

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

G.L., Appellant)

and)

U.S. POSTAL SERVICE, FRANKFORD)
STATION, Philadelphia, PA, Employer)

**Docket No. 08-742
Issued: September 5, 2008**

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 January 15, 2008 appellant, through counsel, filed a timely appeal of an August 17, 2007 merit decision of the Office of Workers' Compensation Programs affirming the termination of her compensation for wage-loss and medical benefits effective March 19, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this termination case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation for wage-loss and medical benefits effective March 19, 2006 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injury; and (2) whether appellant has established that she had any continuing employment-related residuals or disability after March 19, 2006.

FACTUAL HISTORY

On October 10, 2003 appellant, then a 49-year-old letter carrier, filed a claim for an occupational disease. She alleged that on December 15, 2001 she first became aware of a pins and needles sensation and numbness in her right and left hand and realized that her symptoms were caused by factors of her federal employment.¹ Appellant stated that casing mail and performing mark-up work involved repetitive movement of her hands and wrists in the same manner everyday.

Appellant underwent a right carpal tunnel release on December 8, 2003 and a left carpal tunnel release on February 9, 2004, which were performed by Dr. Paul H. Steinfield, an attending Board-certified orthopedic surgeon.

By decision dated January 15, 2004, the Office denied appellant's claim. It found the evidence of record insufficient to establish that she sustained an injury causally related to factors of her employment. On January 19, 2004 appellant requested a review of the written record by an Office hearing representative. In a May 26, 2004 decision, the Office hearing representative set aside the January 15, 2004 decision. She remanded the case to the Office for further development of the medical evidence as to whether appellant sustained an injury caused by her employment. By decision dated July 26, 2004, the Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized subsequent right carpal tunnel surgery. It paid her appropriate compensation.

By letter dated November 21, 2005, the Office referred appellant, together with the case record, a statement of accepted facts and a list of questions to be addressed, to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion medical examination.

On December 8, 2005 the Office received the employing establishment's November 16, 2005 report from its inspector general's office regarding an investigation of appellant's activities outside of work. The investigation revealed her operating a flea market booth out of the back of her car on April 7, May 19 and June 2, 2005. She was observed making cash transactions as a result of selling items from her booth including, sales to undercover postal inspectors. Appellant engaged in activities outside her physical restrictions which included, grasping and manipulations for extended periods of time. She also failed to report any income or employment while receiving compensation for total disability from the Office.

By letter dated December 7, 2005, the Office requested that Dr. Hanley review the employing establishment's investigative report and three accompanying videotapes and an addendum to its statement of accepted facts regarding her activities.

In a December 16, 2005 medical report, Dr. Hanley reviewed a history of appellant's bilateral carpal tunnel syndrome and medical treatment. On physical examination he reported that she held her hands in a guarded position with the fingers slightly flexed and the thumbs very close to the index finger. Dr. Hanley, however, stated that appellant was able to make a full fist

¹ At the time of the filing of her claim, appellant was working in a light-duty position due to nonoccupational lumbar and cervical degenerative disc disease. She began working in this position on April 9, 2002.

and her grip strength was reasonably good. She was unwilling to put her thumbs through range of motion testing because she believed they would lock which was painful. Dr. Hanley reported tenderness at the base of the thumb and a nodule. Appellant's hands showed some congestion of the venous outflow and she suggested that there was a lot of swelling. Despite her contention that her hands swelled up to three times their normal size, Dr. Hanley stated that they looked relatively normal other than the congestion. He stated that appellant had bilateral carpal tunnel syndrome and nonwork-related bilateral trigger finger. Dr. Hanley opined that she no longer suffered from any residuals of her accepted employment injury based on the appropriate treatment she had received. He noted that her subjective symptomatology was questionable based on his review of her activities in the surveillance videotapes. Dr. Hanley stated that appellant was fit to perform the duties of her previous light-duty position.

By letter dated February 1, 2006, the Office issued a notice of proposed termination of compensation based on Dr. Hanley's medical opinion. It provided 30 days to respond to this notice. She did not respond within the allotted time period.

In a decision dated March 6, 2006, the Office terminated appellant's compensation for wage-loss and medical benefits effective March 19, 2006.

