

conflict in medical opinion, constituted the weight of the medical evidence and established that appellant had no further disability for work or injury-related residuals after September 8, 1999, causally related to her February 16, 1995 employment injuries. The Board found, therefore, that the Office met its burden or proof to terminate appellant's compensation benefits. The facts and the circumstances of the case are presented in this prior decision and are hereby incorporated by reference.¹

On February 16, 1995 appellant, then a 38-year-old secretary, filed a claim alleging that on that date she sustained left hand and knee injuries in the course of her employment. She stopped work on March 6, 1995 and received continuation of pay until April 19, 1995 when she returned to limited duty. The Office accepted appellant's claim for contusions of the left arm and leg, strain of her left shoulder and left carpal tunnel syndrome with surgical release performed by Dr. A. Lee Osterman, a Board-certified orthopedic surgeon.

A conflict in medical opinion arose between Dr. Osterman, appellant's attending Board-certified orthopedic surgeon and Dr. Richard J. Mandel, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion evaluation, regarding the issue of whether she remained disabled due to her accepted employment-related conditions. Consequently, the Office referred appellant to Dr. Mattei to serve as an impartial medical specialist for resolution of the conflict.

Dr. Mattei examined appellant on May 5, 1999 and by report dated June 1, 1999, determined that she had fully recovered from the effects of the employment injury and could return to full duty. He found that appellant had excellent range of motion of her hands in extension, flexion, abduction and adduction of the thumbs and had good motion of her fingers. Dr. Mattei noted appellant's complaints of pain and numbness in certain fingers but he found no neurological involvement at that time. Dr. Mattei recommended a cervical spine evaluation due to previous motor vehicle accidents.

By letter dated August 3, 1999, the Office issued appellant a notice of proposed termination of compensation benefits on the grounds that the medical evidence of record failed to establish that she had any residuals of her accepted work-related conditions. This action was made final on September 8, 1999 when the Office terminated all benefits.

Appellant disagreed with this action, and on September 24, 1999 she requested an oral hearing before an Office hearing representative and submitted additional evidence from Dr. Osterman.

A hearing was held on February 14, 2000 at which appellant testified. By decision dated April 24, 2000, the Office hearing representative affirmed the September 8, 1999 decision, finding that the weight of the medical opinion evidence of record rested with Dr. Mattei's impartial medical examination.

¹ Docket No. 00-2637 (issued December 10, 2001).

Thereafter, appellant appealed to the Board. By decision dated December 10, 2001, the Board found that appellant had no disability for work or injury-related residuals after September 8, 1999 and that the Office properly meet its burden of proof to terminate her compensation entitlement.

On July 2, 2002 appellant, through her representative, requested a schedule award. In support she submitted an April 12, 2002 report from Dr. David Weiss, a Board-certified osteopathic orthopedist, who noted appellant's factual and medical history, noted her level of performance of activities of daily living and reported her present complaints and symptomatology. He detailed appellant's examination results, noting painful ranges of motion in the cervical spine, anterior cuff tenderness of the left shoulder with marked crepitance within the acromioclavicular joint upon circumduction, ranges of left hand and wrist motion with tenderness involving the first dorsal compartment, grip strength testing results and muscle group testing and sensory testing results. Dr. Weiss diagnosed post-traumatic acromioclavicular arthropathy in the left shoulder, chronic post-traumatic supraspinatus tendinitis in the left shoulder, post-traumatic left carpal tunnel syndrome, status post endoscopic left carpal tunnel release, aggravation of preexisting cervical pathology (cervical degenerative disc disease by clinical impression) and post-traumatic left de Quervain's tenosynovitis. He noted that appellant's subjective factors of disability included left shoulder pain and stiffness intermittently, cervical pain and stiffness intermittently, persistent left hand pain and increased pain with weather changes and recommended restrictions in activities of daily living.

Objective factors of continuing injury-related disability were noted as including cervical spine paravertebral muscle spasm and tenderness over the left trapezius and splenius capitis region, positive Travell's trigger points on the left, range of motion restriction involving left lateral flexion, right lateral flexion, left rotation and right rotation and pain in all ranges of cervical motion. With the left shoulder, Dr. Weiss found objective symptoms included anterior cuff tenderness, restricted range of motion involving forward elevation and abduction and circumduction with marked crepitance within the acromioclavicular joint. Objective symptomatology involving the left hand and wrist includes a midpalmar endoscopy scar over the hand, tenderness on palpation involving the first dorsal compartment, tenderness over the abductor pollicis longus and extensor pollicis brevis tendons, tenderness localized over the CMC with a positive Finklestein's test, a positive Tinel's sign, positive one-minute Phalen's sign and a positive carpal compression test, with resisted thumb abduction graded at 4+/5. Dr. Weiss noted that appellant had a markedly abnormal grip strength for her sex and age and that sensory examination revealed a perceived sensory deficit over the C6 and 7 dermatomes of the left upper extremity, with manual muscle testing of the upper left extremity, both biceps and triceps graded at 4+/5. Dr. Weiss related appellant's subjective and objective findings that day to the February 16, 1995.

