



## **FACTUAL HISTORY**

On February 13, 2003 appellant, then a 49-year-old procurement coordinator, filed a traumatic injury claim alleging that on that date she slipped on ice and fell while walking from her car to the employing establishment's entrance. She sustained injury to her left arm. Appellant returned to part-time work, four hours per day, on March 3, 2003 and full-time work with restrictions on or about April 28, 2003.

Form reports dated April 28, 2003 from Dr. Henry T. Leis, a Board-certified orthopedic surgeon, March 14, 2003 from Dr. Major Greg Shumacher, an employing establishment physician and March 14, 2003 from Dr. Tim Lindquist, an employing establishment physician, stated that appellant sustained fractured distal radius due to the February 13, 2003 incident.

An April 2, 2003 progress note from Major David Wonchala, a physician's assistant, stated that appellant had probable early RSD. In an April 28, 2003 progress note, Dr. Leis stated that appellant sustained a malunion/nonunion of the left distal radius intra-articular fracture and an ulnar styloid fracture. He stated that her case was complicated by overlying RSD by examination. On May 1, 2003 Dr. Major Janet L. Wilkinson, an employing establishment physician, performed a bone scan which suggested unfused fractures and bone turnover. She stated that, if pain persisted after complete healing, then reevaluation for possible RSD could be helpful. In a May 20, 2003 progress note, Dr. Leis stated that appellant's RSD was resolving based on physical examination and her history.

By letter dated July 2, 2003, the Office accepted appellant's claim for a fracture of the left distal radius and ulnar styloid and authorized closed reduction surgery on the left wrist. On August 4, 2003 Dr. Leis performed surgery on appellant's left wrist.

In an October 1, 2003 report, Dr. Major Scott M. Stallings, an employing establishment physician, stated that appellant had situational depression and a history of RSD. In a December 3, 2003 report, Dr. Stallings diagnosed major depression and RSD.<sup>1</sup>

By letter dated March 31, 2004, the Office accepted appellant's claim for left malunion of fracture and traumatic arthropathy of the left forearm.

On April 1, 2004 the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. Sarah D. Beshlian, a Board-certified orthopedic surgeon and Dr. Robert H. Price, a Board-certified neurologist, for a second opinion medical examination. The physicians were asked to determine whether the claimed condition of RSD was causally related to the February 13, 2003 employment-related injuries.

In a May 18, 2004 report, Drs. Beshlian and Price opined that the accepted employment-related conditions had not resolved in their entirety. They stated that appellant could require future medical treatment due to the development of post-traumatic arthritis of the radiocarpal joint. Drs. Beshlian and Price found that there were no signs of RSD on examination. Appellant's

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<sup>1</sup> On June 3, 2004 the Office accepted appellant's claim for major depressive episode based on the May 18, 2004 medical opinion of Dr. Michael K. Friedman, an Office referral physician.

condition was stable and she had reached maximum medical improvement. Drs. Beshlian and Price stated that appellant did not require any further medical treatment and that she could return to work as a procurement coordinator without restrictions. Utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5<sup>th</sup> ed. 2001) 506, 467, 469, 604, Tables 16-27, Figures 16-28, 16-31 they determined that appellant had a 13 percent impairment to the left upper extremity. In an accompanying work capacity evaluation dated May 20, 2004, Dr. Beshlian stated that appellant could work eight hours per day but restricted her to no repetitive motion of the left wrist and no lifting, pushing, pulling more than two pounds with the left hand.

In a June 1, 2004 report, Dr. Leis diagnosed comminuted distal radius fracture, malunion distal radius, RSD and post-traumatic arthritis of the wrist.

The Office found a conflict in the medical opinion evidence between Drs. Leis, Beshlian and Price as to whether appellant sustained RSD/RCPS due to her accepted employment-related conditions. By letter dated September 16, 2004, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. Richard E. Marks, a Board-certified neurologist, for an impartial medical examination.