In a letter dated March 17, 2006, appellant, through counsel, requested an oral hearing before an Office hearing representative. She submitted medical reports and treatment notes covering the period February 21 through September 21, 2006 from Dr. George L. Rodriguez, a Board-certified physiatrist, who stated that appellant had bilateral carpal tunnel syndrome, bilateral flexor tenosynovitis of the thumbs, bilateral lateral epicondylitis of the elbows and decreased activity due to her accepted employment-related injury.

By decision dated November 8, 2006, the hearing representative affirmed the March 6, 2006 decision. She found the evidence submitted by appellant insufficient to outweigh Dr. Hanley's December 16, 2004 medical opinion.

In a March 5, 2007 letter, appellant, through counsel, requested reconsideration. She submitted reports dated January 3 and April 22, 2007 of Dr. A. Lee Osterman, an attending Board-certified orthopedic surgeon, who reviewed the results of an electromyogram and opined that appellant had bilateral residual median neuropathy and flexor tenosynovitis. In the April 22, 2007 report, Dr. Osterman opined that appellant's conditions were causally related to her employment and that they had not resolved.

On June 1, 2007 the Office determined that a conflict in medical opinion arose between Dr. Osterman and Dr. Hanley regarding whether appellant had any continuing employment-related residuals and disability. By letter dated June 4, 2007, it referred her, together with a statement of accepted facts, the case record and a list of questions, to Dr. Joseph A. Jelen, Jr., a Board-certified orthopedic surgeon, for an impartial medical examination.

In a July 31, 2007 report, Dr. Jelen reviewed the employing establishment's surveillance videotapes and appellant's medical records. He noted a history of her accepted employment injury and social, family and medical background. On physical examination Dr. Jelen reported a full range of motion of the cervical spine. Appellant denied any tenderness when pressure was

applied over the paraspinal, trapezius or scapula areas and over the thoracic spine region. Dr. Jelen stated that her reflexes were not obtainable in either upper extremity but, they were symmetric. Tinel's signs were negative at both wrists. Tinel's sign over the ulnar nerve at the elbow was symptomatic to the mid-forearm area according to appellant's medical records but, it was not classically positive. Dr. Jelen reported full range of motion in the elbows with no epicondyle tenderness. The incisions in appellant's hands were well healed. No muscle atrophy was identified. Strength in the upper extremities was 5/5 bilaterally and no clicking was found in any fingers. Dr. Jelen noted that appellant consistently experienced symptoms in her right thumb and ring finger. He also noted small palpable tendon nodules in these areas, but there was no clicking or rubbing in the region. Appellant had mild-to-minimal tenderness over the flexor tendons. She also had similar findings over the left thumb flexor tendon without clicking. There was no swelling of the hands and appellant could make a complete fist bilaterally. Dr. Jelen diagnosed resolved carpal tunnel syndrome and minimal flexor tendinitis of the hands.

Dr. Jelen opined that appellant was able to perform limited-duty work eight hours per day without restrictions. He related that the medical records and videotapes showed her without obvious pain or concern for her upper extremities as she performed lifting and fine manipulation of both hands without restriction. Dr. Jelen stated that appellant was able to use paraspinal muscles and function in a normal capacity related to the spine within normal limits of lifting as she moved boxes to and from her sport utility vehicle at the flea market. He did not see any absolute restrictions from carpal tunnel syndrome or flexor tendinitis at that time. Dr. Jelen believed that the former condition had been treated adequately and the surgical releases had lessened it. He stated that the entrapment neuropathy had allowed appellant to perform gainful employment and function in at least a limited fashion. Dr. Jelen noted no clicking and triggering of the flexor tendons of either hand and stated that the amount of discomfort in the hands and strength identified on physical examination would not limit her ability to perform activities. He opined that she had recovered from her carpal tunnel syndrome and was able to function well with her hands.

By decision dated August 17, 2007, the Office denied modification of the November 8, 2006 termination decision. It found that Dr. Jelen's July 31, 2007 report was entitled to special weight accorded an impartial medical specialist.

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.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In situations where there are 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 on a proper factual background, must be given special weight.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. Hanley, an Office referral physician, who reviewed a history of her employment-related bilateral carpal tunnel syndrome. Dr. Hanley reported his essentially normal physical examination findings and opined that appellant no longer suffered from any residuals of her accepted employment injury and that she could return to her light-duty position. He explained that she received appropriate medical treatment for her condition. Dr. Hanley further explained that her subjective symptomatology was questionable based on his review of her activities in the employing establishment's surveillance videotapes.

