



## **FACTUAL HISTORY**

On August 24, 2001 appellant, then a 32-year-old remittance perfection clerk, filed an occupational disease claim alleging that on August 22, 2001 she first realized her right wrist and hand pain were employment related. The Office accepted the claim for bilateral hand tendinitis, bilateral carpal tunnel syndrome and overuse syndrome. Appellant stopped work on October 7, 2004.

In a September 23, 2004 report, Dr. Daniel D. Brubaker, a treating Board-certified pathologist with a blood bank subspecialty, diagnosed bilateral carpal tunnel syndrome, mild left de Quervain's syndrome and possible right cubital tunnel syndrome. He placed appellant on partial disability and provided restrictions of no repetitive pushing, no lifting more than 10 pounds, no fine manipulation use such as using a keyboard and no grasping, gripping or twisting. A physical examination revealed right positive Phalen's sign, negative left Phalen's sign, positive left Finkelstein's and negative right Finkelstein's.

In a May 9, 2005 work capacity evaluation form, Dr. Brubaker indicated that appellant was capable of working an eight-hour day with restrictions.<sup>1</sup>

On August 25, 2005 the Office referred appellant for a second opinion examination with Dr. Ghol Bahman Ha'Eri, a Board-certified orthopedic surgeon. On October 18, 2005 Dr. Ha'Eri diagnosed milder bilateral carpal tunnel syndrome and mild bilateral wrist and hand tenosynovitis. A physical examination revealed no sensory or motor deficit in both her hands, no atrophy or swelling and normal hand and wrist range of motion. Dr. Ha'Eri concluded that appellant had no objective disability factors as he found no abnormality on testing or physical examination. He concluded that she required no medical treatment for her condition at the present time and had been partially disabled since August 21, 2001. In an attached work capacity evaluation form, Dr. Ha'Eri provided permanent work restrictions on repetitive movement, pushing, pulling and lifting.

By letter dated March 8, 2006, the Office issued a notice of proposed termination of compensation for wage-loss and medical benefits based on Dr. Ha'Eri's medical opinion that appellant had no employment-related disability or residuals. It provided 30 days in which appellant could respond to this notice.

In a March 16, 2006 report, Dr. Brubaker disagreed with the report of Dr. Ha'Eri. His examination of appellant on September 14, 2005 showed positive Tinel's sign and positive bilateral Phalen's test and reverse Phalen's. Dr. Brubaker diagnosed carpal tunnel syndrome, tenosynovitis and myofascitis of the forearm due to appellant's performing fine manipulative tasks in her job.

On April 12, 2006 the Office found a conflict in the medical opinion evidence between Dr. Brubaker and Dr. Ha'Eri as to whether appellant had any continuing employment-related

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<sup>1</sup> On July 1, 2005 the employing establishment offered appellant limited-duty position at a security desk. On February 21, 2006 the Office informed her that the limited-duty job offer by the employing establishment was found to be suitable and offered her 30 days to either accept the position or provide a reason for refusing the job offer.

residuals or disability. By letter dated October 13, 2006, it referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Charles J. Heller, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a July 28, 2006 electromyograph study, Dr. T. Dosumu-Johnson reported chronic median distribution neuropathy, which was greater on the left than the right and recommended clinical correlation. The physician reported an abnormal nerve conduction study which revealed “electrographic evidence of a chronic medial nerve neuropathy consistent with the diagnosis of carpal tunnel syndrome which appears to be greater on the right than on the left.”

In a November 7, 2006 report, Dr. Heller concluded that there were no objective physical findings supporting a diagnosis of carpal tunnel syndrome. On physical examination, there was no swelling, no temperature differentiation, negative Tinel’s, Phalen’s and Finkelstein signs, no crepitus on palpation with motion, no intrinsic muscle atrophy in the thenar or hypothenar and a full range of wrist and palmar motion. Dr. Heller reported that the grip strengths shown by the Jamar Dynamometer were totally inappropriate for the condition of this patient and suggested symptom magnification. He reported that appellant’s “subjective complaints far outweigh the objective findings.” Dr. Heller noted that electrodiagnostic testing showed increased right carpal tunnel syndrome, but reiterated that there were no supporting physical findings of carpal tunnel syndrome. He advised that, if appellant had carpal tunnel syndrome, it was very minor. Dr. Heller concluded that appellant was capable of working the security desk job.

By decision dated December 8, 2006, the Office finalized the termination of appellant’s medical and wage-loss compensation benefits effective that date.

In a letter dated December 21, 2006, appellant requested an oral hearing before an Office hearing representative, which was held on May 22, 2007. The Office received additional medical reports dated February 15 to April 11, 2007 from Dr. Brubaker diagnosing bilateral carpal tunnel syndrome. Dr. Brubaker indicated that appellant was disabled from her date-of-injury position, but was capable of working a position which did not require repetitive use of her hands. On March 30, 2007 he indicated that appellant was capable of sitting for eight hours a day, but was restricted from performing any repetitive motion with her hands such as answering the telephone, filing or sorting papers.

