

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

K.J., Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
FINANCE & ACCOUNTING SERVICE,
Indianapolis, IN, Employer**

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**Docket No. 08-992
Issued: September 25, 2008**

Appearances:

*Alan J. Shapiro, 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 February 19, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 12, 2007 and January 25, 2008 merit decisions denying her claim for schedule award compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained permanent impairment due to her bilateral carpal tunnel syndrome.

FACTUAL HISTORY

In early 1999, the Office accepted that appellant, then a 29-year-old accounting technician, sustained bilateral carpal tunnel syndrome due to the repetitive duties of her job.¹ She stopped work for various periods and last worked for the employing establishment in February 2001. The Office paid appropriate compensation for these periods of disability.

In notes dated May 7, 2001, Dr. Paul C. Kirk, an attending Board-certified internist, indicated that appellant continued to have symptoms of bilateral carpal tunnel syndrome. On October 24, 2001 Dr. James H. Rutherford, a Board-certified orthopedic surgeon who served as an Office referral physician, stated that appellant showed no clinical signs of carpal tunnel syndrome and that electromyogram (EMG) and nerve conduction tests of her arms showed normal results.² He concluded that appellant no longer had residuals of her accepted bilateral carpal tunnel syndrome.

The Office determined that there was a conflict on the medical evidence between Dr. Kirk and Dr. Rutherford regarding whether appellant had any residuals of work-related bilateral carpal tunnel syndrome. It referred her to Dr. John McGrail, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion on this matter.

In an April 26, 2002 report, Dr. McGrail discussed appellant's medical history including her accepted bilateral carpal tunnel syndrome. He indicated that appellant had complaints consistent with bilateral carpal tunnel syndrome but that clinical testing obtained on April 24, 2002, including Phalen's testing, did not confirm her reported symptoms. Dr. McGrail stated that appellant had varying sensations both before and after Phalen's testing and that she had no atrophy in either arm. Her physical findings were positive for thoracic outlet syndrome. Dr. McGrail stated that he obtained EMG and nerve conduction testing of appellant's arms were "absolutely negative and within the normal range for all studies."³ He concluded that appellant no longer had the accepted condition of bilateral carpal tunnel syndrome. Dr. McGrail indicated that appellant's testing was normal and explained that the symptoms she reported normally would have "tested positive" given the period of time she reported having them. He stated, "There is no residual carpal tunnel syndrome on sensitive electromyographic and nerve conduction testing." Dr. McGrail indicated that appellant should perform light-duty work but noted that this was a precautionary measure.

¹ This claim bears the case file number 09-451537. Appellant has another claim with the Office which bears the file number 09-2004492. The claim was accepted for a bilateral thoracic outlet syndrome and bilateral lateral epicondylitis and, in connection with the claim, appellant received a schedule award in mid 2005 for a 14 percent permanent impairment of his left arm and a 19 percent permanent impairment of his right arm. The matter of appellant's entitlement to schedule award compensation for permanent impairment related to work-related bilateral thoracic outlet syndrome and bilateral lateral epicondylitis is not the subject of the present appeal.

² The record contains the findings of May 17, 1999 EMG and nerve conduction tests of appellant's arms which show normal results.

³ The record contains the findings of May 8, 2007 EMG and nerve conduction testing of appellant's arms which show normal results and no evidence of carpal tunnel syndrome in either arm. It appears that Dr. McGrail inadvertently dated his report April 26, 2002 as the report should have born a date of May 8, 2007 or later.

In a July 8, 2002 letter, the Office advised appellant of its proposed termination of her disability and medical benefits compensation for the accepted bilateral carpal tunnel syndrome based on the opinion of Dr. McGrail. It provided appellant 30 days to submit additional evidence if she felt the termination was unwarranted.

