



## **FACTUAL HISTORY**

This is the third appeal in this case.<sup>1</sup> By decision dated January 30, 2004, the Board reversed Office decisions dated April 2 and January 17, 2003, terminating appellant's compensation and medical benefits.<sup>2</sup> On February 26, 2001 the Board dismissed the appeal docketed as 00-331. The Board's January 30, 2004 decision is incorporated herein by reference.<sup>3</sup>

Following the Board's January 30, 2004 decision, the Office referred appellant to Dr. Bharat K. Bhatt, a Board-certified surgeon specializing in hand surgery, in order to resolve the conflict in the medical evidence as to whether appellant's work-related de Quervain's disease had resolved.<sup>4</sup>

In a report dated July 14, 2004, Dr. Bhatt reviewed a history of appellant's condition and treatment and provided findings on physical examination. He stated:

“There is no cervical spine tenderness. Range of motion of the neck and the shoulders, as well as the elbows, were within normal limits. There was no tenderness in the elbow area. The range of motion at the wrist was bilaterally equal. Active flexion was 65 degrees and extension was 55 degrees. [Appellant] was able to make a full fist with both hands. There was no swelling, either on the wrist or the hand area. Temperature and color of both hands was normal and equal. Both wrist flexion tests were negative and Tinel's sign of both wrists for median and ulnar nerves were negative. The Finkelstein test on the left wrist for tend[i]nitis was negative. There was no tenderness over the first extensor compartment tendon on the left side. The grind test on the left side was positive and axial compression of the first metacarpal causes increased pain in the first

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<sup>1</sup> 55 ECAB \_\_\_\_ (Docket No. 03-1573, issued January 30, 2004); Docket No. 00-331 (order dismissing appeal issued February 26, 2001).

<sup>2</sup> The Office based its 2003 termination decisions on the report of Dr. Robert S. Barbosa, an osteopathic physician selected as the impartial medical specialist. At the time the Office selected Dr. Barbosa in 2001, an osteopathic physician did not meet the definition of a Board-certified physician as set forth in its procedure manual. Therefore, Dr. Barbosa's report could not be accorded the special weight given to an impartial medical specialist and the Office did not meet its burden of proof in terminating appellant's compensation and medical benefits. The Board notes that on May 23, 2003 the Office issued Transmittal No. 03-05, which modified Chapter 3.500.4b and 3.500.7a of its procedure manual to reflect that all qualified Board-certified specialists, including those certified by the American Osteopathic Association and The Official American Board of Medical Specialties (ABMS) Directory of Board-certified Medical Specialists of the American Medical Association are to be used as impartial medical specialists. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.7a (May 2003).

<sup>3</sup> Appellant sustained left wrist and forearm de Quervain's tendinitis as a result of her position as a letter carrier.

<sup>4</sup> The Office indicated that the previous impartial medical specialist, Dr. Barbosa, met the criteria for a referral physician and there remained a conflict in the medical opinion evidence.

carpal-metacarpal joint. She has tenderness over the first carpal-metacarpal joint, as well as in the thenar area.”

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“X-ray examination of the left wrist ... showed early degenerative arthritic changes at the first carpal-metacarpal joint.

“After reviewing [appellant’s medical records] and examining [her] today, my impression is that [appellant] has no evidence of de Quervain’s tendinitis of the left wrist at this time. She does have persistent degenerative arthritis at the first carpal-metacarpal joint. Her left hand symptoms are from degenerative arthritis. [Appellant] also has a history of arthritis in her knees. She is able to work with restrictions. At this time, she should be avoiding continuous pinching, twisting, pushing, pulling and gripping with the left hand. She should avoid lifting more than [five] pounds with the left hand. It is my opinion that she requires medical treatment for her arthritis.”

By letter dated September 30, 2004, the Office asked Dr. Bhatt whether appellant’s degenerative arthritis of the first carpal-metacarpal joint of the left hand was caused or aggravated by her job. On October 7, 2004 Dr. Bhatt stated:

“[Appellant] has a condition of degenerative arthritis of the first carpal-metacarpal joint and it is not caused by her job or job duties. At times, the symptoms of that condition can be aggravated by certain tasks like she was doing as a letter carrier. However, those symptoms could be aggravated by any other work or activity that she does in her day-to-day life.

“[Appellant] stated that she retired from her job as a letter carrier as of July 3, 2003. However, her symptoms of degenerative arthritis persist and that must be related to her day-to-day activities of daily living.”

On June 22, 2005 the Office advised appellant of its proposed termination of her compensation and medical benefits on the grounds that the weight of the medical evidence, represented by the reports of Dr. Bhatt, established that her employment-related left de Quervain’s tendinitis had resolved. No additional evidence was submitted to the record.

By decision dated September 27, 2005, the Office finalized its termination of appellant’s compensation and medical benefits effective September 22, 2005.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>5</sup> The Office may not terminate compensation without

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<sup>5</sup> *Barry Neutach*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

establishing that the disability ceased or that it is no longer related to the employment.<sup>6</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>7</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.<sup>8</sup>

Section 8123(a) of the Federal Employees' Compensation Act provides that "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination."<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS

The Office accepted appellant's claim for left de Quervain's tendinitis. Effective September 22, 2005, the Office finalized the termination of appellant's compensation and medical benefits on the grounds that the accepted condition had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.<sup>11</sup>

Following the Board's January 30, 2004 decision, the Office referred appellant to Dr. Bhatt in order to resolve the conflict in the medical opinion evidence.

Dr. Bhatt reviewed a history of appellant's condition and findings on physical examination and stated that range of motion of the neck, shoulders, elbows and wrists was within normal limits and there was no tenderness in the elbow area. Appellant was able to make a full fist with the left hand and there was no swelling of the wrist or hand. Temperature and color was normal and equal. Tinel's, Finkelstein and flexion tests were negative. Dr. Bhatt noted that x-rays showed early degenerative arthritic changes at the first carpal-metacarpal joint. He stated that appellant had no evidence of de Quervain's tendinitis of the left wrist and her left hand symptoms were caused by nonwork-related degenerative arthritis. Dr. Bhatt stated:

"[Appellant] has a condition of degenerative arthritis of the first carpal-metacarpal joint and it is not caused by her job or job duties. At times, the symptoms of that condition can be aggravated by certain tasks like she was doing

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<sup>6</sup> *Id.*

<sup>7</sup> See *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>8</sup> *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

<sup>9</sup> 5 U.S.C. § 8123(a); see also *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>10</sup> See *Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

<sup>11</sup> *Willa M. Frazier*, 55 ECAB \_\_\_\_ (Docket No. 04-120, issued March 11, 2004).

as a letter carrier. However, those symptoms could be aggravated by any other work or activity that she does in her day-to-day life. [Appellant] stated that she retired from her job as a letter carrier as of July 3, 2003. However, her symptoms of degenerative arthritis persist and that must be related to her day-to-day activities of daily living.”

The Board finds that the thorough and well-rationalized reports of Dr. Bhatt are entitled to special weight and establish that appellant has no continuing disability or medical condition causally related to her May 1, 1997 accepted condition, left de Quervain’s tendinitis. His reports establish that appellant’s left hand condition is caused by her degenerative arthritis which is not causally related to her federal employment. Therefore, the Office met its burden of proof in terminating appellant’s compensation and medical benefits effective September 22, 2005 based on Dr. Bhatt’s reports.

**CONCLUSION**

The Board finds that the Office met its burden of proof in terminating appellant’s compensation and medical benefits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers’ Compensation Programs dated September 27, 2005 is affirmed.

Issued: April 10, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees’ Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees’ Compensation Appeals Board