

In a report dated July 25, 1997, Dr. John Kozura, III, appellant's treating osteopath, stated that she was initially examined by a physician's assistant on April 23, 1997 and was seen several times until June 19, 1997. Dr. Kozura diagnosed right arm tendinitis and requested an electromyogram evaluation (EMG). An August 13, 1997 physical examination revealed a decrease in strength and Dr. Kozura again requested authorization to perform an EMG. In a report dated December 5, 1997, Dr. Kozura stated that appellant was totally disabled since April 23, 1997 as a result of right wrist tendinitis.

The Office accepted appellant's claim for right arm tendinitis and, on January 8, 1998, placed her on the periodic rolls.

A nerve conduction and EMG study taken on January 29, 1998 revealed probable early right carpal tunnel syndrome. On February 4, 1998 Dr. Kozura stated that appellant had tendinitis of the right arm and right carpal tunnel syndrome.

In a report dated February 11, 1998, Dr. Lee Kesterson, a consultant and a Board-certified neurological surgeon, diagnosed right carpal tunnel syndrome. On February 19, 1998 Dr. John R. Anderson, a consultant and orthopedic surgeon, stated that appellant had right carpal tunnel syndrome and requested authorization for a carpal tunnel release.

In a March 3, 1998 statement of accepted facts, the Office stated that appellant had work-related tendinitis of the right arm. On April 2, 1998 Dr. Richard V. Wilson, a second opinion physician and an orthopedic surgeon, stated that, although appellant was initially diagnosed with tendinitis, the EMG report supported a diagnosis of carpal tunnel syndrome, and advised that a carpal tunnel release would provide relief and possible return to work. On April 8, 1998 the Office authorized right carpal tunnel release which was performed by Dr. Kesterson on April 29, 1998. On February 10, 1999 Dr. Kesterson performed a left carpal tunnel release.

In a report dated April 20, 1999, Dr. Kesterson stated that appellant's incisions were well healed with no swelling or drainage, and that she had good strength bilaterally. He noted that appellant was approaching maximum medical improvement and that she was released to return to duty with restrictions against prolonged repetitive and fine motor movements of her hands.

In a May 17, 2000 report, Dr. Gregory D. Powell, a second opinion physician and an orthopedic surgeon, stated that appellant was symptomatic from the after effects of carpal tunnel syndrome and releases which were directly and causally related to the accepted tendinitis in the wrists.

In a report dated August 7, 2000, Dr. Powell stated that appellant could return to restricted work with limitations regarding the multiple and repetitive use of her hands.

In a report dated August 16, 2000, Dr. Jayaraman Ravindran, appellant's treating physician and Board-certified in psychiatry and neurology, stated that he treated appellant that day for bilateral hand pain. He related her surgical history, noting that she felt her surgery made her symptoms worse.

On August 18, 2000 Dr. Ravindran stated that the results of an EMG and nerve conduction studies revealed no electrodiagnostic evidence of nerve entrapment involving either bilateral median or ulnar nerves. He added that appellant's symptoms were limited to the forearm and hands and that she had no neck pain and no evidence of nerve lesion that could be helped by surgery. Dr. Ravindran noted appellant's complaints of continuing numbness, paresthesia and weakness of the hands, and recommended physical therapy, pain management and a work rehabilitation program.

The Office subsequently authorized a rehabilitation program and appellant was treated from September 20 to December 14, 2000 by Dr. Peter B. Polatin, Board-certified in psychiatry and neurology. In a report dated December 14, 2000, Dr. Polatin discharged appellant from the rehabilitation program because of her inability to comply with medical recommendations, refusal to subscribe to rehabilitation goals and her lack of attendance. He noted that appellant's tendinitis would have healed by that time. Further, the doctor noted that she had no current surgically-treatable condition and released her to return to full-time work with no restrictions. Dr. Polatin's discharge diagnoses were chronic bilateral postoperative wrist pain, a chronic deconditioning syndrome, a chronic pain disorder and a borderline personality disorder.

On June 27, 2001 Dr. Ravindran stated that appellant had extreme pain in both hands and recommended referral to a pain specialist.

On August 23, 2001 the Office referred appellant, her medical records, an April 17, 2000 statement of accepted facts and a list of specific questions to Dr. Robert Chouteau, an osteopath with a specialty in orthopedic surgery, for a second opinion evaluation. On October 19, 2001 Dr. Chouteau reported that he examined appellant that day and reported normal findings.

