

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

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**ANNA M. GRESKO, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Youngstown, OH, Employer**

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**Docket No. 05-1335  
Issued: December 8, 2005**

*Appearances:*  
*Alan Shapiro, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
WILLIE T.C. THOMAS, Alternate Judge

**JURISDICTION**

On June 8, 2005 appellant, through counsel, filed a timely appeal from a May 9, 2005 decision of an Office of Workers' Compensation Programs' hearing representative, which affirmed a finding that her compensation benefits were properly terminated effective November 12, 2003. 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 are: (1) whether the Office met its burden of proof to justify termination of appellant's compensation benefits for her accepted bilateral carpal tunnel syndrome effective November 12, 2003; (2) whether appellant established that she had any continuing disability on and after November 12, 2003 due to her accepted employment injury.

**FACTUAL HISTORY**

On March 21, 1990 appellant, a 37-year-old letter sorting machine clerk, filed an occupational disease claim alleging that on March 6, 1990 she first realized her carpal tunnel

syndrome was employment related.<sup>1</sup> The Office accepted her claim for bilateral carpal tunnel syndrome and paid appropriate compensation for intermittent periods of disability.<sup>2</sup>

In a report dated October 17, 2002, Dr. Oscar F. Sterle, a second opinion Board-certified orthopedic surgeon, concluded that there was no evidence that appellant had residuals from her accepted bilateral carpal tunnel syndrome. He noted that she had no clinical findings and “[p]rovocative maneuvers for carpal tunnel syndrome are negative.” A physical examination revealed normal flexion, extension, ulnar deviation and radial deviation in both appellant’s wrists and no discoloration, swelling or deformity. Dr. Sterle reported that she had “full range of motion of the fingers of both hands” with “some tenderness at the carpal metacarpal joint of both thumbs with swelling being worse on the left thumb.” He reported “no swelling of the wrists” and “[s]ensory is intact including two-point discrimination testing.” In concluding, Dr. Sterle opined that appellant was capable of working her regular job eight hours a day.

In a March 5, 2003 report, Dr. John G. Wassil III, a treating Board-certified physiatrist, diagnosed bilateral carpal tunnel syndrome and indicated that appellant could only work six hours a day with restrictions on reaching, repetitive movements, pushing, pulling and lifting. He reported that her symptoms included tingling and numbness in her finger in both hands, “worse in the median innervated digits right equal to left,” tenderness and pain at the anterior wrist, “base of her thumb and occasionally shooting pains up both forearms to about the elbows.” Appellant related that she believed “the work factor was the primary contributor to” the development of her carpal tunnel syndrome. A physical examination revealed anterior wrist and “base of both thumbs” tenderness and “some mild tenderness in the anterior forearms and occasionally in the lateral elbows bilaterally.” Dr. Wassil concluded that appellant suffered employment-related carpal tunnel syndrome and that he anticipated appellant “will continue to suffer from bilateral carpal tunnel syndrome indefinitely weather (sic) she continues to work or not.” In concluding, he opined that she was only capable of working six hours a day with restrictions due to her employment-related bilateral carpal tunnel syndrome.

On March 26, 2003 the Office found that a conflict of medical opinion existed between Dr. Wassil, appellant treating physician, and Dr. Sterle, the second opinion physician, regarding the level of her work-related disability.

To resolve the conflict the Office referred appellant to Dr. David A. Vermeire, a Board-certified orthopedic surgeon, together with a list of questions. In a report dated April 21, 2003, reviewed the medical record, statement of accepted facts and physical examination, diagnosed obesity, hypertension, “moderately advanced degenerative joint disease involving the trapezio-metacarpal joints of both hands and “[l]ong-standing history of carpal tunnel syndrome bilateral documented by previous examiners and confirmed by three electroyograms (EMG),” but there were no supporting clinical documentation of carpal tunnel syndrome. A physical examination revealed full range of motion in all her fingers, “no evidence of thenar or intrinsic atrophy” in her

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<sup>1</sup> This was assigned claim number A09-0343508.

