

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**MONIKA M. ROMANS, Appellant**

**and**

**DEPARTMENT OF THE ARMY, MEDICAL  
COMMAND, Fort Lewis, WA, Employer**

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**Docket No. 04-1060  
Issued: August 10, 2004**

*Appearances:*  
*Monika M. Romans, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On March 10, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated August 21, 2003, which terminated her compensation effective that date. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.<sup>1</sup>

**ISSUE**

The issue is whether the Office met its burden of proof to terminate appellant's compensation effective August 21, 2003.

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<sup>1</sup> Appellant submitted additional evidence after the Office's August 21, 2003 decision, but the Board cannot consider such evidence for the first time on appeal. See 20 C.F.R. § 501.2(c). The record contains an October 3, 2003 letter concerning a request for an oral hearing, but the record does not contain any decision of an Office hearing representative. Appellant previously requested an appeal before the Board and, in an order (Docket No. 03-2155, issued December 11, 2003), the Board dismissed her appeal on the grounds that the record did not contain an Office decision over which it could take jurisdiction. The record currently contains a copy of the Office's August 21, 2003 decision.

## **FACTUAL HISTORY**

On April 15, 1999 appellant, then a 50-year-old dental assistant, filed an occupational disease claim alleging that she sustained right carpal tunnel syndrome due to the duties of her job, including handling and cleaning dental tools, writing records and mixing dental materials.<sup>2</sup> The Office accepted that appellant sustained right carpal tunnel syndrome and authorized a surgical release of the right carpal tunnel which was performed on March 8, 2001 by Dr. Peter L. Taylor, an attending Board-certified orthopedic surgeon.<sup>3</sup>

In a report dated August 16, 2001, Dr. William A. Bulley, Jr., an attending Board-certified orthopedic surgeon, stated that appellant exhibited a positive Tinel's test over the right carpal tunnel syndrome and a normal two-point discrimination test in all of the fingers of the right hand except for the index finger. He indicated that he could not account for her proximally radiating discomfort and noted that appellant might need a repeat surgical release procedure on her right wrist. In a report dated November 30, 2001, Dr. Taylor indicated that appellant had bilateral carpal tunnel syndrome and that she exhibited "nonorganicity and chronic pain behavior." He recommended that she participate in vocational rehabilitation efforts. In March 2002, appellant began to participate in a vocational rehabilitation program. She attended school in order to train for a new job, but this effort did not result in a job placement.<sup>4</sup>

In a report dated March 18, 2003, Dr. Shaila Kode, a Board-certified internist for the employing establishment, stated that appellant had depression, hypothyroidism, hyperlipidemia, degenerative arthritis of the knees and chronic syndrome temporomandibular joint syndrome.

In late May 2003, the Office referred appellant to Dr. Robert Price, a Board-certified neurologist, and Dr. Patrick N. Bays, a Board-certified orthopedic surgeon, for an evaluation of whether she continued to have residuals of her employment injury. In a report dated June 24, 2003, Dr. Price and Dr. Bays determined that appellant no longer had residuals of her employment injury, right carpal tunnel syndrome. They provided a detailed summary of the medical and administrative documents of record and reported the findings of their examination. Dr. Price and Dr. Bays indicated that appellant reported pain in her right wrist and numbness most of the time in her right fingers and thumb and stated that she had a negative Tinel's sign at the right wrist, normal results on two-point discrimination testing of the right arm and full range

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<sup>2</sup> In 1999, appellant filed a claim for employment-related right carpal tunnel syndrome which was denied by the Office.

<sup>3</sup> Appellant resigned from the employing establishment effective May 20, 1999 and received compensation for periods of disability.

