

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOBIE S. HUDGINS and DEPARTMENT OF AGRICULTURE,
FSIS, Stafford Springs, CT

*Docket No. 97-980; Submitted on the Record;
Issued July 23, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly met its burden to terminate appellant's benefits effective January 8, 1997; (2) whether the Office properly denied appellant's request for reconsideration in its January 27, 1997 decision; and (3) whether the Office properly calculated appellant's schedule award at a 10 percent permanent impairment of each upper extremity.

On March 25, 1994 appellant, then a 47-year-old food inspector, filed a notice of traumatic injury alleging that he injured his neck, back and spine on that same date in the course of his federal employment. The Office accepted this claim for a cervical strain on August 18, 1994. On June 8, 1994 appellant filed a notice of occupational disease alleging that he developed carpal tunnel syndrome in both his hands and wrists in the course of his federal employment. On July 13, 1994 the Office accepted the claim for bilateral carpal tunnel and subsequent bilateral surgery. Appellant underwent a right carpal tunnel release on August 3, 1994 and a left carpal tunnel release on August 23, 1994. The Office combined appellant's claims and appropriate compensation was paid. Appellant subsequently filed a claim for a schedule award.

On August 2, 1995 the Office medical adviser stated that since the evidence of record established that appellant's carpal tunnel syndrome had resolved, there was no ratable impairment due to the condition.

By decision dated August 30, 1995, the Office rejected appellant's claim for a schedule award because the evidence failed to establish a permanent ratable disability from the June 2, 1994 injury.

On September 27, 1995 Dr. Joseph A. Veneziano, appellant's treating physician and a Board-certified orthopedic surgeon, indicated that appellant had a five percent permanent disability secondary to persistent tenderness over the left wrist scar.

By decision dated March 20, 1996, the Office hearing representative found that a conflict existed between the August 2, 1995 opinion of the Office medical adviser, stating that appellant did not have any permanent impairment in his arms and the September 27, 1995 opinion of Dr. Veneziano, appellant's treating physician, stating that appellant had a five percent permanent impairment of the left upper extremity secondary to persistent tenderness over the left wrist scar. The hearing representative, therefore, vacated the Office's August 30, 1995 decision and remanded the case for the Office to obtain a referee opinion to resolve the conflict.

The Office subsequently referred appellant to Dr. Juan J. Capello, a Board-certified orthopedic surgeon, for a referee examination.

On August 5, 1996 Dr. Capello provided his referee opinion. Dr. Capello examined appellant on July 1, 1996 and noted his complaints of stabbing pain in the bilateral wrists, hands and fingers. Dr. Capello noted the injuries appellant sustained on March 25, 1994 and June 2, 1994. He mistakenly indicated that the March 25, 1994 injury was not accepted as employment related. Dr. Capello noted that surgeries appellant received in August 1994 consisted of bilateral carpal tunnel releases. On examination, Dr. Capello noted decreased sensation over the left little finger to sharpness. He found no tenderness or deformity. He stated that range of motion was normal, passive and active. Dr. Capello found that a two-point discrimination was normal. He stated that the motor examination was normal bilaterally; no thenar atrophy noted. He stated that sensation was decreased in all fingers. Dr. Capello stated that appellant's x-rays were normal. He indicated that appellant had no complaints relating to his March 25, 1994 back and neck injury. Dr. Capello stated that appellant's symptoms of numbness in the fingers did not relate to his carpal tunnel entrapment, but to diabetic neuropathy. He stated, however, that the symptoms may be related to appellant's cervical disc problems which Dr. Capello again erroneously stated were not accepted as employment related. Dr. Capello indicated that this could be determined by magnetic resonance imaging. He stated, however, that he did not evaluate appellant relative to his neck. Dr. Capello noted that pursuant to his functional capacity examination appellant was disabled secondary to his wrist problem. He stated, however, that manual testing of the upper extremities found the muscles to be within normal limits and no atrophy was noted. Dr. Capello also stated that appellant did not provide maximum effort on the functional capacities examination and that the therapist administering the test stated that appellant demonstrated inappropriate illness behavior. He noted a discrepancy between normal Jamar strength testing performed in 1995 and testing done by his therapist which revealed significant weakness. Dr. Capello stated that there were inconsistencies in appellant's sensory complaints since his two-point discrimination test was normal. He also stated that appellant's complaints of weakness were not supported by his physical examination. He further stated that appellant's disability in his hands could be due to diabetic neuropathy or a cervical disc problem. Dr. Capello stated that appellant's impairment could very well be secondary to lack of maximum effort. He opined that some of the complaints and symptoms were not substantiated by the objective findings. Dr. Capello concluded that, after subtracting for appellant's lack of effort, appellant had a 15 percent impairment of the whole person. On the function capacity evaluation, it was indicated that appellant had significant scar tissue over the bilateral wrist incisions.

On August 21, 1996 the Office medical adviser reviewed Dr. Capello's report and indicated that the nature and magnitude of any carpal tunnel syndrome condition or residual was not substantiated or established. The medical adviser noted that Dr. Capello failed to describe objective findings on examination and failed to indicate the specific anatomic region reviewed on x-ray. The medical adviser indicated that Dr. Capello failed to note appellant's surgical scars in his report. The medical adviser noted, however, that because Dr. Capello failed to find any objective findings on examination such as muscle atrophy, sensory impairment, or range of motion, that his opinion failed to support any continuing impairment given that appellant had surgical releases for his carpal tunnel syndrome.