In a November 4, 2004 report, Dr. Marks provided a detailed description of appellant's procurement coordinator position and reviewed the medical records. He provided a history of her February 13, 2003 employment injuries, medical treatment and family, social and employment background. Dr. Marks noted appellant's left hand and elbow symptoms which included pain that she rated as 4 out of 10. He reported normal findings on physical and neurological examination. Dr. Marks diagnosed a displaced intra-articular fracture of the distal radius associated with distal ulna fracture that was treated initially with casting and subsequently with surgery due to malunion of the original fracture. These conditions were more probably than not related to the accepted employment-related injuries. Appellant also had distal ulnar neuropathy related to the accepted employment-related injuries and subsequent surgery. Dr. Marks defined RSD/RCPS and noted the criteria for establishing this condition as set forth in the A.M.A., *Guides*. He further noted a May 1, 2003 bone scan that found changes most suggestive of unfused fractures and that RCPS was considered to be less likely. Dr. Marks listed the criteria for establishing RSD/RCPS as set forth by the Washington State Department of Labor and Industries, which included impaired motor function. He stated that appellant had some weakness of hand grip on the left that was probably related to her pain complaints. Her bone scan was classically abnormal for RCPS and, even if the impaired motor function of the left upper extremity were taken into consideration, appellant's condition could not be classified as RCPS at that time. He explained:

“The etiology of her pain was not well sorted out. There is no objective evidence for radiculopathy on today's examination. She does have some sensory deficit in the ulnar distribution of the left hand, probably due to ulnar neuropathy as a sequel to the fracture and subsequent surgery. Neuropathies can sometimes be painful, but the more widespread nature of [appellant's] pain and the severity of her pain is not what is usually seen with a distal ulnar neuropathy. It is noted that a previous independent orthopaedic examiner has determined that [appellant] has a left thumb carpal/metacarpal joint osteoarthritis unrelated to the injury in

question, as well as a post[-]traumatic arthropathy radial carpal joint due to intra-articular displacement of the original distal radius fracture. These conditions may be contributing to her discomfort but, again, the level of discomfort seems to be in excess of what one would normally expect[ing] from these two conditions.”

With regard to future medical treatment, Dr. Marks stated that, since appellant did not have RCPS, any further treatment for that condition was probably not indicated at that time. Even assuming that appellant had RCPS, which she probably did not have based on the reasons discussed above, it was unlikely that cervical sympathetic blocks or cervical sympathectomy would be curative. According to the A.M.A., *Guides*, Dr. Marks stated that regional blockade had no role in the diagnosis of RCPS.

By decision dated November 19, 2004, the Office found that appellant did not sustain RSD/RCPS due to her February 13, 2003 employment-related injuries. It found that Dr. Marks’ November 4, 2004 report was entitled to special weight accorded an impartial medical specialist. On December 16, 2004 appellant requested an oral hearing before an Office hearing representative.

On August 22, 2005 appellant filed a claim for wage loss (Form CA-7) for the period August 7 through 20, 2005. The employing establishment stated that she was on leave without pay (LWOP) for 17 hours on August 11 and 12, 2005 and 9 hours on August 18, 2005 due to medical visits and therapy, totaling 26 hours of LWOP. Appellant submitted disability certificates dated August 11 and 18, 2005 from Dr. Cynthia H. Kahn, a Board-certified anesthesiologist, which released her to return to work on August 15 and 18, 2005, respectively.

By letter dated August 25, 2005, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It noted that it had not received any medical evidence regarding her condition since February 9, 2005. The Office requested that she submit medical evidence from an attending physician showing what treatment she received, her prognosis and plan for future treatment.

On August 31, 2005 appellant filed a CA-7 form alleging that she was totally disabled from August 21 through September 2, 2005. The employing establishment stated that she was on LWOP for 9 and 8 hours on August 25, 2005 respectively, due to medical visits and therapy, totaling 17 hours of LWOP.

Appellant submitted Dr. Kahn’s October 28 and November 17, 2004 reports. Dr. Kahn stated that appellant had RSD of the left upper extremity, right elbow tendinitis that was not relieved with injection, right shoulder pain and left elbow tendinitis that was resolved with injection. Her August 25, 2005 disability certificate released appellant to return to work on August 29, 2005. Dr. Kahn’s January 10, 2005 report stated that appellant had left hand pain and RCPS of the left upper extremity. On December 20, 2004 she performed a left stellate ganglion block under fluoroscopic guidance on appellant’s left upper extremity. In June 24 and September 24, 2004 progress notes, Dr. Leis stated that appellant had right lateral epicondylitis and left de Quervain’s tenosynovitis and she was status post left distal ulnar resection and salvage procedure for severe distal radioulnar joint arthrosis with radial malunion with persistent symptoms.