By decision dated July 16, 2007, the Office hearing representative affirmed the December 8, 2006 decision terminating appellant’s compensation benefits.<sup>2</sup> She found the evidence submitted by appellant insufficient to overcome Dr. Heller’s November 7, 2006 medical opinion.

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<sup>2</sup> The Board notes that, following the hearing representative’s July 16, 2007 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. § 501.2(c); *J.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1898, issued January 7, 2008); *G.G.*, 58 ECAB \_\_\_\_ (Docket No. 06-1564, issued February 27, 2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

## LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>3</sup> After it has determined that an employee has disability causally related to 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> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>6</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>7</sup>

Section 8123(a) of the Federal Employees' Compensation 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 [of Labor] shall appoint a third physician who shall make an examination."<sup>8</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.<sup>9</sup>

## ANALYSIS -- ISSUE 1

The Board finds that the Office properly determined that a conflict in the medical opinion evidence arose between Dr. Brubaker, an attending physician, and Dr. Ha'Eri, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to her accepted conditions. Dr. Brubaker opined that appellant had continuing employment-related residuals and was only capable of working a position with no repetitive work. Dr. Ha'Eri concluded that appellant currently required no medical treatment for her accepted conditions and provided permanent work restrictions.

The Board finds that Dr. Heller's November 7, 2006 opinion is based on a proper factual and medical background and is entitled to special weight. Based on his review of the case

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<sup>3</sup> *S.F.*, 59 ECAB \_\_\_\_ (Docket No. 08-426, issued July 16, 2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>4</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>5</sup> *See J.M.*, 58 ECAB \_\_\_\_ (Docket No. 06-661, issued April 25, 2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>6</sup> *T.P.*, 58 ECAB \_\_\_\_ (Docket No. 07-60, issued May 10, 2007).

<sup>7</sup> *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *James F. Weikel*, 54 ECAB 660 (2003).

<sup>8</sup> 5 U.S.C. § 8123(a); *see also R.H.*, 59 ECAB \_\_\_\_ (Docket No. 07-2124, issued March 7, 2008); *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>9</sup> *V.G.*, 59 ECAB \_\_\_\_ (Docket No. 07-2179, issued July 14, 2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

record, negative findings on objective examination and normal findings on physical examination, Dr. Heller found that appellant did not have any residuals or disability causally related to her employment-related bilateral carpal tunnel syndrome. He noted that, while an electrodiagnostic test showed increased right carpal tunnel syndrome, there were no supporting physical findings. Dr. Heller's report constitutes the special weight of the medical opinion evidence afforded an impartial medical specialist. The Board, therefore, finds that the Office met its burden of proof to terminate appellant's compensation benefits on December 8, 2006.

### **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.<sup>10</sup> 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.<sup>11</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>12</sup> 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.<sup>13</sup>

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

After the Office properly terminated appellant's compensation in its December 8, 2006 decision, the burden of proof shifted to her to establish continuing employment-related disability.<sup>14</sup> Appellant submitted reports dated February 15 to April 11, 2007 from Dr. Brubaker, diagnosing bilateral carpal tunnel syndrome. However, Dr. Brubaker was on one side of the conflict which was resolved by Dr. Heller. His recent records are essentially duplicative of his prior reports in finding that appellant has resident of bilateral carpal tunnel. Dr. Brubaker's opinion helped to create the conflict and the new evidence is insufficient to give rise to a new conflict or otherwise show that the termination was improper.<sup>15</sup> Accordingly, the Board finds that Dr. Heller's opinion constitutes the special weight of medical opinion and supports the Office's December 8, 2006 decision to terminate compensation and denying any entitlement to

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<sup>10</sup> See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Manuel Gill*, 52 ECAB 282 (2001).

<sup>11</sup> *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>12</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Elizabeth Stanislav*, 49 ECAB 540 (1998).

<sup>13</sup> *K.W.*, 59 ECAB \_\_\_\_ (Docket No. 07-1669, issued December 13, 2007); *Solomon Polen*, 51 ECAB 341 (2000).

<sup>14</sup> *I.J.*, 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); see *Joseph A. Brown, Jr.*, *supra* note 10.

<sup>15</sup> *M.S.*, 58 ECAB \_\_\_\_ (Docket No. 06-797, issued January 31, 2007).

continuing disability based on the accepted employment conditions of bilateral carpal tunnel syndrome, bilateral hand tendinitis and overuse syndrome.

**CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation benefits effective December 8, 2006 on the grounds that she no longer had any residuals or disability causally related to her accepted bilateral carpal tunnel syndrome, bilateral hand tendinitis and overuse syndrome. The Board also finds that appellant has failed to establish that she had any employment-related residuals or disability after December 8, 2006.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 16, 2007 is affirmed.

Issued: April 14, 2009  
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