



## **FACTUAL HISTORY**

On January 10, 2002 appellant, then a 46-year-old mark-up clerk, filed an occupational disease claim alleging that she sustained right carpal tunnel syndrome due to engaging in typewriting at work for almost all of each workday. She stopped work on June 12, 2001.<sup>1</sup>

The findings of June 6, 2001 electromyogram testing showed “very mild right carpal tunnel syndrome.”

The Office accepted that appellant sustained mild right carpal tunnel syndrome and paid appropriate compensation for periods of disability. She underwent right carpal tunnel release surgery on March 11, 2002, which was authorized by the Office.

In a report dated April 23, 2002, Dr. Ellen C. Maitin, an attending Board-certified orthopedic surgeon, provided a history of her treatment of appellant’s upper extremity problems since September 15, 2000. She indicated that appellant had bilateral basal joint arthritis with secondary tendinitis when she first saw her. Dr. Maitin stated that appellant experienced a gradual increase in symptoms, which included tenderness over the first dorsal compartment tendons of the right wrist. She concluded that appellant had right carpal tunnel syndrome related to the repetitive duties she performed at work. Dr. Maitin indicated that appellant also continued to have symptoms from basal joint arthritis.

In a report dated August 19, 2003, Dr. Maitin indicated that appellant’s disability was not related to her basal joint arthritis but rather was related to her employment-related right carpal tunnel syndrome. In a form report dated November 21, 2003, she stated that appellant continued to be disabled due to her employment-related right carpal tunnel syndrome. Dr. Maitin noted that appellant could begin limited-duty work on May 20, 2002.

In February 2004, the Office referred appellant to Dr. Anthony W. Salem, a Board-certified orthopedic surgeon, for examination and an opinion regarding whether she continued to have employment-related disability.

In a report dated March 18, 2004, Dr. Salem stated that on examination appellant’s arm revealed negative Tinel’s sign, full range of arm motion and normal sensory findings upon pinprick. He indicated that when tested for arm strength appellant made no effort “in any way” and stated that she demonstrated secondary illness behavior, symptom magnification and secondary gain. Dr. Salem concluded that appellant did not have any residuals of the employment-related right carpal tunnel syndrome.

The Office determined that there was a conflict in the medical evidence regarding whether appellant continued to have residuals of her employment injury. In order to resolve the conflict, the Office referred appellant to Dr. David R. Pashman, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.

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<sup>1</sup> The Office had previously accepted that appellant sustained left knee, right shoulder and low back strains due to a traumatic incident on March 4, 1999 and bilateral wrist tendinitis due to repetitive duties over a period of time in 2000.

In a report dated April 26, 2004, Dr. Pashman provided a description of the treatment appellant received for her upper extremities. He indicated that examination of appellant's arms revealed that she was neurologically intact, that she had full range of motion in both shoulders and that she exhibited negative Tinel's and Phalen's signs in both arms. Appellant had mild discomfort with grinding in the first carpometacarpal joint bilaterally and grip strength testing revealed weakness in both hands with less than maximal effort expended. Dr. Pashman diagnosed status post right carpal tunnel release for mild carpal tunnel syndrome with no current objective abnormalities of this condition, degenerative arthritis of the first carpometacarpal joint bilaterally which preexisted the employment injury, history of flexor tenosynovitis with no current objective findings, nonwork-related lumbar arthritis and functional overlay to any objective pathology. He concluded that appellant did not show any ongoing signs of active right carpal tunnel syndrome or tendinitis, but that her current functional symptoms were related to her basal joint arthritis affecting the first carpometacarpal joint bilaterally. Dr. Pashman provided work restrictions for repetitive hand motion, sitting, walking and standing but indicated that these were solely related to her nonwork-related basal joint and lumbar arthritis.

By notice dated June 13, 2005, the Office advised appellant of its proposed termination of her compensation. It found that the weight of the medical evidence rested with the well-rationalized opinion of Dr. Pashman.

In a letter dated June 30, 2005, appellant's attorney argued that Dr. Pashman's report was not well rationalized in that he did not adequately explain why the hand restrictions he recommended were due to appellant's preexisting arthritis rather than the effects of her employment injury.