<sup>2</sup> On March 4, 1999 appellant filed an occupational disease claim alleging that on February 15, 1999 she first realized her right hip condition was employment related.<sup>2</sup> The Office accepted the claim for aggravation of bilateral osteoarthritis of the hips due other rural carrier duties and paid appropriate compensation.

wrists or hands, positive Phalen's signs bilaterally, "good opposition of both thumbs to middle fingers," negative Tinel's signs bilaterally and "good strength in the thenar musculature in both hands." With regards to sensation, he stated "[t]he areas of sensation are inconsistent and do not follow a definite dermatomal pattern." In support of his conclusion that appellant no longer had any disability or residuals due to her employment-related bilateral carpal tunnel syndrome, Dr. Vermeire noted her "[l]ong-standing history of carpal tunnel syndrome bilateral," but found there currently was no supporting objective evidence other than "her report of positive Phalen['s] signs." He noted that appellant had "no objective criteria such as sensory deficit, weakness or thenar atrophy, which would normally be expected in carpal tunnel syndrome of 13½ years duration." Dr. Vermeire opined that appellant was prone to develop carpal tunnel syndrome based upon her history and that the work she performed "in 1989 as an letter sorting machine operator was one of a few precipitating factors which contributed to bilateral carpal tunnel syndrome." He also opined that, while her "job-related activities may have been one of several factors which precipitated" her accepted carpal tunnel syndrome, "there is no indication that any job-related activities have accounted for the continued symptoms over the past 13 years." Moreover, Dr. Vermeire stated that at the time of his examination he "was unable to find any clinical objective evidence of carpal tunnel syndrome in either hand." In an attached work capacity evaluation form dated April 17, 2003, he indicated that appellant was able to work with restrictions on repetitive movements involving the wrists, pushing, pulling, lifting and climbing.

On July 15, 2003 the Office issued a notice of proposed termination of compensation on the basis that the weight of the medical evidence, as represented by the report of Dr. Vermeire, established that residuals of the December 29, 1989 injury had ceased.

In a supplemental report dated October 6, 2003, Dr. Vermeire reviewed Dr. Wassil's response and the August 8, 2003 EMG. Dr. Vermeire noted:

"[Appellant] had a long-standing history of electrical evidence of bilateral carpal tunnel syndrome. It is quite apparent that her symptoms have become more severe down through the years despite the fact that she has been on extremely limited work activity. As I pointed out in my report, the work activity which [appellant] was performing at the time of her first symptoms constituted only a minor portion of the multiple causes for [appellant]'s bilateral carpal tunnel syndrome. The fact that her symptoms have become increasingly more severe down through the years with increasing evidence of bilateral carpal tunnel syndrome, despite the fact that [appellant] has not been doing the repetitive type of activity which she claimed caused her initial symptoms is more evidence to me that her multiple other factors are the main causes of her carpal tunnel syndrome."

By decision dated November 12, 2003, the Office terminated appellant's compensation benefits effective that date, on the grounds that she had no continuing residuals of the accepted employment injury.

On November 24, 2003 appellant requested a hearing, which was held on January 25, 2005.

On February 13, 2004 the Office received reports dated May 19 and November 19, 2003, by Dr. Wassil diagnosing bilateral carpal tunnel syndrome. He also reported positive Tinel's and Phalen's signs at her wrists.

In a report dated February 19, 2004, Dr. Wassil diagnosed bilateral carpal tunnel syndrome and reported "tenderness along the volar wrist bilaterally right greater than left" and positive Tinel's and Phalen's signs at her wrists.

In a March 31, 2004 report, Dr. Wassil noted his disagreement with Dr. Vermeire that appellant no longer had any disability or residuals due to her accepted bilateral carpal tunnel syndrome. He noted that appellant's condition had worsened based upon an April 12, 1999 nerve conduction study. Dr. Wassil noted that an August 8, 2003 nerve conduction study he performed revealed "point median motor distal latency on the right was 11.2 msec and on the left 10.3 msec. He concluded that appellant had severe carpal tunnel syndrome "[b]ased upon my extensive expertise on EMG/NCV [nerve conduction velocity] testing and readings." Dr. Wassil opined:

"[Appellant] has never had any remittance of her symptoms and she also has objective proof that the damage to the nerve at the wrist in the carpal tunnel has progressively gotten worse over time."

On September 27, 2004 the Office received additional reports by Dr. Wassil dated November 19, 2003 and February 19, March 2 and 31, April 27 and May 20, 2004 in which he diagnosed bilateral carpal tunnel syndrome.

On January 26, 2004 the Office received reports dated June 29 and September 17, 2004 by Dr. Wassil diagnosing bilateral carpal tunnel syndrome.

By decision dated May 9, 2005, the Office hearing representative affirmed the November 12, 2003 decision.<sup>3</sup>

### **LEGAL PRECEDENT -- ISSUE**

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup> 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.<sup>5</sup>

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<sup>3</sup> Appellant filed claims for a schedule award for both her left and right wrists June 15, 2003. However, the Office has not issued a final decision regarding a claim for a schedule award. The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. 20 C.F.R. §§ 501.2(c); 501.3(d)(2). Therefore, the issue of a schedule award is not within the Board's jurisdiction on appeal.

