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

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| **R.L., Appellant** | ) | |
| **and** | ) | **Docket No. 09-328** |
| | ) | **Issued: August 17, 2009** |
| **U.S. POSTAL SERVICE, HORSHAM POST OFFICE, Horsham, PA, Employer** | ) | |

*Appearances:*
*Thomas R. Uliase, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

### ***JURISDICTION***

On November 17, 2008 appellant filed a timely appeal from an August 5, 2008 decision of the Office of Workers' Compensation Programs affirming the termination of her compensation benefits and rescinding a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

### ***ISSUES***

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective January 15, 2008 on the grounds that her work-related injury had ceased without residuals; and (2) whether the Office met its burden of proof to rescind a March 24, 2005 schedule award for a 17 percent impairment of the left upper extremity.

### ***FACTUAL HISTORY***

On October 24, 2001 appellant, then a 39-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that she sustained a bilateral wrist condition due to repetitive lifting of parcels and trays of coupon mailers at work during the week of September 3, 2001.

She noted a history of hyperthyroidism due to Graves' disease diagnosed in 1994, for which she took a prescription thyroid hormone replacement.

In an October 25, 2001 report, Dr. Steven Balint, an attending Board-certified internist, related appellant's account of repetitive heavy lifting at work handling trays of bulk mail coupons during the week of September 3, 2001. On examination appellant had left hand paresthesias, diminished grip strength, a positive Tinel's sign on the left and lateral epicondylitis. Dr. Balint referred appellant to Dr. Moody Kwok, a Board-certified orthopedic surgeon.

In a November 19, 2001 report, Dr. Kwok noted that appellant was a left-hand dominant postal clerk, who performed repetitive heavy lifting the first week of September 2001. December 5, 2001 electrodiagnostic studies showed bilateral carpal tunnel syndrome. In a January 9, 2002 report, Dr. Kwok noted that left wrist x-rays and a January 2, 2002 magnetic resonance imaging scan showed scapholunate disassociation with carpal instability, which "could be attributable to some heavy lifting or twisting of her wrist" at work. He recommended surgical repair.

On January 29, 2002 the Office accepted that appellant sustained bilateral carpal tunnel syndrome. In February 2002, an Office medical adviser opined that she sustained a left wrist sprain with scapholunate ligament tear. He approved surgical reconstruction. The Office then accepted a left wrist strain with capsulorrhaphy and reconstruction.

Appellant stopped work on February 28, 2002. Later that day, Dr. Kwok performed an open scapholunate ligament construction and repair with carpal tunnel release and percutaneous pinning. He characterized the left wrist instability and carpal tunnel syndrome as work related. Dr. Kwok removed the pins on May 14, 2002. A computerized tomography scan of the left wrist showed separation of the scapholunate interval and migration of fixation hardware into the lunocapital joint. Dr. Kwok performed a scapholunate ligament revision repair and Blatt procedure on July 30, 2002. He removed hardware and performed manipulation on October 22, 2002.[1] Appellant returned to full-time limited-duty work on December 24, 2003.

On September 29, 2004 appellant claimed a schedule award for permanent impairment of the left upper extremity. In support of her claim, she submitted a June 24, 2004 report from Dr. Nicholas Diamond, an attending osteopathic physician, who provided a history of injury and treatment and found that appellant had reached maximum medical improvement. On examination, Dr. Diamond noted dorsiflexion limited to 25 degrees, flexion to 10 degrees, radial deviation at 5 degrees and ulnar deviation at 10 degrees. He also noted a grip strength deficit on the left and pain of 6 to 7 out of 10 on the visual analog scale. Dr. Diamond diagnosed left scapholunate dissociation, carpal tunnel syndrome and unresolved tenosynovitis of the left wrist. Referring to the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*), he assigned a six percent impairment for limited left wrist dorsiflexion and an eight percent impairment for limited palmar flexion according to Figure 16-28, page 467[2] and a four percent deficit for limited ulnar deviation

[1] Dr. Kwok submitted progress notes through June 2004 finding continued left wrist pain and stiffness.

