

**United States Department of Labor
Employees' Compensation Appeals Board**

P.T., Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Indianapolis, IN, Employer**

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**Docket No. 08-387
Issued: June 6, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 19, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated March 7 and August 15, 2007, which terminated her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation effective March 7, 2007 on the grounds that she no longer had any residuals or disability causally related to her accepted right carpal tunnel syndrome and cubital tunnel syndrome; and (2) whether she had any continuing employment-related residuals or disability after March 7, 2007.

FACTUAL HISTORY

On December 6, 1996 appellant, then a 34-year-old mail processing clerk, filed a claim for an occupational disease assigned number 09-0423792. On August 22, 1996 she first became

aware of pain in her right hand and arm which resulted from working on a machine and lifting trays. By decision dated April 9, 1997, the Office denied appellant's claim. Appellant did not submit any medical evidence establishing that she sustained an injury in the performance of duty.

In an April 30, 1997 letter, appellant requested reconsideration. By decision dated May 9, 1997, the Office set aside the April 9, 1997 decision, finding that appellant sustained an injury in the performance of duty. On May 9, 1997 the Office also accepted appellant's claim for right carpal tunnel syndrome.¹ On July 8, 1997 it authorized right carpal and ulnar tunnel release which was performed on July 29, 1997 by Dr. Jerrold A. Laskin, an attending surgeon.²

By letter dated March 17, 2006, the Office requested that appellant submit a medical report from an attending physician which addressed whether she had any continuing residuals or disability causally related to her accepted condition. Also on March 17, 2006 the Office accepted appellant's claim for right cubital tunnel syndrome.

On March 27, 2006 appellant advised the Office that she was not under the care of any physician. By letter dated April 7, 2006, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions, to Dr. Mark J. Janicki, a Board-certified neurologist, for a second opinion medical examination. Dr. Janicki was asked to provide appellant's current diagnoses and determine whether she could return to her regular work duties, 40 hours per week without restrictions and whether she had any permanent impairment based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

In a May 2, 2006 medical report, Dr. Janicki reviewed a history of appellant's accepted employment-related injuries and medical treatment. On physical and motor examination, he reported:

“[Appellant] appeared in no acute distress. Her higher cortical functions and organic sensorium appeared to be intact. [Appellant] had full range of motion of her head and neck. No tender or trigger points were encountered. Adson's maneuver was negative. Speech was clear. No cervical or supra infraclavicular were appreciated. Cranial nerves all appeared to be intact. Specifically there was no Horner's syndrome. More specifically, upper extremity examination did not reveal any obvious atrophy. [Appellant's] muscle bulk appeared to be good throughout her arms and distally into her hands bilaterally. No tremor or involuntary movements were noted. Muscle tone was normal and symmetrical. No trigger points were elicited at the cubital tunnel. Tinel's was negative,

¹ Appellant stopped working at the employing establishment on June 27, 1997. On October 4, 1999 she began working in for a private employer. On October 3, 2004 appellant became a youth worker.

² On December 18, 1998 appellant filed another claim for an occupational disease assigned number 09-0449414. She alleged that on November 1, 1997 she first became aware of her left carpal tunnel syndrome and first realized that it was caused by her former federal employment. By decision dated March 11, 1999, the Office denied the claim. It found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty. On March 27, 2006 the Office doubled this claim and the instant claim into a master claim assigned number 09-0423792.

however, Phalen's did cause some paresthesias and discomfort again only in her little finger. Motor examination revealed good strength in her upper extremities. Muscles tested included the biceps, triceps, deltoid, pronator teres, wrist flexors and extensors, abductor pollicis brevis, first dorsal interosseous and abductor digiti minimi. No obvious or major strength loss was noted. Sensory examination to pinprick and light touch did not reveal any abnormalities at this time. Reflexes at biceps, triceps and brachioradials were normal and symmetrical."

Dr. Janicki stated that he was unable to identify much pathology on examination. He reviewed a March 2002 electromyogram (EMG) and nerve conduction velocity (NCV) study and recommended a repeat study. Dr. Janicki opined that appellant probably had a certain amount of discomfort in her hand and arm but he did not find much neuropathology at the time of his examination. He stated that some of her description may be related more to tendinitis or even bursitis. Dr. Janicki concluded that additional testing was necessary to respond to the Office's questions.

On August 25, 2006 Dr. Janicki performed an EMG and NCV study. They were reported as normal and there was only slight/minimal prolongation of the median palmar sensory latency. Dr. Janicki stated that this was typically not symptomatic of carpal tunnel. He did not identify any other neurogenic lesions in the right upper extremity.

In a November 14, 2006 report, Dr. Janicki stated that he was unable to provide a specific diagnosis for appellant's right hand/arm condition either electrophysiologically or clinically by his examination. He stated that there may be some evidence of tendinitis or bursitis involving the pain in her right hand/arm. Dr. Janicki was not able to totally determine whether appellant could return to work at that time. He believed that she was experiencing some discomfort unrelated to neuropathology. From a neurological standpoint, appellant did not have any limitations in her motion or any limitations that could be brought on by what aggravated her pain. She did not have any neuropathology causing her pain. Dr. Janicki concluded that he could not rate any impairment to appellant's right arm. He concluded that he was not qualified to judge whether she had pain from another source such as an orthopedic condition, *i.e.*, tendinitis or bursitis.