In an August 13, 2002 decision, the Office terminated appellant's compensation effective August 13, 2002 on the grounds that she had no residuals of her accepted bilateral carpal tunnel syndrome after that date. In a June 17, 2003 decision, an Office hearing representative affirmed the Office's August 13, 2002 termination decision.⁴

In an April 2, 2007 report, Dr. Richard M. Ward, an attending Board-certified orthopedic surgeon, discussed appellant's history of bilateral carpal tunnel syndrome and stated that she presently complained bilateral hand symptoms of pain, numbness, tingling and weakness of grip which were aggravated by repetitive hand activity. He indicated that examination revealed reported pain over the distal volar aspect of each forearm which radiated across her wrist and into both hands, including the thumb, index and long fingers. He stated that Tinel's testing was very positive on both sides and noted, "Based on the history and my examination, I believe she was injured on March 5, 1999. As a result of that injury she has the allowance of bilateral carpal tunnel syndrome." Dr. Ward reported the results of grip strength testing and concluded that appellant had a 20 percent permanent impairment based on diminished grip strength under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

Appellant filed a claim contending that she was entitled to schedule award compensation due to bilateral carpal tunnel syndrome.

In a July 12, 2007 decision, the Office denied appellant's claim for a schedule award. It determined that the August 13, 2002 termination of disability and medical benefits compensation was proper as it was based on the well-rationalized opinion of Dr. McGrail, the impartial medical specialist and showed that appellant ceased to have residuals of work-related bilateral carpal tunnel syndrome. The Office further found that the opinion of Dr. Ward was not sufficiently well rationalized to show that appellant had any residuals of work-related bilateral carpal tunnel syndrome after August 13, 2002 and therefore she had not shown she was entitled to schedule award compensation due to work-related bilateral carpal tunnel syndrome.

Appellant requested a hearing via telephone with an Office hearing representative. At the November 13, 2007 hearing, she alleged that she continued to have work-related bilateral carpal tunnel syndrome which caused permanent impairment. In a January 25, 2008 decision, an Office hearing representative affirmed the July 12, 2007 decision.

⁴ Appellant submitted additional medical evidence after the Office's termination but none of it showed that she continued to have carpal tunnel syndrome at the time of the termination.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of her claim, including that she sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.⁶ The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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 condition and the implicated employment factors.⁷

Under the Act, once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁸ To terminate authorization for continuing compensation for disability and medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.⁹ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹⁰ 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."¹¹ 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.¹²

ANALYSIS

In early 1999, the Office accepted that appellant sustained bilateral carpal tunnel syndrome due to the repetitive duties of her job. It terminated appellant's disability and medical benefits compensation effective August 13, 2002 because the opinion of Dr. McGrail, a Board-certified orthopedic surgeon, who served as an impartial medical specialist, showed that she did

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See *Bobbie F. Cowart*, 55 ECAB 476 (2004). In *Cowart*, the employee claimed entitlement to a schedule award for permanent impairment of her left ear due to employment-related hearing loss. The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and therefore it denied her claim for entitlement to a schedule award for the left ear.

⁷ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁸ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁹ *Wiley Richey*, 49 ECAB 166 (1997).

¹⁰ See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹¹ 5 U.S.C. § 8123(a).

¹² *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

not have residuals of her work-related bilateral carpal tunnel syndrome after that date. In April 2007, appellant alleged entitlement to schedule award compensation due to the effects of bilateral carpal tunnel syndrome. The Office denied appellant's schedule award claim. It determined that the August 13, 2002 termination of disability and medical benefits compensation was proper and showed that appellant ceased to have residuals of work-related bilateral carpal tunnel syndrome. The Office further found that the opinion of Dr. Ward, an attending Board-certified orthopedic surgeon, was not sufficiently well rationalized to show that appellant had any residuals of work-related bilateral carpal tunnel syndrome after August 13, 2002.

The Board finds that the Office properly determined that there was a conflict in the medical opinion between Dr. Kirk, an attending Board-certified internist, and Dr. Rutherford, a Board-certified orthopedic surgeon acting as an Office referral physician, on the issue of whether appellant continued to have residuals of the accepted bilateral carpal tunnel syndrome.¹³ In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. McGrail for an impartial medical examination and an opinion on the matter.¹⁴

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. McGrail, the impartial medical specialist selected to resolve the conflict in the medical opinion.¹⁵ The opinion of Dr. McGrail established that appellant had no disability due to her bilateral carpal tunnel syndrome after August 13, 2002.