[2] Figure 16-28, page 467 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Lack OF Flexion and Extension of Wrist Joint."

according to Figure 16-31, page 469.[3] Dr. Diamond assigned a 10 percent impairment due to grip strength deficit. He added the range of motion deficits to equal 18 percent, then combined this percentage with the 10 percent grip strength impairment to equal 26 percent. Dr. Diamond then added a three percent impairment due to pain according to Figure 18-1, page 574.[4] He then added the 26 and 3 percent impairments to total a 29 percent impairment to the left upper extremity.[5]

On October 24, 2004 an Office medical adviser reviewed Dr. Diamond's report and opined that appellant sustained a 17 percent impairment of the left upper extremity: 8 percent for loss of flexion and 7 percent for loss of extension according to Figure 16-28 and 2 percent for pain according to Table 18-1.

By decision dated March 24, 2005, the Office granted appellant a schedule award for a 17 percent impairment of the left upper extremity. The period of the award ran from June 24, 2004 to January 22, 2005.

In a March 29, 2005 letter, appellant requested an oral hearing, held February 24, 2006. At the hearing, he asserted a conflict of medical opinion between Dr. Diamond and the Office medical adviser.

By decision dated and finalized May 8, 2006, an Office hearing representative set aside the March 24, 2005 schedule award, finding a conflict of medical opinion between Dr. Diamond, for appellant and the Office medical adviser, for the government, regarding the appropriate percentage of permanent impairment. The hearing representative remanded the case to the Office for appointment of an impartial medical examiner.

On August 3, 2006 the Office referred appellant, the medical record and a statement of accepted facts to Dr. William Simon, a Board-certified orthopedic surgeon, for an impartial medical examination and calculation of a schedule award. In a September 11, 2006 report, Dr. Simon reviewed the medical record and statement of accepted facts. He noted that appellant had hypothyroidism. On examination of the left wrist Dr. Simon found dorsiflexion and palmar flexion limited to 40 degrees and a loss of 20 degrees radial deviation. He stated that while appellant's left wrist pain developed after repetitive heavy lifting at work, this was not an "acute injury that would represent an acute tear of the scapholunate ligament." Dr. Simon therefore opined that it was likely that the scapholunate ligament dissociation was a developmental finding or old finding unconnected to lifting at work. Also, appellant had widening of the scapholunate interval in both wrists but only had symptoms on the left. Dr. Simon found a 34 percent permanent impairment to the left upper extremity due to decreased range of motion according to the A.M.A., *Guides*: 6 percent for limited dorsiflexion and 8 percent for limited palmar flexion

[3] Figure 16-31, page 469 of the fifth edition of the A.M.A., *Guides* is entitled "Pie Chart of Upper Extremity Motion Impairments Due to Abnormal Radial and Ulnar Deviations of Wrist Joint."

[4] Figure 18-1, page 574 of the fifth edition of the A.M.A., *Guides* is entitled, "Algorithm for Rating Pain-Related Impairment in Conditions Associated With Conventionally Ratable Impairment."

[5] In a March 8, 2005 report, Dr. Balint noted that radial deviation in the left wrist was limited to 10 degrees, ulnar deviation to 20 degrees and flexion and extension to 30 degrees. He recommended continued work restrictions.

according to Figure 16-28, 4 percent for limited ulnar deviation according to Figure 16-31, 10 percent for grip strength deficit according to Tables 16-32[6] and 16-34,[7] page 509. He combined these impairments to equal 26 percent. Dr. Simon then added a 3 percent impairment for pain according to Table 18-1, page 574, for a total of 29 percent. However, he stated that this impairment was related only to the nonoccupational scapholunate dissociation.

In an October 25, 2006 report, an Office medical adviser found that Dr. Simon erred as his clinical findings equaled only a 12 percent impairment of the left upper extremity. He therefore found no additional permanent impairment.

