

injury, he worked part-time limited duty as a result of a May 2, 1993 injury, accepted by OWCP for brachial neuritis and neck sprain under file number xxxxxx328. Appellant stopped work on November 9, 2010 after the employing establishment withdrew his employment under the National Reassessment Program (NRP). OWCP paid him compensation for total disability beginning December 10, 2010.

On July 21, 2011 OWCP referred appellant to Dr. Stanley Askin, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated August 12, 2011, Dr. Askin diagnosed continued carpal tunnel syndrome that had not been adequately treated. He found no evidence of brachial neuritis and neck sprain. Dr. Askin opined that appellant could return to his regular employment duties.

On September 1, 2011 Dr. Jennifer Chu, a Board-certified physiatrist, discussed appellant's symptoms of bilateral hand numbness and tingling. On examination, she found weakness in the hands, fingers, forearms and wrists bilaterally and reduced motion of the neck. Dr. Chu diagnosed an aggravation of bilateral carpal tunnel syndrome and found that the results of electrical stimulation "also indicate presence of active ongoing muscle spasms due to aggravation of the carpal tunnel syndrome when he fell on his forearms at work on August 14, 2007." She found that appellant was unable to return to his regular employment as a result of his carpal tunnel syndrome.

In an addendum dated September 28, 2011, Dr. Askin found that any employment-related aggravation of carpal tunnel syndrome had ceased based on the fact that appellant had "not worked in such a long time...." He also noted that appellant might have diabetic neuropathy.

By decision dated December 1, 2011, OWCP terminated appellant's compensation effective December 1, 2011. It found that the medical evidence established that he had no disability or condition resulting from his August 14, 2007 employment injury.

On December 6, 2011 appellant's attorney requested an oral hearing before an OWCP hearing representative.

In a report dated December 14, 2011, Dr. Chu reviewed Dr. Askin's report and disagreed with his finding that appellant's current condition of carpal tunnel syndrome was unrelated to the August 14, 2007 employment injury. She found that appellant had continued brachial neuritis due to a May 2, 1993 work injury. Dr. Chu asserted that he could not work full time or perform his usual work duties.

Following a preliminary review, in a decision dated February 14, 2012, OWCP's hearing representative vacated the December 1, 2011 decision. She found that a conflict in medical opinion arose between Dr. Askin and Dr. Chu regarding whether appellant had further residuals of either his August 14, 2007 or 1993 employment injuries. On remand, the hearing representative instructed OWCP to combine the 1993 and 2007 claims and amend the statement of accepted facts to show that it had not accepted a 1995 claim for carpal tunnel syndrome. She instructed OWCP to determine whether appellant had any residuals of either the 1993 or 2007 work injury.

On June 18, 2012 OWCP referred appellant to Dr. Gregory Maslow, a Board-certified orthopedic surgeon, for an impartial medical examination. It asked Dr. Maslow to address

whether appellant had any continuing condition due to either his 1993 or 2007 employment injuries.

In a report dated July 25, 2012, Dr. Maslow discussed appellant's complaints of hand pain on both sides with numbness, cramping and tingling. On examination, he found tenderness "even to sometimes very light palpation." Dr. Maslow found a full range of motion of the wrist without crepitus but symptoms of pain and a negative Phalen's test and Tinel's sign at the wrists and elbows. He reviewed the medical records and diagnosed multiple contusions. Dr. Maslow stated:

"It is my opinion that there is absolutely no evidence that [appellant] suffered injury to his wrists or hands on August 14, 2007. It is further my opinion within reasonable medical probability, that [he] did not suffer any aggravation of preexistent carpal tunnel syndrome on August 14, 2007. I do not see any evidence that [he] suffered any aggravation of what had been thought to be a preexistent cervical radiculitis problem on August 14, 2007.

"It is my opinion that [appellant] did not suffer any significant injury at all on August 14, 2007. It is further my opinion that there is no evidence that any injury on August 14, 2007 changed his work status, and it is my opinion that based on today's examination he is perfectly capable of employment as a mail handler without any restrictions imposed by the August 14, 2007 event."