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. Hanley fully discussed the history of injury and explained that there were no objective findings to establish that appellant had any continuing employment-related residuals. The Board, therefore, finds that Dr. Hanley's opinion is detailed, well rationalized and based upon a complete and accurate history.

Dr. Rodriguez' reports and treatment notes stated that appellant had bilateral carpal tunnel syndrome, bilateral flexor tenosynovitis of the thumbs, bilateral lateral epicondylitis of the elbows and decreased activity due to the accepted employment injury. However, he did not provide any medical rationale explaining how or why the diagnosed conditions were caused by the accepted employment injury.⁶ The Board finds that Dr. Rodriguez' reports and treatment notes are insufficient to overcome the weight accorded to Dr. Hanley'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

⁴ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

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

⁶ *Bobbie F. Cowart*, 55 ECAB 746 (2004); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

⁸ *Id.*

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 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 Board finds that the Office properly determined that a conflict in the medical opinion evidence arose between Dr. Hanley, an Office referral physician, and Dr. Osterman, an attending physician, as to whether appellant had any continuing residuals or disability causally related to her accepted employment-related injury following the termination of her compensation. As stated, Dr. Hanley opined that appellant's employment-related bilateral carpal tunnel syndrome had resolved and she could return to her light-duty position. Dr. Osterman opined that appellant had continuing employment-related residuals.

The Office referred appellant to Dr. Jelen, selected as the impartial medical specialist. In a July 31, 2007 report, Dr. Jelen reviewed a history of appellant's employment-related injury and medical background. On physical examination, he reported full range of motion of the cervical spine and elbows with no epicondyle tenderness. Dr. Jelen stated that appellant did not experience any tenderness when pressure was applied over the paraspinal, trapezius or scapula areas and over the thoracic spine region. Her reflexes were not obtainable in either upper extremity but, they were symmetric. Tinel's signs were negative at both wrists. Dr. Jelen stated that a Tinel's sign over the ulnar nerve at the elbow was symptomatic to the mid-forearm area according to appellant's medical records but, it was not classically positive. The incisions in her hands were well healed and she had no muscle atrophy. Strength in the upper extremities was 5/5 bilaterally and no clicking was found in any fingers. Dr. Jelen noted that appellant consistently experienced symptoms in her right thumb and ring finger. He also noted small palpable tendon nodules in these areas, but there was no clicking or rubbing in the region. Appellant had mild to minimal tenderness over the flexor tendons. She also had similar findings over the left thumb flexor tendon without clicking. There was no swelling of the hands and appellant could make a complete fist bilaterally. Dr. Jelen diagnosed resolved carpal tunnel syndrome and minimal flexor tendinitis of the hands.

Dr. Jelen opined that appellant was able to perform limited-duty work eight hours per day without restrictions. Based on his review of the surveillance videotapes, he stated that she did not experience any obvious pain or concern for her upper extremities as she performed lifting and fine manipulation of both hands without restriction. Dr. Jelen further stated that she was able to use paraspinal muscles and function in a normal capacity related to the spine within normal limits of lifting as she moved boxes to and from her sport utility vehicle at the flea market. He did not see any absolute restrictions from carpal tunnel syndrome or flexor tendinitis

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

¹⁰ *See cases cited supra* note 6.

at that time. Dr. Jelen believed that the former condition had been treated adequately and the surgical releases had lessened. He stated that the entrapment neuropathy had allowed appellant to perform gainful employment and function in at least a limited fashion. Dr. Jelen noted no clicking and no triggering of the flexor tendons of either hand and stated that the amount of discomfort in the hands and strength identified on physical examination would not limit appellant's ability to perform activities. He opined that she had recovered from her carpal tunnel syndrome and was able to function well with her hands.

The Board finds that Dr. Jelen's July 31, 2007 opinion is based on a proper factual and medical background and is entitled to special weight. Based on his review of the case record and essentially normal findings on physical examination, Dr. Jelen found that appellant no longer had any residuals or disability causally related to her employment-related bilateral carpal tunnel syndrome. For this reason, Dr. Jelen's report constitutes the special weight of the medical opinion evidence afforded an impartial medical specialist.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective March 19, 2006 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injury. The Board further finds that appellant did not establish continuing employment-related residuals or disability after March 19, 2006.

ORDER

IT IS HEREBY ORDERED THAT the August 17, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 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