

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

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| DONALD P. CROUCHER, Appellant |) | |
| |) | |
| and |) | Docket No. 04-514 |
| |) | Issued: July 2, 2004 |
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| U.S. POSTAL SERVICE, POST OFFICE, |) | |
| Cleveland, OH, Employer |) | |
| |) | |

Appearances:
Donald P. Croucher, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 15, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated September 16, 2003 terminating compensation for wage-loss and medical benefits and a November 3, 2003 denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues on appeal are: (1) whether the Office properly terminated appellant's compensation for wage-loss and medical benefits effective September 15, 2003; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On September 28, 2001 appellant, then a 54-year-old mail handler, filed an occupational disease claim alleging that he developed carpal tunnel syndrome beginning September 25, 2001 due to performing repetitive movements at work. The Office accepted the claim for bilateral

carpal tunnel syndrome and authorized carpal tunnel releases on the left and right which were performed December 14, 2001 and January 16, 2002 respectively. Appellant was off work from December 13, 2001 through March 5, 2002 and then returned to full-time limited duty. On or about March 14, 2002 he reduced his schedule to four hours limited duty. On April 5, 2002 appellant stopped work entirely and received compensation for total disability.¹

Appellant received treatment from Dr. Sandra M. Fakult, a Board-certified internist. In a letter to Dr. Fakult dated April 7, 2002, the Office inquired about whether there was sufficient medical evidence to support that appellant's work-related bilateral carpal tunnel syndrome was still present and active and whether he continued to experience residuals of his accepted condition. The Office further noted that an October 17, 2002 magnetic resonance imaging scan was unreadable and inquired whether there was any objective medical reason why appellant could not return to work.

In a report dated September 3, 2002, Dr. Fakult indicated that appellant experience several medical conditions, including cervical arthritis with cord compression, carpal tunnel syndrome, osteoarthritis, bilateral lateral epicondylitis, pain in his lower extremities, erosive arthritis, anemia, depression, anxiety and post-traumatic stress disorder, which precluded him from any future gainful employment. Regarding the bilateral carpal tunnel syndrome, Dr. Fakult stated that appellant had undergone treatment for the condition for two years with some noted improvement with therapy; however, he required surgical releases and continued to have pain, numbness and weakness of his hands and arms. She opined that appellant's residual symptoms prevented him from working even under the strictest limitations and that she expected no further improvement in his ability to work.

The Office referred appellant to Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon, for a second opinion examination. In a letter dated June 30, 2003, Dr. Kaffen reviewed appellant's employment history and treatment for his accepted bilateral carpal tunnel syndrome, complaints of persistent pain, numbness and tingling in both upper extremities and listed findings on physical examination. He stated:

“Examination of the left wrist revealed an anterior surgical scar. There is no swelling or tenderness. The range of motion of the left wrist is extension to 60 degrees, flexion to 60 degrees, radial deviation to 20 degrees and ulnar deviation to 30 degrees. The Tinel sign and Phalen's test were negative. There was no muscle atrophy or sensory deficit in the left hand. Examination of the right wrist revealed a well-healed surgical scar on the volar surface. There is no swelling or tenderness. There is a full range of motion of the right wrist without pain. There was no sensory deficit or atrophy in the right hand. The Phalen's test and Tinel sign are negative.”

Dr. Kaffen indicated that a May 21, 2002 electromyogram (EMG) showed no abnormality in the upper extremities except for a mild chronic neuropathy in the left deltoid. He diagnosed resolved

¹ On August 9, 2002 the Office accepted that appellant sustained a recurrence of disability due to the September 25, 2001 injury and provided that all appropriate medical expenses related to his occupational disease would be paid following proper submission of charges to the Office.

bilateral carpal tunnel syndrome by history, physical examination and review of the medical records. Dr. Kaffen further concluded that there was no medical evidence in the form of objective finding to support that the work-related condition of bilateral carpal tunnel syndrome was still present and active. He concluded that appellant no longer had residuals of the accepted condition.

On August 12, 2003 the Office issued a notice of proposed termination of compensation benefits on the grounds that his bilateral carpal tunnel syndrome had ceased. In a decision dated September 16, 2003, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence, as represented by the opinion of Dr. Kaffen, established that his injury-related disability ceased effective September 15, 2003.

