidence, as discussed above, is based on its convincing quality and the care of the analysis manifested. The Board finds that the evidence of record is not sufficient to meet the Office’s burden of proof to terminate compensation for wage loss effective May 10, 2009.

**CONCLUSION**

The Board finds that the Office did not meet its burden of proof to terminate compensation for wage loss effective May 10, 2009.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers’ Compensation Programs dated July 16 and May 7, 2009 are reversed.

Issued: October 1, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

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

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<sup>6</sup> It is well established that a checkmark “yes” on a form question is of diminished probative value. *Cecilia M. Corley*, 56 ECAB 662 (2005).