

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. The facts as set forth in the Board's prior decision are hereby incorporated by reference. The relevant facts are hereinafter set forth. OWCP accepted that appellant, then a 48-year-old keyer, sustained carpal tunnel syndrome causally related to factors of her federal employment. She had surgery for left carpal tunnel release on September 14, 2006 and right carpal tunnel release on February 2, 2009. On July 23, 2009 appellant accepted a limited-duty position with the employing establishment. In a decision dated May 14, 2012, the Board affirmed a March 10, 2011 decision of an OWCP hearing representative, denying her claim for total disability from July 10 to October 26, 2010.²

Based on the opinion of Dr. Wayne J. Altman, a Board-certified orthopedic surgeon, who conducted a second opinion and concluded that appellant's carpal tunnel syndrome had totally resolved, on August 31, 2010, OWCP issued a notice proposing termination of medical benefits and compensation for wage loss for the reason that appellant had no residuals or disability related to the accepted work injury of bilateral carpal tunnel syndrome. OWCP determined that Dr. Altman's opinion was entitled to more weight than the opinion of appellant's treating Board-certified physiatrist, Dr. Mark A.P. Filippone, who opined that appellant continued to have residuals from her accepted injury and continued to prescribe work restrictions related to that injury.

OWCP finalized the termination of medical and wage-loss compensation benefits in a decision dated October 18, 2010.

Appellant requested an oral hearing which was held before an OWCP hearing representative on February 24, 2011. She described her injuries, the tasks of her limited duty position and her medical treatment. In a decision dated March 10, 2011, the hearing representative held, in pertinent part, that the reports of Dr. Altman were not based on a correct factual or medical background and did not specifically address all of the pertinent medical evidence. The hearing representative further found that there remained an unresolved conflict in medical opinion. Accordingly, he reversed the termination decision in its entirety.

On March 29, 2011 OWCP referred appellant to Dr. Andrew Carollo, a Board-certified orthopedic surgeon, for an impartial medical examination. In an April 21, 2011 report, Dr. Carollo opined that appellant was doing extremely well with the carpal tunnel releases. He noted no objective evidence of a residual disability involving either hand. Dr. Carollo noted that appellant demonstrated excellent strength of grip as well as excellent strength of pinch involving both hands. He stated that there are no motor or sensory deficits involving either wrist and that there was a negative Tinel's sign present bilaterally. Dr. Carollo opined that appellant had reached maximum medical improvement with regard to bilateral carpal tunnel syndrome and stated that he saw no need for any additional treatment or any additional diagnostic measures to be taken with regard to either hand. He opined that, based exclusively on examination for carpal tunnel syndrome, appellant should be able to return to work on an unrestricted basis.

² Docket No. 11-1576 (issued May 14, 2012).

In a May 12, 2011 report, Dr. Filippone disputed that appellant could return to work with regard to her bilateral carpal tunnel syndrome. He noted bilaterally positive Tinel's and Phalen's signs. Dr. Filippone also conducted new electromyography studies and concluded that they showed evidence of bilateral carpal tunnel syndrome and of a left C5-6 cervical radiculopathy but no electrical evidence of suggestions of any systemic neuromuscular diseases. He opined that these abnormalities were all consistent with the history and physical presentation and, in his opinion, were directly and solely the result of injuries sustained while working for the employing establishment.

By decision dated August 17, 2011, OWCP terminated appellant's medical and wage-loss compensation benefits effective that date for the reason that appellant did not have any residual impairment traceable to factors of employment; that any work limitation in effect was not due to any job-related condition; and that the weight of the medical evidence established that appellant's injury-related condition had ended.

After this decision, appellant submitted a July 18, 2011 report wherein Dr. Filippone continued to opine that appellant had residuals from her carpal tunnel syndrome.

On August 22, 2011 appellant, through counsel, requested a hearing. By letter dated December 8, 2011, appellant's counsel requested that this be changed to a review of the written record.

By decision dated February 28, 2012, the hearing representative affirmed the August 17, 2011 termination of benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.⁵

Section 8123(a) of FECA provides in pertinent part: if there is 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.⁶ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of

³ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁵ *M.D.*, Docket No. 11-1737 (issued April 3, 2012); *Calvin S. Mays*, 39 ECAB 993 (1988).

⁶ 5 U.S.C. § 8123(a); *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.⁷

ANALYSIS

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome. It terminated her compensation effective August 17, 2011 as it found that she had no residuals from the accepted employment injury.

There was a conflict in medical opinion evidence between appellant's treating physician, Dr. Filippone, and the second opinion physician, Dr. Altman, with regard to whether appellant had any residuals from the accepted injury. Therefore, the Board finds that OWCP properly referred appellant to Dr. Carollo to resolve the conflict, pursuant to 5 U.S.C. § 8123(a). Dr. Carollo opined in an April 21, 2011 report that appellant was doing extremely well with her carpal tunnel releases and had no objective evidence of a residual disability involving either hand. He based his conclusion on appellant's excellent grip and pinch strength, the fact that there were no motor or sensory deficits involving either wrist and the fact that there was a negative Tinel's sign present bilaterally. Dr. Carollo saw no need for any additional treatment and stated that appellant should be able to return to work on an unrestricted basis based on the accepted condition.

The Board finds that OWCP properly relied upon the well-rationalized report of Dr. Carollo who carefully documented appellant's findings on physical examination and determined that appellant no longer had any disability due to his accepted condition of carpal tunnel syndrome; accordingly OWCP properly terminated appellant's wage-loss compensation benefits. Dr. Carollo also noted that he saw no need for any further medical treatment for this condition; therefore OWCP properly terminated medical benefits. As noted, when a case is referred to an impartial medical examiner to resolve a conflict, the resulting medical opinion, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸ Although subsequent reports and tests by Dr. Filippone indicated that appellant had residuals and disability related to her accepted condition of bilateral carpal tunnel syndrome, additional reports from a physician who had been on one side of the original conflict in medical opinion are typically insufficient to overcome the special weight of the impartial medical specialist or to create a new conflict.⁹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁷ V.G., 49 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

⁸ *M.P.*, Docket No. 12-669 (issued October 10, 2012); *see also Gary R. Sieber*, *supra* note 7.

⁹ *Nancy Keenan*, 56 ECAB 687 (2005); *Roger W. Griffith*, 51 ECAB 491 (2000); *Talmadge Miller*, 47 ECAB 673 (1996).

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective August 17, 2011.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 28, 2012 is affirmed.

Issued: February 22, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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