On December 7, 2006 the Office requested that Dr. Janicki clarify whether appellant had any residuals of her accepted conditions. It again asked him to determine whether she could return to her regular work duties, 40 hours per week.

In a supplemental report dated December 21, 2006, Dr. Janicki opined that appellant did not have any residuals of her employment-related right carpal tunnel or cubital syndrome based on his physical and objective findings. He opined that she could return to work duties as a mail processor, 40 hours per week.

By letter dated January 25, 2007, the Office issued a notice of proposed termination of compensation based on Dr. Janicki's medical opinion. It provided 30 days in which appellant could respond.

Appellant submitted a February 22, 2007 report of Dr. David Steiman, a Board-certified internist, who reviewed a history of her employment-related right carpal tunnel syndrome and medical treatment. Dr. Steiman was not sure what happened over the last 10 years with regard to appellant's right hand condition but stated that she did not satisfactorily recover from it. On physical examination, he reported a slight decrease to pinprick on the right hand consistent with a median nerve problem versus C6 radiculopathy. Reflexes were decreased but symmetrical of the biceps and triceps. Motor examination showed a global weakness in the right upper extremity. Appellant had no focal weakness. She had a weak grip and opponens pollicis, and weakness in the biceps and triceps. Dr. Steiman initially thought appellant simply had a neuralgia-type problem or causalgia in the nerve that never fully recovered from surgery as apposed to the possibility of radiculopathy at C6 which caused pain in her arm and hand. He stated that her examination was not simply focal as the August 25, 2006 EMG/NCV study seemed to rule that out. Dr. Steiman related that appellant had a positive Tinel's sign over the right median nerve but he thought it may have been old.

By decision dated March 7, 2007, the Office terminated appellant's compensation benefits effective that date. It accorded weight to Dr. Janicki's medical opinion. On March 27, 2007 appellant requested a review of the written record by an Office hearing representative.

In a July 12, 2007 form report, Dr. Laskin stated that appellant suffered from right cubital tunnel syndrome. He indicated with an affirmative mark that the diagnosed condition was caused by an employment activity. Dr. Laskin could not list the period of appellant's total disability.

By decision dated August 15, 2007, an Office hearing representative affirmed the March 7, 2007 decision. The hearing representative found that Dr. Janicki's medical opinion represented the weight of the medical opinion evidence.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits based on the opinion of Dr. Janicki, a referral physician, who reviewed a history of appellant's employment-related right carpal tunnel syndrome and cubital tunnel syndrome. Dr. Janicki reported essentially normal findings on physical examination and noted

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

that diagnostic studies of the right upper extremity were essentially normal. He opined that appellant no longer had any residuals or disability due to her accepted employment-related injuries. Dr. Janicki explained that there were no physical or objective findings of residuals or disability causally related to the accepted conditions. He concluded that appellant could perform her regular work duties as a mail processor, 40 hours per week.

The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁵ Dr. Janicki fully discussed the history of injury and explained that there were no objective findings to establish that appellant had any continuing employment-related residuals or disability. The Board finds that his opinion is detailed, well rationalized and based upon a complete and accurate history. The Board finds that Dr. Janicki's opinion represents the weight of the medical evidence. It establishes that appellant no longer has any residuals or disability causally related to her employment-related right carpal tunnel syndrome and cubital tunnel syndrome. The Office met its burden of proof to terminate compensation.

Dr. Steiman's report stated that appellant had continuing symptoms related to her right hand and arm as she had not satisfactorily recovered from her employment-related right carpal tunnel syndrome. He opined that a positive Tinel's sign over the right median nerve "may" have been old. Dr. Steiman's opinion, however, that appellant's positive Tinel's sign may have been old is speculative in nature. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.⁶ Further, Dr. Steiman did not specifically relate his finding to the accepted employment-related conditions. The Board finds that Dr. Steiman's report is insufficient to overcome the weight accorded to Dr. Janicki's medical opinion.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.⁷ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁸ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of

⁵ See *Ann C. Leanza*, 48 ECAB 115 (1996).

⁶ *L.R. (E.R.)*, 58 ECAB ____ (Docket No. 06-1942, issued February 20, 2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

⁷ See *Manuel Gill*, 52 ECAB 282 (2001).

⁸ *Id.*

⁹ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

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, must be one of reasonable medical certainty, 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.¹⁰

ANALYSIS -- ISSUE 2

The only medical evidence submitted by appellant regarding employment-related residuals or disability after March 7, 2007 is Dr. Laskin's July 12, 2007 report. Dr. Laskin indicated with an affirmative mark that appellant's right cubital tunnel syndrome was caused by an employment activity. He did not list the period of her total disability. The Board finds that Dr. Laskin's report is insufficient to establish appellant's claim as a report which only addresses causal relationship with a checkmark without more by way of medical rationale explaining how the incident caused the injury, is insufficient to establish causal relationship and is of diminished probative value.¹¹ Further, he did not identify any period of total disability due to appellant's accepted employment-related injuries.

The Board finds that appellant did not submit the necessary rationalized medical evidence to substantiate that the claimed continuing residuals or disability on or after March 7, 2007 were causally related to her accepted employment-related injuries.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective March 7, 2007 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related right carpal tunnel syndrome and cubital tunnel syndrome. The Board further finds that appellant failed to establish that she had any continuing employment-related residuals or disability after March 7, 2007.

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

ORDER

IT IS HEREBY ORDERED THAT the August 15 and March 7, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 6, 2008
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