

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

PAMELA P. PURVIS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 05-681
Issued: July 1, 2005**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On January 24, 2005 appellant, through her attorney, filed an appeal from the March 2 and August 10, 2004 merit decisions of the Office of Workers' Compensation Programs terminating her compensation and medical benefits on the grounds that her accepted condition had resolved. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's medical and wage-loss benefits on March 2, 2004 on the grounds that she had no further residuals due to her accepted employment injury; and (2) whether appellant has established that she had continuing disability after March 2, 2004 causally related to her accepted employment injury.

FACTUAL HISTORY

On August 8, 2002 appellant, a 41-year-old mail clerk, filed an occupational injury claim alleging that she developed carpal tunnel syndrome in her right upper extremity as a result of duties associated with her federal employment. She stopped working on December 11, 2002. The claim was accepted for right carpal tunnel syndrome.

Appellant was treated by Dr. Guy M. Nardella, a Board-certified plastic surgeon specializing in surgery of the hand, who performed a right carpal tunnel release on January 16, 2003. Appellant was also treated by Dr. Bruce F. Grossinger, a Board-certified osteopath specializing in neurology. On February 18, 2003 Dr. Grossinger provided a diagnosis of bilateral carpal tunnel syndrome with tenosynovitis and hand pain with usage. In a report dated March 24, 2003, Dr. Grossinger opined that appellant was unable to case mail or perform other repetitive activities and recommended that any job in which appellant engaged should involve minimal hand usage. He stated that her electromyogram (EMG) study showed an improvement in the right carpal tunnel syndrome following surgery but that “she still [had] a left carpal tunnel syndrome.”

The Office continued to develop the claim and on May 29, 2003 referred appellant, along with the medical record and statement of accepted facts¹ to Dr. Steven Valentino, a Board-certified osteopath specializing in orthopedic surgery, for a second opinion examination. In a report dated June 17, 2003, Dr. Valentino found no objective evidence of residuals relating to appellant’s work-related injury. He opined that, although she presented with a plethora of symptoms which were “nonphysiologic,” there was no objective evidence of carpal tunnel syndrome or ganglion cyst and, therefore, no need for ongoing supervised treatment. He further concluded that appellant could return to work in her preinjury capacity.

Appellant submitted a June 20, 2003 report from Dr. Grossinger reflecting a diagnosis of carpal tunnel syndrome, tenosynovitis and hand pain with usage. Dr. Grossinger indicated that appellant had noted pain and numbness in both hands and that her left hand was getting worse because of compensation for her right hand.

In order to resolve the conflict between Dr. Grossinger and Dr. Valentino, on August 12, 2003, the Office referred appellant, together with a statement of accepted facts, questions to be addressed and the entire case record, to Dr. Donald F. Leatherwood, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated September 16, 2003, Dr. Leatherwood reviewed appellant’s factual and medical history, listed her present complaints and discussed diagnosed conditions and the findings of EMG testing. He explained that appellant’s second EMG showed improvement after surgery. Dr. Leatherwood reported that his examination revealed normal capillary refill throughout the upper right extremity; no trophic changes; no atrophy present grossly in the thenar muscles of the hands or arms; variable motion in the upper right extremity throughout the examination; and free motion of the right elbow.

¹ The statement of accepted facts dated May 29, 2003 reflected that appellant had filed a claim for left carpal tunnel syndrome, alleging October 7, 2002 as the date of injury (OWCP file No. A03-2814243). That claim was denied on May 6, 2003.

Dr. Leatherwood noted that the right side showed “give way” motor strength throughout; that deltoid strength was 5/5; that two-point discrimination was greater than 6 millimeter (mm) in the right thumb and the small finger and 5 mm in the other digits; and that appellant had “theatrically positive Tinel’s sign at the right wrist.” Based upon his review of the record and his examination, Dr. Leatherwood opined that appellant’s right carpal tunnel syndrome had fully resolved and required no work restrictions.

On January 8, 2004 the Office issued a notice of proposed termination of compensation and medical benefits on the grounds that residuals related to appellant’s accepted condition had ceased. No response was received by the Office.

By decision dated March 2, 2004, the Office terminated appellant’s compensation and medical benefits, finding that Dr. Leatherwood’s September 16, 2003 report represented the weight of the medical evidence.

By letter dated May 12, 2004, appellant, by counsel, requested reconsideration of the Office’s March 2, 2004 termination of benefits, alleging that the evidence did not support Dr. Leatherwood’s conclusion. In addition to previously submitted documents, appellant submitted a report dated May 25, 2004 from Dr. Grossinger in which he opined that appellant continued to suffer from the effects of carpal tunnel syndrome and that neither Dr. Valentino nor Dr. Leatherwood “appear to appreciate [appellant’s] neurological injuries.”