On September 26, 1996 the Office medical adviser indicated that prior to the referee examination performed on July 1, 1996 appellant had surgery for bilateral carpal tunnel syndrome, but that objective findings of the condition were sparse. Pursuant to Table 116, page 57, of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition), for a median nerve entrapment at the wrist of a mild degree of severity there is a 10 percent impairment for each upper extremity.

On October 28, 1996 the Office issued a "Notice of Proposed Termination of Compensation and Medical Benefits." The Office indicated that disability resulting from job injuries had ceased. In an accompanying memorandum, the Office indicated that the opinion of Dr. Capello, the referee examiner, constituted the weight of the evidence. Appellant was given 30 days to submit additional evidence and argument.

By decision dated October 29, 1996, the Office awarded appellant a schedule award for a 10 percent permanent disability for both the right and left upper extremity.

By decision dated January 8, 1997, the Office terminated compensation because the evidence failed to establish that appellant was entitled to continuing medical benefits or workers' compensation benefit payments for continuing disability for either injury. In an accompanying memorandum, the Office indicated that it relied on the weight of the opinion of Dr. Capello, the referee examiner, who opined that there were no objective symptoms of disability.

On January 27, 1997 appellant requested reconsideration.

By decision dated February 3, 1997, the Office indicated that appellant's letter neither raised substantial legal questions nor included new and relevant evidence. It, therefore, found the request insufficient to warrant a review of its prior decision.

The Board initially finds that the Office failed to meet its burden to terminate appellant's benefits effective January 8, 1997.

In the present case, the Office based its January 8, 1997 decision terminating compensation and medical benefits on the report of Dr. Capello, a Board-certified orthopedic surgeon selected to resolve the conflict in the medical evidence on whether appellant had any permanent impairment in his upper extremities. The Office subsequently rejected appellant's request for reconsideration of its January 8, 1997 decision in a decision dated February 3, 1997.

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 on a proper factual background, must be given special weight.¹ The Board finds, however, that Dr. Capello's medical opinion is not well rationalized and is not entitled to special weight.

In his August 5, 1996 opinion, Dr. Capello found that appellant had a 15 percent impairment of the whole person due to his wrist conditions after allowing for appellant's lack of effort in testing. He stated that some of appellant's complaints were not supported by his objective findings. He further stated that some of appellant's problems could be attributed to diabetic neuropathy or a cervical disc problem. Dr. Capello was unaware that appellant's claim for a cervical sprain had been accepted and combined with this claim. Dr. Capello noted that he found no evidence of muscle atrophy, sensory impairment, or decrease in range of motion. The Office medical adviser reviewing Dr. Capello's report indicated that he failed to adequately describe these objective findings and his conclusion that appellant's x-rays were normal. The medical adviser also indicated that Dr. Capello failed to note appellant's surgical scars in his report although they were mentioned in his functional capacity evaluation.

Because Dr. Capello concluded that appellant had some impairment due to his wrist conditions while indicating that all the objective testing failed to support such a conclusion, his opinion on whether appellant has any residuals from his accepted injuries is equivocal. Moreover, as the Office medical adviser indicated, Dr. Capello failed to adequately describe his objective findings. He was also unaware that appellant had a previous claim accepted for cervical strain and that the claim had been combined with the claim for bilateral carpal tunnel syndrome. Accordingly, because Dr. Capello's opinion is not well rationalized and is not based on a proper factual background the Office erred in relying on this opinion to terminate appellant's benefits.² The Office, therefore, failed to meet its burden to terminate appellant's benefits effective January 8, 1997 and its decision dated January 8, 1997 is reversed.³

The Board further finds that the Office improperly calculated appellant's schedule award at a 10 percent permanent impairment of each upper extremity.

In its decision dated October 29, 1996, the Office awarded appellant a schedule award for a 10 percent permanent disability of both the right and left upper extremity. In reaching this determination, the Office relied on its medical adviser's September 26, 1996 opinion which indicated that pursuant to Table 116, page 57, of the A.M.A., *Guides* for a median nerve entrapment at the wrist of a mild degree of severity there is a 10 percent impairment for each upper extremity. The Office medical adviser, however, relied on the findings and opinion of Dr. Capello, the referee examiner, in determining the extent of appellant's impairment. As previously established, Dr. Capello's opinion was neither well rationalized nor based on a proper

¹ *Terrance R. Stath*, 45 ECAB 412 (1994); *James P. Roberts*, 31 ECAB 1010 (1980).

² *Id.*

³ In light of the Board's reversal of the Office's January 8, 1997 decision terminating benefits, it need not address the Office's January 27, 1997 decision in which it denied appellant's request for reconsideration of that decision.

factual background. In fact, the Office medical adviser noted that Dr. Capello failed to describe his objective findings. The Office, therefore, erred in issuing a schedule award based on an incomplete medical report of the impartial medical specialist.⁴ When the Office secures an opinion from an impartial medical specialist and the opinion of the specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report. The decision of the Office dated October 29, 1996 is therefore set aside and this case is remanded for further development by referring the case to Dr. Capello for a clarifying report. If Dr. Capello is unable to clarify or elaborate on his original report or if the supplemental report is also vague, speculative, or lacks rationale, the Office must refer appellant to a second impartial specialist for a rationalized medical report on the issue in question.⁵

Accordingly, the decisions of the Office of Workers' Compensation Programs dated February 3 and January 8, 1997 are reversed and the decision of the Office dated October 29, 1996 is set aside and the case remanded for further development as set forth in this decision.

Dated, Washington, D.C.
July 23, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *Henry G. Flores, Jr.*, 43 ECAB 901, 905 (1991).

⁵ *Harold Travis*, 30 ECAB 1081 (1979).