<sup>4</sup> The record reveals that, during her participation in the program, appellant received little or no medical treatment for her right wrist condition from physicians.

of motion in the digits of the right hand. They noted that she had right hand numbness and wrist pain which was of uncertain etiology, but possibly represented residuals of mild median neuropathy of the right wrist.<sup>5</sup>

Dr. Price and Dr. Bays stated that appellant's presentation was not consistent with right carpal tunnel syndrome and noted that her right upper limb weakness on examination appeared most consistent with symptom magnification. They indicated that the findings on examination did not suggest a specific diagnosis for appellant's right upper limb and stated that her symptoms likely could be explained by "nonorganic aspects of her presentation" and "disability syndrome." Dr. Price and Dr. Bays noted that the possible medial neuropathy of appellant's right wrist might be related to her nonwork-related obesity, hypothyroidism and osteoarthritis. They concluded that there were no objective residuals of the employment injury which would prevent appellant from working.

On July 17, 2003 the Office issued a proposed notice of termination, indicating that the opinion of Dr. Price and Dr. Bays showed that appellant no longer had residuals of her employment injury. The Office provided appellant with 30 days to submit evidence or argument supporting that she continued to have such residuals. In a letter dated July 21, 2003, appellant argued that she continued to be disabled due to her right carpal tunnel syndrome. She asserted that the opinion of Dr. Price and Dr. Bays was incorrect. By decision dated August 21, 2003, the Office terminated appellant's compensation effective August 21, 2003, on the grounds that she had no disability after that date due to her employment injury.

### **LEGAL PRECEDENT**

Under the Federal Employees' Compensation Act,<sup>6</sup> once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>7</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>8</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>9</sup>

### **ANALYSIS**

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of the Office referral physicians, Dr. Price, a Board-certified

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<sup>5</sup> Dr. Price and Dr. Bays suggested that appellant's claim had been accepted for bilateral carpal tunnel syndrome, but it has only been accepted for carpal right tunnel syndrome. They indicated that the Office asked them to answer a question about a June 1, 1996 injury, but the record does not contain any indication that appellant sustained such an injury and this matter is not part of the present claim.

<sup>6</sup> 5 U.S.C. § 8101 *et seq.*

<sup>7</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

<sup>8</sup> *Id.*

<sup>9</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

neurologist, and Dr. Bays, a Board-certified orthopedic surgeon. The June 24, 2003 report of Dr. Price and Dr. Bays establishes that appellant had no disability due to her employment injury after August 21, 2003. The Board has carefully reviewed the opinion of Dr. Price and Dr. Bays and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Their opinion is based on a proper factual and medical history in that they had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.<sup>10</sup>

Dr. Price and Dr. Bays determined that appellant did not exhibit any objective findings on examination or diagnostic testing to show that she continued to have residuals of her employment injury, right carpal tunnel syndrome. They indicated that the findings did not support any specific diagnosis, but that appellant did exhibit some signs of possible mild right medial neuropathy.<sup>11</sup> Dr. Price and Dr. Bays provided rationale for their opinion by explaining that these apparent lingering symptoms could be explained by nonwork-related conditions. For example, they indicated that appellant's right upper limb weakness on examination appeared most consistent with symptom magnification and that her symptoms likely could be explained by "nonorganic aspects of her presentation" and "disability syndrome." They also noted that the possible medial neuropathy of appellant's right wrist might be related to her nonwork-related obesity, hypothyroidism and osteoarthritis.

Appellant did not submit any medical evidence from around the time of the termination of her compensation to show that she had continuing residuals of her employment injury. In a report dated March 18, 2003, Dr. Kode, a Board-certified internist for the employing establishment, stated that appellant had depression, hypothyroidism, hyperlipidemia, degenerative arthritis of the knees and chronic syndrome temporomandibular joint syndrome. However, none of these conditions is accepted as employment related. Dr. Kode did not provide the rationalized medical explanation necessary to establish that these conditions were causally related to the accepted injury.

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective August 21, 2003 on the grounds that she had no disability after that date due to her employment injury.

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<sup>10</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

<sup>11</sup> Dr. Price and Dr. Bays noted that appellant had a negative Tinel's sign at the right wrist, normal results on two-point discrimination testing of the right arm and full range of motion in the digits of the right hand.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 21, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member