<sup>4</sup> *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>5</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

In situations where there are 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 on a proper factual background, must be given special weight.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted appellant's claim for bilateral carpal tunnel syndrome. The Office found that a conflict of medical opinion existed between the treating physician, Dr. Wassil, a Board-certified physiatrist, who opined that she continued to suffer from her employment-related bilateral carpal tunnel syndrome and noted that appellant was only capable of working six hours a day with restrictions on repetitive movement, etc. and the second opinion physician, Dr. Sterle, a Board-certified orthopedic surgeon, who opined that appellant had no residuals due to her accepted bilateral carpal tunnel syndrome and she was capable of working eight hours in her regular job. As there was a conflict in the medical opinion evidence, the Office properly referred appellant for an impartial medical examination by Dr. Vermeire, a Board-certified orthopedic surgeon.

In his initial report dated April 21, 2003, Dr. Vermeire opined that appellant had no disability due to her employment-related bilateral carpal tunnel syndrome. He noted her "[l]ong-standing history of carpal tunnel syndrome bilateral documented by previous examiners and confirmed by three EMG's," but opined there were no supporting clinical documentation of carpal tunnel syndrome no supporting objective evidence other than "her report of positive Phalen's signs." Dr. Vermeire noted that appellant had "no objective criteria such as sensory deficit, weakness or thenar atrophy, which would normally be expected in carpal tunnel syndrome of 13½-years duration." He also concluded that, while her "job-related activities may have been one of several factors which precipitated" her accepted carpal tunnel syndrome, "there is no indication that any job-related activities have accounted for the continued symptoms over the past 13 years." In his supplemental report dated October 6, 2003, in response to inquiries from the Office, Dr. Vermeire noted that appellant "had a long-standing history of electrical evidence of bilateral carpal tunnel syndrome" and that [i]t is quite apparent that her symptoms have become more severe down through the years despite the fact that she has been on extremely limited-work activity." Moreover, he stated that "[t]he fact that her symptoms have become increasingly more severe down through the years with increasing evidence of bilateral carpal tunnel syndrome, despite the fact that she has not been doing the repetitive type of activity which she claimed cause her initial symptoms is more evidence to me that her multiple other factors are the main causes of her carpal tunnel syndrome."

The Board finds that Dr. Vermeire's reports are of diminished probative value and are internally inconsistent as he appears to find that appellant has evidence of bilateral carpal tunnel syndrome by EMG studies and history, but also finds that there is "no objective criteria such as sensory deficit, weakness or thenar atrophy, which would normally be expected in carpal tunnel syndrome of 13½-years duration. In addition, he also stated that appellant's "symptoms have become increasingly more severe down through the years with increasing evidence of bilateral

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<sup>6</sup> *Anna M. Delaney*, 53 ECAB 384 (2002).

carpal tunnel syndrome.” Dr. Vermeire provided no explanation for the apparent discrepancy or rationale in support of his conclusions. As his opinion is equivocal in nature and unsupported by medical rationale, it is of diminished probative value.<sup>7</sup> Additionally, Dr. Vermeire’s finding that residuals of appellant’s employment activities in 1989 was one of a few precipitating factors which contributed to bilateral carpal tunnel syndrome is insufficient to negate causal relationship. Where the medical evidence reveals that factors of employment contributed in any way to the disabling condition, such condition is considered employment related for the purposes of compensation under the Federal Employees’ Compensation Act.<sup>8</sup> Thus, Dr. Vermeire’s opinion is insufficient to meet the Office’s burden of proof to establish that appellant had no employment-related condition or disability after November 12, 2003.

### **CONCLUSION**

The Board finds that the Office did not meet its burden of proof to terminate appellant’s compensation and authorization for medical benefits effective November 12, 2003.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers’ Compensation Programs dated May 9, 2005 is reversed.<sup>9</sup>

Issued: December 8, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees’ Compensation Appeals Board

David S. Gerson, Judge  
Employees’ Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees’ Compensation Appeals Board

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<sup>7</sup> *Betty M. Regan*, 49 ECAB 496 (1998).

<sup>8</sup> *Jack L. St. Charles*, 42 ECAB 809 (1991).

<sup>9</sup> In view of the disposition of the first issue in this case, the Board need not address the second issue of whether that appellant established she had any continuing disability on and after November 12, 2003.