

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DENISE M. NOTARIAN and U.S. POSTAL SERVICE,  
POST OFFICE, Chesterland, OH

*Docket No. 03-2054; Submitted on the Record;  
Issued October 22, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits on the basis that she no longer suffered from residuals of her employment-related bilateral carpal tunnel syndrome.

This case has previously been on appeal before the Board. Appellant, a former part time rural letter carrier, has an accepted claim for mild bilateral carpal tunnel syndrome.<sup>1</sup> By decision dated May 4, 2001, the Office terminated appellant's wage-loss compensation and medical benefits based on the February 27, 2001 report of Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon and Office referral physician. The Office subsequently reviewed the claim on the merits and denied modification, in a decision dated November 27, 2001.

By decision dated June 10, 2002, the Board reversed the Office's May 4 and November 27, 2001 decisions. The Board determined that Dr. Kaffen's February 27, 2001 report was based on an incomplete and inaccurate factual and medical background. Accordingly, the Board found that the Office improperly relied on Dr. Kaffen's findings and, therefore, failed to meet its burden of proof in terminating appellant's medical benefits and wage-loss compensation.<sup>2</sup>

On July 19, 2002 the Office requested an updated medical evaluation from appellant's treating physician, Dr. Monica M. Urban, a Board-certified internist. The Office noted that the last report that Dr. Urban submitted was dated December 17, 2001. She did not respond to the

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<sup>1</sup> Appellant filed her occupational disease claim on September 30, 2000 and she identified July 1999 as the date that she first realized her condition was employment related. The Office accepted the claim on November 9, 2000 and paid appropriate wage-loss compensation. Appellant resigned from her position with the employing establishment effective January 29, 2001.

<sup>2</sup> Docket No. 02-553 (issued June 10, 2002). The Board's June 10, 2002 decision is incorporated herein by reference.

Office's July 19, 2002 request for additional medical evidence. Accordingly, the Office referred appellant for examination by Dr. Alan H. Wilde, a Board-certified orthopedic surgeon. He examined appellant on August 30, 2003 and, in a similarly dated report, he found that, while appellant complained of ongoing symptoms, she had no objective findings of bilateral carpal tunnel syndrome. Dr. Wilde stated that he did not believe that appellant's condition precluded her from performing her duties as a rural letter carrier. He also indicated that he did not believe appellant's condition was work related.

In a decision dated October 23, 2002, the Office terminated appellant's wage-loss compensation and medical benefits based on Dr. Wilde's August 30, 2002 report.<sup>3</sup>

Appellant requested an oral hearing, which was held on May 6, 2003. By decision dated July 23, 2003, the Office hearing representative affirmed the October 23, 2002 decision terminating compensation and medical benefits.

The Board finds that the Office improperly terminated appellant's compensation and medical benefits.

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>4</sup> Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>6</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which would require further medical treatment.<sup>7</sup>

At the May 6, 2003 hearing appellant's counsel challenged the Office's reliance on Dr. Wilde's opinion on the basis that he did not administer any diagnostic studies and relied exclusively on his physical examination findings. In the July 23, 2003 decision, the Office hearing representative noted that, while an updated electromyography study would have been helpful, the "complete dearth of objective findings on clinical examination" noted by Dr. Wilde provided a sufficient basis upon which to terminate wage-loss compensation and medical benefits. Additionally, the hearing representative appears to have accorded some weight to Dr. Kaffen's February 27, 2001 opinion despite the Board's prior finding regarding the deficiencies in his report.

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<sup>3</sup> On September 18, 2002 the Office issued a notice of proposed termination of entitlement to compensation and medical benefits.

<sup>4</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>5</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>6</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>7</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

Much like Dr. Kaffen's earlier report, Dr. Wilde's opinion was based on the results of his physical examination, the statement of accepted facts and a brief medical history. He did not administer any diagnostic studies and his report did not specifically mention appellant's most recent June 26, 2001 nerve conduction study, which revealed bilateral carpal tunnel syndrome, right greater than left. Appellant's physical examination was essentially normal and Dr. Wilde stated that, while appellant complained of ongoing symptoms, she had no objective findings of bilateral carpal tunnel syndrome. He also questioned the appropriateness of the Office's acceptance of appellant's claim, noting that appellant did not have a work-related injury because her symptoms started at night mainly after six months of working for the employing establishment. Dr. Wilde also explained that appellant's complaints of ongoing symptoms despite not having worked for the employing establishment since October 15, 2000 was further evidence that her condition was not work related.

Dr. Wilde's opinion is equivocal at best. In one respect, he indicates that appellant does not have objective findings of bilateral carpal tunnel syndrome, thus suggesting that she no longer suffers from residuals of her accepted employment injury. However, Dr. Wilde notes that appellant continues to complain of symptoms. To the extent that appellant's ongoing subject complaints are credible, Dr. Wilde appears to hedge by indicating that appellant's past and present subjective complaints are not work related. Thus, according to him appellant either does not currently suffer from carpal tunnel syndrome or if she does, the condition is not related to her prior federal employment.

Dr. Urban indicated, on December 17, 2001, that appellant continued to suffer from carpal tunnel syndrome, as demonstrated by nerve conduction studies, which were administered most recently on June 26, 2001. She also noted that appellant had been examined by two orthopedic surgeons and had elected to undergo continued conservative treatment including physical therapy and cortisone injections.<sup>8</sup> While Dr. Urban's opinion is somewhat dated, at least she had the benefit of relatively recent diagnostic studies when she diagnosed ongoing carpal tunnel syndrome. In contrast, Dr. Wilde's August 30, 2002 opinion regarding the lack of objective evidence of bilateral carpal tunnel syndrome is undermined by the absence of contemporaneous diagnostic studies and his opinion regarding the etiology of appellant's condition is similarly compromised. Dr. Wilde did not explain why the nighttime manifestation of symptoms would preclude appellant's employment as a rural carrier as a causative factor. Furthermore, while it is true that appellant had not worked as a rural mail carrier since October 15, 2000, Dr. Wilde did not explain why appellant's symptoms should not or could not have persisted beyond the period of her employment exposure given the fact that appellant opted for conservative treatment rather than surgical intervention.

The Board further notes that the fact that Drs. Kaffen and Wilde were in agreement that appellant could resume her former duties as a rural letter carrier does not lend credence to either physician's respective opinion. The Board previously noted the deficiencies in Dr. Kaffen's opinion, which the Office hearing representative apparently ignored and as discussed above, Dr. Wilde's opinion is similarly flawed. Additionally, the fact that appellant did not proffer any

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<sup>8</sup> The record indicates that in August 2001 appellant was advised to undergo surgery for her right carpal tunnel syndrome and that surgery on the left wrist was not required.

recent evidence to contradict Dr. Wilde's opinion does not somehow diminish the Office's burden to justify modification or termination of benefits. The issue in the instant case is of a medical nature and the Office must proffer rationalized medical opinion evidence in order to satisfy its burden of proof. The Office has once again failed to present rationalized medical evidence in support of its decision to terminate appellant's benefits. Accordingly, the Board finds that the Office failed to meet its burden of proof in terminating appellant's medical benefits and wage-loss compensation.

The July 23, 2003 decision of the Office of Workers' Compensation Programs is hereby reversed.

Dated, Washington, DC  
October 22, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member