By decision dated February 16, 2007, the Office denied an additional schedule award, based on Dr. Simon's opinion. In a February 22, 2007 letter, appellant requested an oral hearing, By decision dated May 3 2007, an Office hearing representative vacated the February 16, 2007 decision due to a conflict of medical opinion between Dr. Diamond, for appellant, and Dr. Simon, for the government, regarding the percentage of permanent impairment and cause of the scapholunate ligament dissociation. The hearing representative directed the appointment of an impartial medical specialist to resolve the conflict.

In a May 4, 2007 reports, Dr. Kwok noted that appellant developed post-traumatic arthritis of her left wrist, status post left scapholunate reconstruction. He found extension limited to 45 to 50 degrees and volar flexion limited to 45 degrees. Dr. Kwok permanently limited lifting to 17 pounds or less.

On July 19, 2007 the Office referred appellant, the medical record and a statement of accepted facts to Dr. Andrew Collier, a Board-certified orthopedic surgeon, for an impartial medical evaluation. Dr. Collier submitted an August 22, 2007 report reviewing the medical record and statement of accepted facts. He noted that, in 1994, appellant was diagnosed with hyperthyroidism due to Grave's disease, had ablation of the thyroid and had taken Synthroid since. On examination, Dr. Collier found flexion, extension and radial deviation of the left wrist limited to 30 degrees and ulnar deviation limited to 10 degrees. He noted slightly diminished grip strength on the left. Dr. Collier noted that the most recent x-rays, obtained on February 13, 2004, showed a persistent increase in the scapholunate interval with no carpal instability. He concurred with Dr. Simon that appellant had no occupational wrist condition because hypothyroidism caused the carpal tunnel syndrome and the scapholunate dissociation was developmental. Dr. Collier stated that she had no residual impairment attributable to the carpal tunnel release. He noted work restrictions against lifting more than 17 pounds and repetitive upper extremity motion. Dr. Collier explained that these restrictions were due to nonoccupational scapholunate dissociation and not the accepted carpal tunnel syndrome.

[6] Table 16-32, page 509 of the fifth edition of the A.M.A., *Guides* is entitled "Average Strength of Grip by Age in 100 Subjects."

[7] Table 16-34, page 509 of the fifth edition of the A.M.A., *Guides* is entitled "Upper Extremity Joint Impairment Due to Loss of Grip or Pinch Strength."

By notice dated November 16, 2007, the Office advised appellant that it proposed to terminate her compensation benefits on the grounds that the accepted carpal tunnel syndrome had ceased without residuals, based on Dr. Collier's report as the weight of the medical evidence.

In a November 29, 2007 letter, appellant asserted that Dr. Collier's opinion was flawed as he did not refer to the A.M.A., *Guides* and incorrectly stated that carpal tunnel release surgery did not constitute a permanent impairment.

By decision dated January 15, 2008, the Office terminated appellant's wage-loss and medical compensation benefits effective that day, based on Dr. Collier's opinion as the weight of the medical evidence. It characterized Dr. Collier's report as well rationalized and based on a complete medical and factual record.

In a January 21, 2008 letter, appellant requested an oral hearing, held on April 22, 2008. At the hearing, she, through her attorney, asserted that the left median nerve release constituted a permanent impairment according to the A.M.A., *Guides*. Therefore, Dr. Collier erred by finding that appellant had no ratable impairment. Also, he did not provide sufficient rationale explaining why repeated heavy lifting at work would not aggravate a congenital disorder of the scapholunate ligament. Appellant's attorney contended that Dr. Collier's report was insufficient to represent the weight of the medical evidence.

After the hearing, appellant submitted a January 29, 2008 report from Dr. Kwok, finding limited left wrist flexion and extension. He permanently limited lifting to 17 pounds.

By decision dated and finalized August 5, 2008, an Office hearing representative affirmed the Office's February 16, 2007 and January 15, 2008 decisions, finding that the Office properly terminated appellant's compensation benefits. The hearing representative found that Dr. Collier's opinion was entitled to the weight of the medical evidence as it was well rationalized and based on a complete factual and medical history. The hearing representative remanded the case for rescission of the March 24, 2005 schedule award as the weight of the medical evidence established that it was paid solely for appellant's preexisting, nonoccupational scapholunate ligament condition.