On November 5, 2001 the Office issued a notice of proposed termination of compensation on the grounds that appellant had no medical residuals as a result of her work-related bilateral carpal tunnel syndrome with release. By decision dated December 10, 2001, the Office terminated appellant's compensation benefits effective that date. The Office relied on Dr. Chouteau's October 19, 2001 report which stated that her accepted work-related condition of bilateral carpal tunnel syndrome had resolved and that there was no evidence to support residual effects of her condition.

In a letter dated January 8, 2002, appellant requested reconsideration but failed to submit evidence in support of her request. By decision dated February 13, 2002, the Office denied review of appellant's request for reconsideration.

On July 1, 2002 appellant, through counsel, again requested reconsideration and submitted a February 28, 2002 report from Dr. Robert Helsten, a specialist in emergency medicine, a June 13, 2002 report from Dr. John Flores, Board-certified in internal medicine, and an undated report from Dr. Ravindran. In his February 28, 2002 report, Dr. Helsten stated that appellant had positive compression tests and Phalen's tests. He also noted her complaints of "horrible agonizing pain in both wrists and forearms" which radiated into the middle, ring and little fingers. He noted results of a January 24, 2002 performance test noting that appellant had "chronic severe pain and inability to work" and recommended rehabilitation including a work-

hardening or a pain management program. The doctor also noted that Dr. Chouteau recommended a work-hardening program for six to eight weeks, for eight hours a day for five days a week.¹

A physical performance test dated January 24, 2002 revealed that appellant could stand continuously up to four hours a day and intermittently for eight hours a day, could lift up to 20 pounds occasionally, 4 pounds continuously, and could use her hands for firm grasping and fine manipulation without restrictions. Appellant was determined to be capable of light duty. Dr. Flores stated that he treated appellant from November 29 to December 21, 2001 for pain in forearms and hands resulting from carpal tunnel syndrome, and advised she received minimal relief from pain through medication. Dr. Ravindran stated that appellant should be referred to a pain management specialist.

Finding that a conflict in medical opinion had been created between the opinions of Dr. Helsten and Dr. Chouteau, the Office, on March 25, 2003, referred appellant, together with the medical record, a statement of accepted facts and specific questions to Dr. Bernie L. McCaskill, a Board-certified orthopedic surgeon and an impartial medical examiner, to clarify the conflict in medical opinion regarding appellant's work capabilities.²

On April 8, 2003 Dr. McCaskill stated that appellant's bilateral carpal tunnel syndrome had resolved with no objective evidence to support a disability from work.

By decision dated May 21, 2003, the Office denied modification of its prior decision.³

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

¹ Dr. Chouteau did not recommend a work-hardening program in his October 19, 2001 report. Indeed, he stated that appellant had been placed in a pain management program and quit after four weeks. Dr. Chouteau added that he would not recommend physical therapy, pain management or a work-hardening program because appellant would not benefit from any of these programs. However, the record includes an October 16, 2001 report from a physical therapist associated with Dr. Chouteau's office recommending such a program.

² Dr. Flores' report did not contain an opinion on causal relationship.

³ The Board notes that this case record contains evidence which was submitted subsequent to the Office's May 21, 2003 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

⁴ *Jorge E. Sotomayor*, 52 ECAB 105 (2000).

⁵ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁶ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

ANALYSIS -- ISSUE 1

In this case, the Office terminated appellant's compensation benefits on December 10, 2001 based on an October 19, 2001 report from Dr. Chouteau, the Office's second opinion physician. Dr. Chouteau reported intact radial pulses bilaterally and negative Adson's signs and Wright's syndrome. Deep tendon reflexes were brisk and normal, Tinel's and Phalen's signs were negative bilaterally, and he reported a normal two-point discrimination bilaterally of the index, thumb or middle fingers of either hand. He noted good and equal grip strength bilaterally, and no evidence of thenar atrophy. X-rays were normal. Range-of-motion findings were slightly decreased on flexion and extension bilaterally, and mild tenderness on palpation over the incisional area of the wrists was noted. Dr. Chouteau noted that the record included a normal electromyogram study which supported his opinion that appellant had no residuals of her employment-related condition and that she could return to work without restrictions. The doctor added that a work-hardening program would not be beneficial because she had been placed previously in a pain program but quit after four weeks.

Although Dr. Ravindran stated on June 27, 2001 that appellant had extreme pain in both hands, he did not indicate that her symptoms were related to her carpal tunnel syndrome and, in fact, noted in August 2000 normal diagnostic tests which revealed no evidence of nerve entrapment.

