

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MADELINE STRANO and DEPARTMENT OF DEFENSE,
DEFENSE LOGISTICS & SUPPLY CENTER, Philadelphia, PA

*Docket No. 00-2637; Submitted on the Record;
Issued December 10, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant had any disability for work or injury-related residuals after September 8, 1999 when the Office of Workers' Compensation Programs terminated her compensation.

The Office accepted that on February 16, 1995 appellant, then a 38-year-old secretary, sustained contusions of the left leg and arm, a left shoulder sprain and left carpal tunnel syndrome when she fell on ice while walking from the parking lot to the building. Appellant missed six weeks of work and received appropriate compensation. Thereafter she returned to work as a secretary on light duty with no lifting more than 10 pounds and no prolonged typing, lifting, grasping or carrying.

Appellant's treating physician, Dr. A. Lee Osterman, a Board-certified orthopedic hand surgeon, provided multiple medical reports regarding appellant's complaints of left hand and wrist pain and diagnosed bilateral carpal tunnel syndrome and left ulnar nerve neuropathy.

On June 11, 1998 appellant underwent an endoscopic carpal tunnel release for medial nerve compression of the left wrist, performed by Dr. Osterman.

On October 16, 1998 appellant was referred, together with a statement of accepted facts and questions to be addressed, to Dr. Richard J. Mandel, a Board-certified orthopedic surgeon, for a second opinion examination.

By report dated November 5, 1998, Dr. Mandel reviewed appellant's factual and medical history, noted her present complaints, reported clinical findings and stated that examination failed to document objective evidence of ongoing left carpal tunnel syndrome. He opined that appellant's persistent hand pain appeared to be nonspecific in nature, noting a clinical suggestion of mild cubital tunnel syndrome on the left and mild carpal tunnel syndrome on the right. He opined that the overall combination of neuropathies suggested diabetic polyneuropathy, but that "there is no evidence whatsoever that the findings on the right are in any way traumatically

induced or related to the injury in question. She appears to be recovered from the carpal tunnel syndrome on the left.”¹ Dr. Mandel recommended regular duty as a secretary without limitation.

By report dated February 25, 1999, Dr. Osterman noted that appellant still had left-sided radial wrist pain, some paresthesias through the entire hand, numbness and tingling, a positive Finklestein test bilaterally, and a positive Tinel’s test at the cubital tunnel. He diagnosed status post left carpal tunnel syndrome release, right carpal tunnel syndrome and bilateral carpal metacarpal (CMC) arthritis.

Because a conflict in medical opinion existed between Dr. Osterman and Dr. Mandel, the Office referred appellant, a statement of accepted facts, questions to be addressed and the relevant case record to Dr. Frank A. Mattei, a Board-certified orthopedic surgeon.

By report dated June 1, 1999, Dr. Mattei reviewed appellant’s factual and medical history, reported her present complaints and symptomatology, conducted a thorough physical examination of her left wrist² and diagnosed post-endoscopic surgery for carpal tunnel release on the left, possible arthritic changes of the left wrist joints and the carpal metacarpal joint of the thumb and possible de Quervain’s disease affecting the area at the radial styloid. Dr. Mattei found a negative Finklestein’s test on the right, but found some arthritic changes in the CMC joint and a positive Finklestein’s test on the left. He opined that he was “quite sure that she had full recovery of any median nerve involvement at the volar aspect of her wrist joint with a carpal tunnel release. However I could not elicit any objective findings to support her subjective complaints.”

Dr. Mattei opined that any disability due to carpal tunnel syndrome would have been relieved, according to the records of Dr. Osterman, within six weeks after the surgery and that at that time appellant could have returned to full activity. He noted: “[Appellant] has made a complete recovery from any injuries she may have sustained as a result of her fall on February 16, 1995 and has reached her preinjury level of activity and can return to full activity.”

On August 3, 1999 the Office issued appellant a notice of proposed termination of compensation and medical benefits on the grounds that the weight of the medical evidence of record established that she had no further disability for work or injury-related residuals, causally related to her February 16, 1995 injuries. The Office advised that if she disagreed with the proposed action, she had 30 days within which to provide further evidence or argument to support continuing disability.

By decision dated September 8, 1999, the Office terminated appellant’s wage-loss compensation and medical benefits, finding that Dr. Mattei’s opinion constituted the weight of the medical opinion evidence.

¹ Appellant is left hand dominant.

² Dr. Mattei noted that appellant would not allow him to examine her right upper extremity, thorax, neck and head, only her left wrist.

By letter dated September 24, 1999, appellant requested an oral hearing which was held on February 14, 2000. Appellant submitted an additional report from Dr. Osterman, who noted that appellant had no significant evidence of diabetic neuropathy, that she did have multiple residual symptoms which were consistent with her known pathology, that further electrical studies were indicated to determine the residuals relative to the median nerve and that appellant was working in a modified duty position and needed protective work restrictions.

By decision dated April 24, 2000, the hearing representative affirmed the September 8, 1999 termination decision, finding that the weight of the medical opinion evidence of record rested with Dr. Mattei's impartial medical examination report.

The Board finds that appellant had no disability for work or injury-related residuals after September 8, 1999 and that the Office met its burden of proof in terminating compensation.

In this case, appellant's treating physician, Dr. Osterman, identified ongoing complaints of left hand and wrist pain, left ulnar nerve neuropathy and partial disability for work. The Office's second opinion specialist, Dr. Mandel, however, found no objective symptomatology of ongoing left carpal tunnel syndrome, no continuing disability for work and no injury-related residuals requiring further medical treatment.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a 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."

Because the report from Dr. Mandel disagreed with the reports of Dr. Osterman, the case was therefore properly referred to a third physician, Dr. Mattei, who conducted a complete examination of the affected part and, based on a complete factual and medical background, determined in a well-rationalized report that appellant had no further disability for work or injury residuals requiring further medical treatment.

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.³

In this case, Dr. Mattei's report was based on a complete and accurate factual and medical background and was well rationalized, such that it was entitled to that special weight.

Following the termination of compensation benefits, appellant submitted an additional report from Dr. Osterman. This report reiterated his belief that appellant had multiple residual symptoms related to her work injury and that further work-up was needed. An additional report from appellant's physician that essentially repeats his earlier findings and conclusions is insufficient to overcome the special weight accorded to the impartial medical examiner's report, where appellant's physician has been on one side of the conflict in the medical opinion that the

³ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

impartial medical examiner resolved.⁴ The additional report from Dr. Osterman was repetitive of his earlier reports and unrationalized and was, therefore, insufficient not only to overcome the special weight accorded to Dr. Mattei's report, but also to create a new conflict.

The decisions of the Office of Workers' Compensation Programs dated April 24, 2000 and September 8, 1999 are hereby affirmed.

Dated, Washington, DC
December 10, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

⁴ *Thomas Bauer*, 46 ECAB 257 (1994); *Virginia Davis-Banks*, 44 ECAB 389 (1993).