By decision dated July 26, 2005, the Office terminated appellant's compensation effective August 7, 2005 on the grounds that she had no residuals of her employment injury after that date.

Appellant requested a hearing before an Office hearing representative. At the hearing, appellant's attorney provided an argument which was similar to that provided in his June 30, 2005 letter.

By decision dated and finalized March 7, 2006, the Office hearing representative affirmed the Office's July 26, 2005 decision.

### **LEGAL PRECEDENT**

Under the Federal Employees' Compensation Act,<sup>2</sup> once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.<sup>3</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

longer related to the employment.<sup>4</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>5</sup>

Section 8123(a) of the 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."<sup>6</sup> In situations where there exist 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 upon a proper factual background, must be given special weight.<sup>7</sup>

### ANALYSIS

The Office accepted that appellant sustained mild right carpal tunnel syndrome due to employment factors. It terminated her compensation effective August 7, 2005 based on the medical opinion of Dr. Pashman, a Board-certified orthopedic surgeon, who served as an impartial medical specialist.<sup>8</sup>

The Office properly determined that there was a conflict in the medical opinion between Dr. Maitin, appellant's attending Board-certified orthopedic surgeon and Dr. Salem, a Board-certified orthopedic surgeon acting as an Office referral physician, on the issue of whether she continued to have residuals of her employment injury. In report dated August 19 and November 21, 2003, Dr. Maitin determined that appellant continued to be disabled due to her employment-related right carpal tunnel syndrome. In contrast, Dr. Salem found in a March 18, 2004 report that no longer had residuals of this employment injury.

In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Pashman.<sup>9</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>6</sup> 5 U.S.C. § 8123(a).

<sup>7</sup> *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

<sup>8</sup> The Office had previously accepted that appellant sustained left knee, right shoulder and low back strains due to a traumatic incident on March 4, 1999 and bilateral wrist tendinitis due to repetitive duties over a period of time in 2000.

<sup>9</sup> See *supra* note 6 and accompanying text.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Pashman, the impartial medical specialist selected to resolve the conflict in the medical opinion.<sup>10</sup> The April 26, 2004 report of Dr. Pashman establishes that appellant had no disability due to her employment injury after August 7, 2005.

In an April 26, 2004 report, Dr. Pashman indicated that examination of appellant's arms revealed that she was neurologically intact, that she had full range of motion in both shoulders and that she exhibited negative Tinel's and Phalen's signs in both arms. He stated that appellant had mild discomfort with grinding in the first carpometacarpal joint bilaterally and that grip strength testing revealed weakness in both hands with less than maximal effort expended. Dr. Pashman diagnosed status post right carpal tunnel release for mild carpal tunnel syndrome with no current objective abnormalities of this condition, degenerative arthritis of the first carpometacarpal joint bilaterally which preexisted the employment injury, history of flexor tenosynovitis with no current objective findings, nonwork-related lumbar arthritis and functional overlay to any objective pathology.

The Board has carefully reviewed the opinion of Dr. Pashman and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Pashman's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.<sup>11</sup> He provided medical rationale for his opinion by explaining that his conclusion that appellant had no continuing residuals of her employment injury was supported by the fact that she had no ongoing signs of active right carpal tunnel syndrome.<sup>12</sup> Dr. Pashman then explained that appellant's continuing complaints and need for work restrictions were solely related to her nonwork-related basal joint and lumbar arthritis. Appellant argued that Dr. Pashman did not adequately explain why her problems were solely due to nonwork conditions. However, he explained that appellant had no objective findings of a continuing employment injury and there was no evidence that her nonwork conditions were aggravated by employment factors.

### CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective August 7, 2005 on the grounds that she had no residuals of her employment injury after that date.

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<sup>10</sup> See *supra* note 7 and accompanying text.

<sup>11</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

<sup>12</sup> He also determined that she did not have any continuing residuals from a prior work injury, bilateral wrist tendinitis.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' March 7, 2006 decision is affirmed.

Issued: December 27, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board