



## **FACTUAL HISTORY**

This claim has previously been on appeal before the Board. Appellant filed a claim for bilateral carpal tunnel syndrome in September 2000, which the Office accepted.<sup>1</sup> She subsequently filed a claim for an employment-related emotional condition on March 14, 2002. In an April 13, 2005 decision, the Board reversed an Office decision, finding that the medical evidence established that her emotional condition was causally related to a compensable work factor.<sup>2</sup> The Office combined the two claims, File Nos. 110182040 and 112007176.

In a March 23, 2005 report, Dr. Olayinka Ogunro, a Board-certified orthopedic surgeon and appellant's treating physician, noted appellant's complaints of continued tingling pain and numbness in both hands. He stated that appellant was not capable of performing the duties and physical requirements of her former job as a claims examiner.

In order to determine whether appellant still had residuals from her accepted carpal tunnel condition, the Office referred her to Dr. Charles E. Graham, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated May 26, 2005, Dr. Graham opined that appellant was not capable of resuming her duties as a claims examiner. He stated:

“[Appellant] cannot return to those duties. The duties of claims examiner require a lot of keyboarding and before she is able to do any of her duties she would need to be retrained on something like the Dragon voice recognition equipment in order to avoid the keyboarding problem”

Dr. Graham advised that appellant had permanent restrictions due to her carpal tunnel condition which had not been addressed surgically and would recur rapidly if she used a keyboard. He opined that if appellant did return to work she required retraining in a job which did not require repetitive use of the upper extremities.

The Office determined that a conflict in the medical evidence existed between Dr. Ogunro and Dr. Graham. Appellant was referred to Dr. David Willhoite, Board-certified in orthopedic surgery. In a report dated September 26, 2005, Dr. Willhoite stated that he needed appellant to undergo nerve conduction studies of both upper extremities and a functional capacity examination in order to render an informed opinion on her condition.

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<sup>1</sup> In an August 2, 2002 decision, the Board reversed decisions of the Office which suspended her compensation benefits for failure to participate in vocational rehabilitation. Docket No. 02-127 (issued August 2, 2002). In an August 13, 2004 decision, the Board found that the Office did not meet its burden of proof to terminate compensation benefits and reinstated her compensation. Docket No. 03-1592 (issued August 13, 2004).

<sup>2</sup> In a December 4, 2003 decision, Docket No. 03-1447, the Board reversed the denial of appellant's emotional condition claim and found that appellant established a compensable work factor under *Cutler*. Following further development of the medical evidence, the Office denied the claim, finding that the medical evidence did not establish that her emotional condition was related to factors of her federal employment. In its April 13, 2005 decision, the Board reversed an Office decision and found that the medical evidence established that appellant sustained depression which was contributed to by the work factor. Docket No. 04-1197 (issued April 13, 2005). *See also* Docket No. 05-1722 (issued July 11, 2006).

The Office referred appellant to Dr. Hadi R. Tajani, a Board-certified psychiatrist. In an October 27, 2005 report, Dr. Tajani stated that appellant had a depressive disorder secondary to her physical problems; *i.e.*, her bilateral carpal tunnel syndrome. He related that appellant told him that she was not working due to her physical problems. Dr. Tajani felt that she was motivated to work if her doctors released her back to work. He concluded that her physical condition seemed to be the problem keeping her from gainful employment and opined that appellant was in fact able to return to work.

In a January 30, 2006 report, Dr. Willhoite stated:

“[Appellant] underwent electromyogram [EMG] and nerve conduction studies of both upper extremities on November 18, 2005. The EMG and nerve conduction studies were completely normal. [Appellant] underwent a functional capacity evaluation on January 17, 2006. This evaluation indicated that she qualified for the light category of work which would be well within her job description. Therefore, in my opinion [appellant] can return to full duties at the position she was in on her date of injury.”

On April 18, 2006 the Office issued a notice of proposed termination of compensation to appellant. The Office found that the weight of the medical evidence, as represented by Dr. Willhoite’s opinion, established that appellant was no longer disabled from a physical standpoint due to the accepted carpal tunnel condition. The Office found that appellant was no longer disabled due to her emotional condition based on Dr. Tajani’s referral opinion. The Office allowed appellant 30 days to submit additional evidence or legal argument in opposition to the proposed termination.

In a work capacity evaluation dated May 4, 2006, Dr. Ogunro reiterated that appellant was unable to perform her usual job as claims examiner. He outlined permanent restrictions of no sitting, walking or standing for more than 30 to 45 minutes at a time; no repetitive movements of the wrists and elbows for more than 30 minutes at a time; no pushing, pulling or lifting more than 5 pounds, for no more than 15 minutes at a time. Dr. Ogunro also indicated that appellant must take a 30-minute break every hour.

By decision dated May 19, 2006, the Office terminated appellant’s entitlement to compensation based on the opinions of Drs. Willhoite and Tajani.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>3</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>4</sup>

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<sup>3</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

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

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 shall appoint a third physician who shall make an examination.<sup>5</sup>

### ANALYSIS

The Board finds that the Office did not meet its burden to terminate appellant's compensation. The Office erred in finding that a conflict existed in the medical evidence between Dr. Ogunro, appellant's treating physician, and Dr. Graham, the Office's second opinion physician, whose referral report did not indicate that the residuals of appellant's accepted bilateral carpal tunnel syndrome had ceased. To the contrary, both Dr. Ogunro and Dr. Graham opined that the accepted condition had not resolved.<sup>6</sup> Dr. Graham opined that appellant had permanent restrictions due to her carpal tunnel condition which had not been addressed surgically and would recur rapidly if she returned to keyboarding. He also concurred with Dr. Ogunro in stating that appellant was not capable of resuming her duties as a claims examiner because the position required repetitive functions such as keyboarding for hours at a time. Dr. Graham indicated that appellant could only return to work if she obtained retraining in a job which did not require repetitive use of the upper extremities.

Accordingly, because the Office erroneously found a conflict in the medical evidence and relied on the opinion of Dr. Willhoite to terminate appellant's compensation, it failed to meet its burden of proof in terminating appellant's compensation for her accepted carpal tunnel condition.

In addition, the Office failed to meet its burden of proof in terminating compensation for appellant's emotional condition. The Office based its decision to terminate appellant's compensation on the referral opinion of Dr. Tajani who stated that appellant had a depressive disorder secondary to her physical problems; *i.e.*, her bilateral carpal tunnel syndrome. Dr. Tajani advised that appellant was currently not working due to her physical problems which seemed to be the problem preventing her from returning to gainful employment. He felt that she could be motivated to get back to work if her doctors released her back to work from a physical standpoint.

The Board finds that Dr. Tajani's report lacks probative value because it is insubstantial and not well rationalized. In addition, Dr. Tajani has not clarified or elaborated the specific background upon which he based his opinion. His opinion was not a sufficient basis on which to terminate compensation for her emotional condition. The Board, therefore, finds that the Office erred in relying on Dr. Tajani's opinion in its May 19, 2006 termination decision.

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<sup>5</sup> 5 U.S.C. § 8123(a).

<sup>6</sup> See Federal (FECA) Procedural Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4(a)(1) (March 1994), which states:

"A conflict exists only when there is a disagreement between the attending physician and the physician designated by the United States...."

**CONCLUSION**

The Board finds that the Office has failed to meet its burden to terminate appellant's compensation benefits.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 19, 2006 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 14, 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