In a merit decision dated August 10, 2004, the Office denied modification of its March 2, 2004 decision.²

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of proof to justify a termination or modification of compensation benefits.³ After it has determined that an employee has a condition causally related to his or her federal employment, the Office may not terminate compensation without establishing that the condition has ceased or that it is no longer related to the employment.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation. To terminate authorization for medical treatment, the

² The Board notes that appellant submitted additional evidence after the Office rendered its August 10, 2004 decision. The Board’s jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, the newly submitted evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

³ *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004); *see also Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Willa M. Frazier*, *supra* note 3; *see also Vivien L. Minor*, 37 ECAB 541, 546 (1986).

Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

If there is disagreement between the physician making the examination for the Office and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁶ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁷

ANALYSIS -- ISSUE 1

Having accepted appellant's claim for right carpal tunnel syndrome, the Office terminated her compensation and medical benefits on March 2, 2004 on the grounds that the condition had resolved and related residuals had ceased. The Office, therefore, bears the burden of proof to justify a termination of benefits. The Board finds that the Office has met its burden of proof.

Subsequent to surgery for carpal tunnel release, appellant was treated by Dr. Grossinger, who opined through March 2003 that appellant was unable to case mail or perform other repetitive activities, and recommended that any job in which appellant engaged should involve minimal hand usage. In a second opinion report, Dr. Valentino found no objective evidence of residuals relating to appellant's work-related injury and opined that, although she presented with a plethora of symptoms which were "nonphysiologic," there was no objective evidence of carpal tunnel syndrome or ganglion cyst and, therefore, no need for ongoing supervised treatment. He further concluded that appellant could return to work in her preinjury capacity. In order to resolve the conflict between Dr. Grossinger and Dr. Valentino, the Office properly referred appellant to Dr. Leatherwood, an impartial medical specialist. His opinion, which is based on a proper factual and medical history, is well rationalized and supports the determination that residuals from appellant's accepted condition had ceased by March 2, 2004, the date the Office terminated her benefits. Dr. Leatherwood accurately summarized the relevant medical evidence, provided findings on examination and reached conclusions regarding appellant's condition which comported with his findings.

Dr. Leatherwood explained that appellant's second EMG showed improvement after surgery. He reported that his examination revealed normal capillary refill throughout the upper right extremity; no trophic changes; no atrophy present grossly in the thenar muscles of the hands or arms; variable motion in the upper right extremity throughout the examination; and free motion of the right elbow. Dr. Leatherwood noted that the right side showed "give way" motor strength throughout; that deltoid strength was 5/5; that two-point discrimination was greater than 6 mm in the right thumb and the small finger and 5 mm in the other digits; and that appellant had "theatrically positive Tinel's sign at the right wrist." Based upon his review of the record and his

⁵ *LaDonna M. Andrews*, 55 ECAB ___ (Docket No. 03-1573, issued January 30, 2004); *see also Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, 41 ECAB 361 (1990).

⁶ 5 U.S.C. § 8123(a).

⁷ *See Roger Dingess*, 47 ECAB 123, 126 (1995); *Glenn C. Chasteen*, 42 ECAB 493, 498 (1991).

examination, Dr. Leatherwood opined that appellant's right carpal tunnel syndrome had fully resolved and required no work restrictions.

As Dr. Leatherwood provided a detailed and well-rationalized report based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner. The remaining evidence of record is insufficient to outweigh that special weight.

Since the referee physician found absolutely no objective evidence of any residuals related to appellant's accepted condition, the Board finds that the Office has met its burden of showing that appellant's employment-related condition has resolved.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.⁸

ANALYSIS -- ISSUE 2

Following the termination of compensation appellant submitted additional reports from Dr. Grossinger whose March 24, 2003 report failed to establish that appellant had residuals related to her accepted condition. The explanation regarding disability associated with appellant's left carpal tunnel syndrome is not relevant to her accepted condition of right carpal tunnel syndrome and, therefore, lacks probative value. In fact, the report makes no mention of any residuals related to her accepted injury. Dr. Grossinger's June 20, 2003 report reflects appellant's complaints of pain and numbness in both hands and that her left hand was "getting worse because of compensation for her right hand." However, his diagnosis of carpal tunnel syndrome, tenosynovitis and hand pain with usage did not specify the right or left extremity. Moreover, he did not provide a rationalized explanation as to why appellant would have had continuing symptoms in her right hand following surgery, nor did he supply any factual or clinical evidence to support residuals from appellant's accepted injury. Dr. Grossinger's May 25, 2004 report does not offer any new clinical or factual evidence in support of appellant's position. The Board finds the report to be cumulative in nature. For these reasons, Dr. Grossinger's reports lack probative value.

CONCLUSION

The Office met its burden of proof in terminating appellant's medical and wage-loss benefits on March 2, 2004. Appellant has not established that she had continuing disability caused by the accepted injury after March 2, 2004.

⁸ *Franklin D. Haislah*, 52 ECAB 457 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 10 and March 2, 2004 are affirmed.

Issued: July 1, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member