In an April 26, 2002 report, Dr. McGrail indicated that appellant had complaints consistent with bilateral carpal tunnel syndrome but that clinical testing he obtained, including Phalen's testing, did not confirm her reported symptoms.¹⁶ He stated that he obtained EMG and nerve conduction testing of appellant's arms which was "absolutely negative and within the normal range for all studies." Dr. McGrail concluded that appellant no longer had the accepted condition of bilateral carpal tunnel syndrome.

The Board has carefully reviewed the opinion of Dr. McGrail 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. McGrail'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.¹⁷ He provided medical rationale for his opinion by explaining that appellant

¹³ In notes dated May 7, 2001, Dr. Kirk indicated that appellant continued to have symptoms of bilateral carpal tunnel syndrome. In contrast Dr. Rutherford indicated on October 24, 2001 that appellant no longer had residuals of her accepted bilateral carpal tunnel syndrome.

¹⁴ See *supra* note 11 and accompanying text.

¹⁵ See *supra* note 12 and accompanying text.

¹⁶ Dr. McGrail stated that appellant had varying sensations both before and after Phalen's testing and that she had no atrophy in either arm. He indicated that her physical findings were positive for thoracic outlet syndrome. As noted above, the matter of appellant's entitlement to schedule award compensation for permanent impairment related to bilateral thoracic outlet syndrome is not the subject of the present appeal. See *supra* note 1 and accompanying text.

¹⁷ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

did not show signs of current carpal tunnel syndrome through her physical examination or the findings on EMG and nerve conduction testing.¹⁸

Appellant subsequently submitted an April 2, 2007 report of Dr. Ward, an attending Board-certified orthopedic surgeon and contended that she was entitled to schedule award compensation due to residuals of bilateral carpal tunnel syndrome. Dr. Ward suggested that appellant continued to have work-related bilateral carpal tunnel syndrome. The Board finds that the Office properly determined that the opinion of Dr. Ward was not sufficiently well rationalized to show that appellant had any residuals of work-related bilateral carpal tunnel syndrome after August 13, 2002 and therefore she had not shown she was entitled to schedule award compensation due to work-related bilateral carpal tunnel syndrome.

Dr. Ward's report is of limited probative value regarding the existence of residuals of work-related bilateral carpal tunnel syndrome in that he did not provide any explanation for his ostensible opinion that such work-related residuals were still present. Such medical rationale is especially necessary in the present case as appellant had not worked for the employing establishment since February 2001. His opinion is not based on a complete and accurate factual and medical history in that he did not discuss the medical evidence of record which led to the termination of appellant's compensation for work-related bilateral carpal tunnel syndrome.¹⁹ Given the valid termination of appellant's compensation for work-related bilateral carpal tunnel syndrome and the limited-probative value of Dr. Ward's report with respect to continuing work-related residuals of carpal tunnel syndrome, she has not shown that she has permanent impairment due to a work-related carpal tunnel condition.²⁰ For these reasons, appellant did not show that she was entitled to schedule award compensation due to the effects of bilateral carpal tunnel syndrome and the Office properly denied her schedule award claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained permanent impairment due to the effects of bilateral carpal tunnel syndrome.

¹⁸ Dr. McGrail also explained that appellant's symptoms could be explained by conditions that are not the subject of the present appeal.

¹⁹ The Board further notes that Dr. Ward appears to have relied heavily on appellant's reported complaints in diagnosing bilateral carpal tunnel syndrome. He did not present any findings of diagnostic testing, such as EMG and nerve conduction testing, to show that appellant had this condition.

²⁰ See *Madeline Strano*, Docket No. 04-1878 (issued May 11, 2005). In *Strano*, the Board determined that the Office had properly terminated the claimant's compensation for disability and medical benefits and found that an impairment rating report from almost three years later did not change the prior determination that the claimant no longer had work-related residuals. The Board affirmed the Office's denial of a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 25, 2008 and July 12, 2007 decisions are affirmed.

Issued: September 25, 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