In a decision issued on September 28, 2005, the Office denied appellant's claims for wage-loss compensation. The medical evidence of record failed to establish that she was totally disabled from August 9 to September 2, 2005, due to her accepted fracture of the left distal radius and ulnar styloid, left malunion of fracture and traumatic arthropathy of the left forearm.

On October 10, 2005 appellant submitted Dr. Kahn's reports. On August 11, 18 and 25, 2005 appellant underwent a left stellate ganglion block under fluoroscopic guidance on the left upper extremity. On September 2, 2005 report Dr. Kahn stated that appellant's left upper extremity RCPS had improved much following a series of stellate ganglion blocks.

On October 13, 2005 appellant requested an oral hearing before an Office hearing representative regarding the September 28, 2005 decision. Dr. Kahn's December 20, 2004 report revealed that on that date appellant underwent a left stellate ganglion block under fluoroscopic guidance on the left upper extremity.

Following the October 20, 2005 hearing regarding the denial of appellant's claim of RSD, she submitted Dr. Leis' July 15, 2003 report. Dr. Leis stated that she sustained left distal radius malunion and ulnar styloid nonunion with likely triangular fibrocartilage complex injury. His September 30, 2003 progress note indicated that appellant had dorsal sensory branch of the ulnar nerve neuritis status post distal ulna excision with extensor carpi ulnaris (ECU) tendon stabilization. In a November 6, 2003 report, Dr. Leis provided a history of appellant's employment-related left wrist condition and medical treatment. He noted that she would never regain full motion or function of her wrist and required six months to fully recovery from her August 2003 surgery. Dr. Leis stated that appellant had not yet reached a static state or maximum medical improvement. In subsequent progress notes, he noted that appellant was status post left Darrah with ECU tendon stabilization with improvement of postoperative RSD.

In a February 27, 2004 report, Dr. Lawrence A. Kropp, a Board-certified anesthesiologist, stated that there were no signs of RSD. He diagnosed Type 2 RCPS in the left wrist and hand.

By decision dated January 23, 2006, an Office hearing representative affirmed the November 19, 2004 decision. He found that Dr. Marks' medical opinion as an impartial medical specialist constituted the weight of the medical evidence in establishing that appellant's RSD was not causally related to the February 13, 2003 fracture of the left distal radius or her accepted condition.

In a March 8, 2006 decision, a hearing representative affirmed the September 28, 2005 denial of wage loss. The evidence of record failed to establish that appellant was disabled from August 9 through September 2, 2005 due to her accepted February 13, 2003 employment-related injuries.

## LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.<sup>4</sup>

Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>5</sup> must be one of reasonable medical certainty<sup>6</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup> The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relation.<sup>8</sup>

When 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>9</sup>

## ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a fracture of the left distal radius. As a result, she sustained ulnar styloid, a left malunion fracture and traumatic arthropathy of the left forearm. The Board finds that a conflict in the medical opinion evidence arose between Dr. Leis,

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Jerry D. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> *See Morris Scanlon*, 11 ECAB 384-85 (1960).

<sup>7</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>8</sup> *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

<sup>9</sup> *James F. Weikel*, 54 ECAB 660 (2003); *Beverly Grimes*, 54 ECAB 543 (2003); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003); *Phyllis Weinstein (Elliot H. Weinstein)*, 54 ECAB 360 (2003); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Bernadine P. Taylor*, 54 ECAB 336 (2003); *Karen L. Yeager*, 54 ECAB 317 (2003); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

an attending physician and Drs. Beshlian and Kropp, Office referral physicians, as to whether appellant sustained RSD/RCPS causally related to the accepted conditions. Dr. Leis opined that appellant had RSD. Drs. Beshlian and Kropp opined that she did not have any signs of RSD.