In a letter received October 23, 2003, appellant requested reconsideration and submitted medical records dating from 1986 to the present. Appellant argued that his work-related carpal tunnel had not resolved and asserted that Dr. Kaffen's findings were not based on his medical records. He argued further that Dr. Napier conducted diagnostic testing approximately one year after his carpal tunnel release surgeries and concluded that he still had carpal tunnel in both hands and would have the bilateral condition for the remainder of his life. Appellant submitted a September 26, 2003 report from Dr. Patrick Convery, an attending Board-certified orthopedic surgeon, which indicated that he continued to complain of pain in both hands and knees, which he reported kept him from returning to work as a postal worker. Dr. Convery indicated that appellant could not return to work because the repetitive activities caused pain in his hands.

By decision dated November 3, 2003, the Office denied appellant's request for reconsideration on the grounds that he failed to submit relevant evidence as to whether he had continuing residuals of his accepted bilateral carpal tunnel syndrome.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ 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.⁵

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

ANALYSIS -- ISSUE 1

In this case, the Office terminated appellant's compensation and medical benefits based on the report of Dr. Kaffen, a Board-certified orthopedic surgeon, who served as the second opinion specialist. He examined appellant on June 25, 2003, providing an accurate history of injury and results of physical examination. Dr. Kaffen stated that there were no objective findings to substantiate that the work-related condition was still present and active and he concluded that appellant no longer suffered from residuals of his work-related condition, bilateral carpal tunnel syndrome. He provided medical rationale for his opinion by explaining that appellant had limited upper extremity findings on examination and diagnostic testing. Dr. Kaffen indicated that there was no swelling or tenderness of the wrists; that the Tinel sign and Phalen's test were negative bilaterally; and that there was no upper extremity muscle atrophy or sensory deficit bilaterally. He further noted that diagnostic testing did not reveal continuing carpal tunnel syndrome as a May 21, 2002 EMG showed no abnormality in the upper extremities except for a mild chronic neuropathy in the left deltoid.

There is no contemporaneous medical evidence of equal weight supporting appellant's claim for continuing disability and medical residuals. The Board finds that the Office properly relied on Dr. Kaffen's detailed and well-reasoned report to conclude that appellant had no continuing disability or medical residuals as a result of his accepted employment injuries. Therefore, the Office met its burden of proof to terminate appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁶ the Office's regulation provide that a claimant must (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁷ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁸ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.⁹

ANALYSIS -- ISSUE 2

In support of his reconsideration request, appellant argued that his work-related condition had not resolved and submitted numerous medical reports in support of his request dating back to 1986. Many of the reports submitted are unrelated to the accepted work-related condition of

⁶ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ 20 C.F.R. § 10.607(a).

⁹ 20 C.F.R. § 10.608(b).

bilateral carpal tunnel syndrome or concerned treatment during periods which were not contemporaneous with the time that appellant's compensation and benefits were terminated. None of the reports demonstrated that appellant had any residuals or continuing disability causally related to his accepted employment injury.¹⁰ In a September 26, 2003 report, Dr. Convery, an attending Board-certified orthopedic surgeon, indicated that appellant continued to complain of pain in both hands and knees, which he reported kept him from returning to work as a postal worker. However, Dr. Convery's report is not relevant to the main issue of the present case because he did not provide a clear opinion that appellant continued to have residuals of the accepted bilateral carpal tunnel syndrome. Dr. Convery merely described appellant's self-reported symptoms and indicated that he should avoid repetitive activities in the future.

Appellant has not established that the Office improperly refused to reopen his claim for a review on the merits of its September 16, 2003 termination decision under section 8128(a) of the Act, because he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered by the Office.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective September 15, 2003. The Board further finds that the Office properly refused to reopen appellant's case for further reconsideration of the merits of his claim.

¹⁰ *George Servetas*, 43 ECAB 424, 430 (1992). Once the Office meets its burden of proof to terminate compensation benefits the burden shifts to appellant to establish that he had disability causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 3 and September 16, 2003 are affirmed.

Issued: July 2, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member