Using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2000), Dr. Weiss calculated that appellant had a 1 percent permanent impairment for a left shoulder range of motion deficit in flexion; a 9 percent permanent impairment for the 4/5 motor strength deficit of the left thumb in abduction; a 30 percent permanent impairment for left grip strength deficit; a 6 percent permanent for sensory deficit in the left C6 nerve root; and 6 percent permanent for sensory deficit in the left C7 nerve

root. Using the combined values of left upper extremity, appellant resulted in having a 35 percent permanent impairment, which when added to a 3 percent impairment for pain, results in appellant having a 38 percent total left upper extremity impairment, with a date of maximum medical improvement noted as April 12, 2002.

In a March 31, 2003 response to the Office claims examiner's questions about Dr. Weiss' April 12, 2002 report, the Office medical adviser noted that the impartial medical opinion of Dr. Mattei, which was affirmed by the Board, found that appellant had made a complete recovery from the February 16, 1995 employment injury. The medical adviser noted that Dr. Weiss attributed six diagnoses to the work injury and gave an impairment rating including 30 percent for loss of grip strength, even though the A.M.A., *Guides*, (5th ed. 2001) page 494, does not allow for grip strength rating in compression neuropathy such as carpal tunnel syndrome. He opined that, since the effects of the February 16, 1995 employment injury resolved by June 1, 1999, any current impairment is not attributable to the February 16, 1995 employment injury.

By decision dated April 2, 2003, the Office rejected appellant's request for a schedule award, finding that the medical evidence of record did not support that she suffered any permanent residuals from her original work injuries of February 16, 1995.

By letter dated April 7, 2003, appellant, through her representative, requested an oral hearing on the denial of her claim. The hearing was held on January 28, 2004 at which appellant testified. By decision dated March 31, 2004, the Office hearing representative affirmed the Office's April 2, 2003 decision, finding that Dr. Mattei's impartial medical opinion was entitled to special weight and established that appellant had no disability, residuals or permanent impairment causally related to the February 16, 1995 accepted injuries.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination."³ 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.⁴ To terminate authorization for continuing compensation for disability and medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.⁵

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

³ 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁴ *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

⁵ *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, 41 ECAB 361 (1990).

ANALYSIS

Almost three years after the termination on the basis that there were no residuals, appellant filed a claim for a schedule award based on the April 12, 2002 report from Dr. Weiss. Dr. Mattei had been appointed to resolve the conflict in medical evidence between Dr. Osterman and Dr. Mandel. He accomplished this objective with a well-rationalized June 1, 1999 medical report, which found that appellant had fully recovered from the effects of her employment injuries and could return to full duty. Dr. Mattei noted that appellant had excellent range of motion of her hands in extension, flexion, abduction and adduction of the thumbs and had good motion of her fingers. He noted appellant's complaints of pain and numbness in certain fingers but he found no neurological involvement. Dr. Mattei recommended a cervical spine evaluation due to previous motor vehicle accidents, not due to the employment-related slip and fall of February 16, 1995. On December 10, 2001 the Board accepted Dr. Mattei's findings when it affirmed the Office's decision finding no residuals.

Dr. Weiss examined appellant on April 12, 2002 almost three years after the termination of compensation. In a March 31, 2003 response to Office questions about Dr. Weiss' April 12, 2002 report, an Office medical adviser recognized that the Board had affirmed the Office's termination of compensation benefits based on the impartial medical opinion of Dr. Mattei. He noted that, by June 1, 1999, it had been determined that appellant had made a complete recovery from the February 16, 1995 work injuries. Although Dr. Weiss stated that he found objective evidence of ongoing disabilities and permanent impairment, which interfered with her ability to function and painful ranges of motion in the cervical spine in determining that appellant had a 38 percent total impairment of her left upper extremity, he did not provide any explanation why the impairments he found were caused by the February 16, 1995 employment injury. Dr. Weiss' comments with regard to the cause of the impairment are limited to the conclusory statement, "The work-related injury of February 16, 1995, was the competent producing factor for the claimant's subjective and objective findings of today." This is in contrast to Dr. Mattei who, in a detailed thorough report, opined that appellant had fully recovered from her employment injuries and could return to full duty. The report of Dr. Mattei continues to represent the weight of the evidence that appellant does not suffer from residuals of the February 16, 1995 injury. Accordingly, the Board finds Dr. Weiss' report insufficient to establish residuals or any permanent impairment from the accepted employment injury especially in light of the special weight given to the report of the impartial medical examiner's report.

CONCLUSION

The Board finds that the decision of the Office dated March 31, 2004 properly found that appellant was not entitled to a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 31, 2004 is affirmed

Issued: May 11, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member