The Office properly referred appellant to Dr. Marks, selected as the impartial medical specialist, to resolve the conflict. In a November 4, 2004 report, Dr. Marks provided a detailed review of appellant's medical history of her February 13, 2003 employment-related injuries and medical, family, social and employment background. He reported normal findings on physical and neurological examination. Dr. Marks diagnosed a displaced intra-articular fracture of the distal radius associated with distal ulna fracture that was treated with a cast and subsequently with surgery. He further diagnosed distal ulnar neuropathy. Dr. Marks opined that the stated conditions were caused by the February 13, 2003 employment injuries. He outlined the criteria for diagnosing RSD/RCPS. Dr. Marks stated that appellant had some weakness in her hand grip strength on the left but this was probably related to her complaints of pain. He noted that her bone scan was classically abnormal for RCPS and found no objective evidence of RCPS. Although appellant experienced some sensory deficit in the ulnar distribution of the left hand, the severity of her pain was not usually seen with distal ulnar neuropathy. Dr. Marks noted that appellant also had previously diagnosed carpal/metacarpal joint osteoarthritis of the left thumb that was unrelated to the accepted employment injuries. He opined that post-traumatic arthropathy of the radial carpal joint due to intra-articular displacement of the original distal radius fracture may have been contributing to her discomfort. However, her level of discomfort was in excess of what was normally expected from these two conditions.

The Board notes that, although Dr. Kropp opined that appellant developed RSD, he did not state that the diagnosed condition was caused by the February 13, 2003 injury. Similarly, Dr. Kahn's October 28 and November 17, 2004 and January 10 and September 2, 2005 progress reports found that appellant had RSD and RCPS of the left upper extremity. However, Dr. Kahn failed to address whether the diagnosed conditions were caused by the accepted conditions.

The Board finds that Dr. Marks' opinion is based on a proper factual and medical background and is entitled to special weight. Dr. Marks found that appellant's did not have RSD causally related to the accepted employment-related fracture of the left distal radius and resulting conditions to her left forearm. For this reason, his report constitutes the weight of medical opinion.

### **LEGAL PRECEDENT -- ISSUE 2**

Under the Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.<sup>10</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>11</sup> Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a

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<sup>10</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>11</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

preponderance of probative and reliable medical opinion evidence.<sup>12</sup> The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>13</sup> The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify her disability and entitlement to compensation.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

As noted the Office accepted appellant's claim for fracture of the left distal radius and ulnar styloid, left malunion of fracture and traumatic arthropathy of the left forearm. Appellant subsequently claimed compensation for total disability from August 7 through September 2, 2005. Appellant has the burden of establishing, by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability and the accepted condition.<sup>15</sup>

The relevant medical evidence includes Dr. Kahn's August 11, 18 and 25, 2005 disability certificates. She indicated that appellant could return to work on August 15, 18 and 29, 2005, respectively. Dr. Kahn's reports indicate that she performed a left stellate ganglion block under fluoroscopic guidance on appellant's left upper extremity on August 11, 18 and 25. This evidence fails to establish that appellant was disabled for work due to the accepted employment-related injuries for the period claimed. Dr. Kahn's disability certificates and reports are insufficient to establish appellant's claim.

Appellant failed to submit rationalized medical evidence establishing total disability for the period August 9 to September 2, 2005 due to residuals of her accepted fracture of the left distal radius and resulting left forearm conditions. The Board finds that she has not met her burden of proof.

### **CONCLUSION**

The Board finds that appellant has failed to establish that her RSD/RCPS is causally related to her accepted February 13, 2003 employment-related injuries. The Board further finds that appellant has failed to establish that she was totally disabled from August 9 through September 2, 2005 due to her accepted employment-related conditions.

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<sup>12</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>13</sup> *Manuel Garcia*, 37 ECAB 767 (1986).

<sup>14</sup> *Amelia S. Jefferson*, 57 ECAB \_\_\_\_ (Docket No. 04-568, issued October 26, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>15</sup> *Alfredo Rodriguez*, 47 ECAB 437 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 8 and January 23, 2006 and September 28, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 29, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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