The Board notes that tendinitis was the initial accepted condition in this case. However, in a report dated April 2, 1998, Dr. Wilson, a second opinion physician and an orthopedic surgeon, noted that bilateral carpal tunnel syndrome was the only work-related condition supported by objective medical evidence. Further, Dr. Polatin, also an Office second opinion physician, stated on December 14, 2000 that appellant's soft tissue injury would have healed by that date. None of the subsequent medical reports diagnosis her condition as tendinitis. The Board finds that Dr. Chouteau's opinion constitutes the weight of the medical evidence finding that appellant had no residuals of her bilateral carpal tunnel syndrome and is sufficient to justify the Office's termination of benefits. For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.⁷

LEGAL PRECEDENT -- ISSUE 2

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had disability causally related to her accepted injury.⁸ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.⁹ Causal relationship is a medical issue and the medical evidence required to

⁷ In his May 17, 2000 report, Dr. Powell, a second opinion physician, mistakenly stated that appellant's accepted injury was tendinitis in the wrists. It was tendinitis of the right arm.

⁸ *Manuel Gill*, 52 ECAB 282 (2001).

⁹ *Id.*

establish a causal relationship is rationalized medical evidence.¹⁰ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹² The Board has long held that the report of an impartial medical examiner, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹³

ANALYSIS -- ISSUE 2

After the Office properly terminated appellant's benefits the burden of proof shifted to appellant.¹⁴ The Office properly denied review of appellant's January 8, 2002, request for reconsideration on February 13, 2002 as she failed to submit evidence in support of her request. On July 1, 2002 appellant then filed a second request for reconsideration and submitted a report from Dr. Helsten who found that she had chronic and severe pain as a result of her carpal tunnel syndrome and was unable to work. The Office found a conflict in medical opinion between Dr. Helsten and Dr. Chouteau and referred appellant to Dr. McCaskill, an impartial medical examiner. On April 8, 2003 Dr. McCaskill related appellant's history of injury, noting that she had not worked since 1997, reviewed her medical records including her right carpal tunnel release on April 28, 1998 and a left release on February 10, 1999 and reviewed the statement of accepted facts. He stated that appellant complained of continuous and diffuse pain, numbness and spasms affecting all aspects of her hands and into her forearms and noted her complaints of intermittent cervical discomfort. Dr. McCaskill also related that she believed that she was unable to work at that time. Upon examination, appellant demonstrated a full range of motion of the cervical spine and both upper extremities, including shoulders, elbows, wrists and hands. He noted no swelling, atrophy, deformity or other objective evidence of a significant musculoskeletal injury in either upper extremity. Appellant's radial pulses were full and intact. Dr. McCaskill noted that she was diffusely sensitive to percussion over each wrist causing pain into her hands. However, he noted no abnormal neurological findings in either extremity. Dr. McCaskill also reported normal motor strength of the upper extremities, normal reflexes and

¹⁰ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹² *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹³ *See supra* note 7.

¹⁴ After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that she had an employment-related disability that continued after termination of compensation benefits; *see Franklin D. Haislah*, 52 ECAB 457 (2001).

no objective evidence of peripheral nerve entrapment of either extremity. He reviewed prior electrodiagnostic studies dated January 29, 1998 which described probable early right carpal tunnel syndrome and an August 18, 2000 report which was normal. Dr. McCaskill opined that appellant had no objective symptoms to support a diagnosis of bilateral carpal tunnel syndrome and had no work restrictions based on her work-related injuries. He added that appellant would not benefit from additional supervised medical treatment because of her poor response to recent care. In a work capacity evaluation dated that day, Dr. McCaskill stated that appellant was released to return to full duty. However, Dr. McCaskill did not indicate whether appellant was disabled from February 28, 2002, the date of Dr. Helsten's examination which noted working restrictions.

The Board finds that, since the Office undertook to obtain an impartial medical specialist opinion, it now has the obligation to see that it obtains a sufficiently reasoned report as to whether appellant was disabled on or after February 28, 2002 to April 8, 2003, the date of the impartial medical examiner's report.¹⁵ The Board directs the Office to request a supplemental report from Dr. McCaskill whether appellant was capable of full duty from anytime after February 28, 2002. He must explain whether appellant's condition after that time disabled her from full-time duty and if so whether the cause of the disability was work-related bilateral carpal tunnel syndrome.

CONCLUSION

The Office properly met its burden of proof in terminating appellant's compensation benefits effective December 10, 2001. However, the Office failed to determine whether appellant was disabled from February 28, 2002 to April 8, 2003, and thus directs the Office to request a supplemental report from Dr. McCaskill to determine if appellant was disabled during this time period.

¹⁵ See, e.g., *Elmer K. Kroggel*, 47 ECAB 557 (1996) (the Board remanded the case for the Office to obtain a supplemental report from the impartial medical specialist).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 21, 2003 is affirmed in part and remanded in part for further consideration consistent with this opinion.

Issued: July 22, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member