Dr. Maslow concluded that appellant did not sustain carpal tunnel syndrome due to his August 14, 2007 employment injury. On examination he had a negative Tinel's sign and Phalen's test, no atrophy and no hypesthesia in the median nerve distribution. Dr. Maslow noted that, while objective studies had demonstrated "severe median nerve abnormality" of the wrists, these conditions were present prior to the August 14, 2007 incident. He stated:

"It is my opinion that [appellant] should have had a surgical release of the carpal tunnel on both sides long ago for his complaints. Now his complaints are diffuse and I do not feel that any definite intervention is warranted based on today's clinical examination."

By decision dated August 13, 2012, OWCP terminated appellant's compensation effective August 13, 2012 based on its finding that Dr. Maslow's opinion represented the weight of the evidence and established that he had no further residuals of his employment injury.

On August 16, 2012 appellant, through his attorney, requested an oral hearing. Following a preliminary review, by decision dated October 11, 2012, an OWCP hearing representative vacated the August 13, 2012 decision. She determined that OWCP should have issued another proposed termination of compensation prior to terminating compensation benefits.

On December 13, 2012 OWCP advised appellant that it proposed to terminate his compensation and authorization for medical benefits based on the report of Dr. Maslow, the impartial medical examiner. In a December 26, 2012 response, counsel asserted that Dr. Maslow's opinion was not in accordance with the statement of accepted facts. He further noted that appellant was working limited duty at the time of his August 14, 2007 work injury.

On January 2, 2013 Dr. Chu submitted a progress report and diagnosed an aggravation of bilateral carpal tunnel syndrome. In a report dated January 9, 2013, she disagreed with Dr. Maslow's findings, noting that there were objective findings of numbness and loss of strength with weakness and tightness of the fingers and spasm of the trapezius muscles. Dr. Chu stated, "[appellant] still continues to suffer from an aggravation of his underlying carpal tunnel syndrome secondary to the fall on August 14, 2007. This fall initiated and aggravated the myofascial pain syndrome by causing ongoing irritation on chronic involvement of multiple cervical nerve roots." Dr. Chu advised that appellant was unable to undergo surgery due to his diabetes. She found that appellant could work with restrictions.

On January 14, 2013 OWCP accepted appellant's claim for an aggravation of carpal tunnel syndrome bilaterally. It requested that Dr. Maslow address whether he agreed with the diagnosis and whether the condition continued. On January 31, 2013 OWCP again advised Dr. Maslow that it had factually accepted the existence of an aggravation of carpal tunnel syndrome and requested that he provide a supplemental opinion on whether the condition continued and complete a work restriction evaluation.

In a work restriction evaluation dated February 9, 2013, Dr. Maslow found that appellant had no limitations and could resume his regular employment. He indicated that another factor to be considered in identifying an appropriate position was a "prior neck injury."

By letter dated February 28, 2013, OWCP requested that Dr. Maslow review and comment on Dr. Chu's January 2 and 9, 2013 reports. On March 8, 2013 Dr. Maslow related that it "would be extremely difficult to aggravate any preexistent carpal tunnel syndrome by falling on the forearms." He disagreed with Dr. Chu's finding that appellant was disabled, noting that his examination showed a negative Tinel's sign and Phalen's test.

In a decision dated March 19, 2013, OWCP terminated appellant's compensation effective that date after finding that the weight of the evidence established that he had no further disability or condition due to his August 14, 2007 employment injury.

On March 22, 2013 appellant, through his attorney, requested an oral hearing. At the hearing, held on July 17, 2013, counsel noted that appellant was a poor surgical candidate for carpal tunnel releases due to his diabetes. He questioned Dr. Maslow's diagnosis of multiple contusions and asserted that it was inconsistent with the statement of accepted facts and OWCP's acceptance of the claim for an aggravation of bilateral carpal tunnel syndrome.

In a decision dated October 21, 2013, OWCP's hearing representative affirmed the March 19, 2013 decision.

On appeal, counsel contends that Dr. Maslow's opinion is outside the statement of accepted facts as he disagreed with OWCP's acceptance that appellant sustained an aggravation of carpal tunnel syndrome due to his August 14, 2007 work injury. He further notes that Dr. Maslow did not address the fact that appellant was not performing his regular employment duties at the time of his August 2007 injury. Counsel also indicates that Dr. Maslow's report is inconsistent as he found no carpal tunnel syndrome but also indicated that he should have had carpal tunnel releases.