## ***LEGAL PRECEDENT -- ISSUE 1***

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[8] Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[9]

[8] *Bernadine P. Taylor*, 54 ECAB 342 (2003).

[9] *Id*.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[10] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.[11]

Section 8123 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.[12] 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.[13]

Where the Office secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.[14]

## ***ANALYSIS -- ISSUE 1***

The Office accepted that, on or before September 3, 2001, appellant sustained bilateral carpal tunnel syndrome with left median nerve release and a left scapholunate ligament tear with reconstruction. It terminated her compensation benefits effective January 15, 2008 on the grounds that she no longer had residuals of the accepted carpal tunnel syndrome. By August 5, 2008 decision, the Office affirmed the termination of appellant's compensation and rescinded its acceptance of the let scapholunate ligament tear, based on the opinion of Dr. Collier, a Board-certified orthopedic surgeon and impartial medical examiner. The Board finds, however, that Dr. Collier's opinion is deficient in several respects.

In his August 22, 2007 report, Dr. Collier opined that appellant had a permanent impairment of the left upper extremity due to nonoccupational scapholunate dissociation. He stated that the accepted carpal tunnel syndrome and median nerve release did not constitute a permanent impairment. However, Dr. Collier did not refer to the A.M.A., *Guides* to support this opinion. The Board notes that the A.M.A., *Guides* at page 495 provide that after an optimal period of time following median nerve decompression, residual symptoms could constitute a permanent impairment of up to five percent. Dr. Collier also found that appellant had a congenitally enlarged scapholunate interval bilaterally. However, he did not provide medical

[10] *Roger G. Payne*, 55 ECAB 535 (2004).

[11] *Pamela K. Guesford*, 53 ECAB 726 (2002).

[12] 5 U.S.C. § 8123; *see Charles S. Hamilton*, 52 ECAB 110 (2000).

[13] *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

[14] *Harry T. Mosier*, 49 ECAB 688 (1998).

rationale explaining how and why repetitive heavy lifting at work would not have affected this preexisting condition.

Also, Dr. Collier concurred with the opinion of Dr. Simon, a Board-certified orthopedic surgeon and second opinion examiner, that neither of the accepted conditions were work related. However, Dr. Simon based his opinion on an incorrect medical history. In his September 11, 2006 report, he attributed appellant's carpal tunnel syndrome to hypothyroidism. But appellant did not have hypothyroidism. She had hyperthyroidism, the opposite condition, due to Graves' disease. Appellant underwent ablation of the thyroid in 1994 and was prescribed a synthetic thyroid hormone. There is no evidence of record, such as laboratory results of serologic tests, that the Synthroid did not adequately compensate for the absence of natural thyroid hormone or that appellant was diagnosed by an endocrinologist or other germane specialist as having hypothyroidism. Therefore, Dr. Simon's opinion was based on an incorrect, inaccurate medical history. Dr. Collier's adoption of Dr. Simon's opinion was therefore erroneous.

The Board finds that Dr. Collier's opinion was predicated on inaccurate medical information and insufficiently rationalized. It was insufficient to represent the weight of the medical evidence and resolve the conflict of medical opinion between Dr. Diamond, for appellant and Dr. Simon, for the government. Therefore, at the time of the termination, there was an outstanding conflict of medical opinion. The termination was thus improper. The Office did not meet its burden of proof in terminating compensation.[15]

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

The Office did not meet its burden of proof in terminating appellant's compensation benefits or in rescinding acceptance of scapholunate dissociation and reconstructive surgery. Therefore, the second issue regarding the rescission of the schedule award on the grounds that appellant had no occupational left wrist condition is moot.

## ***CONCLUSION***

The Board finds that the Office did not meet its burden of proof in terminating appellant's wage-loss and medical benefits. The second issue regarding the rescission of the schedule award is therefore moot. The case is returned to the Office for payment of all compensation due and owing from January 15, 2008 onward.

[15] *V.C.*, 59 ECAB ___ (Docket No. 07-642, issued October 18, 2007); *Raymond W. Behrens*, 50 ECAB 221 (1999).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 5, 2008 is reversed.

Issued: August 17, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board