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.² 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.³ Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁴ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

Section 8123(a) of FECA provides that, 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 When 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.⁷

OWCP's procedure manual provides as follows:

“When the DMA [district medical adviser], second opinion specialist or referee physician renders a medical opinion based on a SOAF [statement of accepted facts] which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.”⁸

ANALYSIS

OWCP accepted that appellant sustained an aggravation of bilateral carpal tunnel syndrome as the result of an August 14, 2007 employment injury. At the time of his injury, appellant was working limited duty as the result of a May 2, 1993 employment injury, accepted by OWCP for brachial neuritis and cervical strain. In a decision dated February 14, 2012, an OWCP hearing representative determined that a conflict arose between Dr. Chu, appellant's attending physician, and Dr. Askin, an OWCP referral physician, regarding whether he had any

² *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

³ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁴ *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁵ *Id.*

⁶ 5 U.S.C. § 8123(a).

⁷ *David W. Pickett*, 54 ECAB 272 (2002); *Barry Neutuch*, 54 ECAB 313 (2003).

⁸ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600(3) (October 1990).

further employment-related disability or condition. She instructed OWCP to combine the case records for the 1993 and 2007 injury and refer appellant for an impartial medical examiner to determine the extent of any employment-related condition or disability due to either injury.

OWCP referred appellant to Dr. Maslow, a Board-certified orthopedic surgeon, for an impartial medical examination.

When there exists a conflict in medical opinion 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.⁹ OWCP provided Dr. Maslow with a statement of accepted facts stating that it accepted an aggravation of bilateral carpal tunnel syndrome due to the August 14, 2007 employment injury. In a report dated July 25, 2012, Dr. Maslow found that appellant had a negative Phalen's test and Tinel's sign at the wrists and elbows. He diagnosed multiple contusions as a result of the August 14, 2007 employment injury. Dr. Maslow opined that appellant did not sustain an aggravation of bilateral carpal tunnel syndrome due to his work injury on August 14, 2007. He further noted that appellant should have undergone carpal tunnel release long ago. Dr. Maslow advised that he could resume his usual employment. In a work restriction evaluation dated February 9, 2013, he listed no physical limitations but noted that appellant's previous neck injury was a factor to be considered in finding an appropriate position.

The Board finds that the opinion of Dr. Maslow is not entitled to special weight as it is outside of the statement of accepted facts. Dr. Maslow did not conclude that appellant had no further disability or residuals of his aggravation of carpal tunnel syndrome but instead found that he did not experience such an injury on August 14, 2007. In letters dated January 14 and 31, 2013, OWCP advised Dr. Maslow that it had accepted appellant's claim for an aggravation of bilateral carpal tunnel syndrome and requested that he address whether he agreed with the diagnosis and whether the condition continued; however, he did not respond to OWCP's requests. To the extent that Dr. Maslow's opinion is outside the framework of the statement of accepted facts, it is based on an inaccurate factual history and insufficient to meet OWCP's burden of proof.¹⁰ He did not address, as requested by OWCP, whether appellant had any continued residuals from his May 2, 1993 work injury of brachial neuritis and neck sprain.

OWCP did not indicate whether it was attempting to rescind acceptance of appellant's aggravation of bilateral carpal tunnel syndrome based on Dr. Maslow's report. It did not notify him that it was contemplating rescission or actually rescind acceptance of the aggravation of bilateral carpal tunnel syndrome in its termination decision. OWCP must inform a claimant correctly and accurately of the grounds on which a rejection rests so as to afford the claimant an opportunity to meet, if possible, any defect appearing therein.¹¹ It may not find that residuals of an employment injury have ceased by a particular date when the evidence upon which the decision rests tends to support that, in fact, the injury never occurred.¹² Accordingly, the Board

⁹ See *R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

¹⁰ See *T.F.*, Docket No. 12-209 (issued June 18, 2012).

¹¹ See *John M. Pittman*, 7 ECAB 514 (1955).

¹² See *T.F.*, Docket No. 12-209 (issued June 18, 2012); *John L. Hofmann*, Docket No. 04-1802 (issued November 22, 2004).

finds that OWCP did not meet its burden of proof to terminate appellant's compensation benefits.

CONCLUSION

The Board finds that OWCP improperly terminated appellant's compensation benefits effective March 19, 2013 on the grounds that he had no further residuals of his August 14, 2007 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2013 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 8, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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