



## **FACTUAL HISTORY**

This case was previously before the Board. The Office accepted appellant's occupational disease claim for left carpal tunnel syndrome on February 23, 1993 and right carpal tunnel syndrome on September 13, 1993.<sup>1</sup> It placed him on the periodic rolls for wage loss on April 4, 2000. By decision dated April 26, 2001, the Office reduced appellant's compensation benefits to zero based on his refusal to participate in vocational rehabilitation. The Board reversed this determination by decision dated July 1, 2002.<sup>2</sup> The facts and circumstances of the case as set out in the Board's prior decision are incorporated herein by reference.

On March 23, 2007 the Office referred appellant to Dr. Matthew Mitchell, a Board-certified orthopedic surgeon, for a second opinion evaluation. On April 20, 2007 Dr. Mitchell reviewed appellant's history of injury, medical treatment and performed a physical examination. He found full elbow range of motion, bilateral negative Tinel's sign in the elbow cubital tunnel, negative Phalen's test, negative carpal tunnel compression test and full range of motion of both wrists. Dr. Mitchell diagnosed bilateral carpal tunnel syndrome by history and positive nerve conduction studies. He found that appellant had signs of very mild right thenar atrophy. In an attached work capacity evaluation form, Dr. Mitchell advised that appellant could work at his usual job with restrictions, with repetitive and/or wrist motions and reaching above the shoulder limited to four hours.

In a March 21, 2007 report, Dr. Dennis J. Sullivan, an attending Board-certified orthopedic surgeon with a subspecialty in hand surgery, diagnosed right carpal tunnel syndrome. Physical examination revealed full bilateral elbow, forearm, wrist and finger motion. Dr. Sullivan found a positive Tinel's sign over the median nerve at the right wrist, but negative over the median nerve at the left wrist and negative at both elbow ulnar nerves. He concluded that appellant was capable of performing his usual duties from a hand standpoint. In an attached work capacity evaluation form, Dr. Sullivan indicated appellant was capable of working without restrictions.

The Office found a conflict in medical opinion between Dr. Mitchell and Dr. Sullivan regarding appellant's work capacity. It referred him to Dr. Howard Sturtz, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated January 16, 2008, Dr. Sturtz reviewed the statement of accepted facts and the medical records. He performed a physical examination and diagnosed bilateral carpal tunnel syndrome. Dr. Sturtz found normal wrist and elbow range of motion. He noted that appellant had negative bilateral Phalen's and Durkan's tests, a slightly positive left wrist Tinel's sign and negative right wrist Tinel's sign. Dr. Sturtz advised that there was no electrodiagnostic change between 1992 and January 2001.

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<sup>1</sup> The Office assigned claim number xxxxxx242. It also accepted a claim for binaural hearing loss and tinnitus under claim number xxxxxx960. The Office accepted that appellant sustained bladder cancer under claim number xxxxxx270. It terminated appellant's wage-loss compensation, by decision dated October 5, 1999, on the basis that he no longer suffered from bladder cancer.

<sup>2</sup> Docket No. 01-1695 (issued July 2, 2002). The Office accepted that appellant, an aircraft electrician equipment technician, sustained bilateral carpal tunnel syndrome causally related to factors of his federal employment. On March 25, 2000 the Office issued schedule awards for a 10 percent impairment of each arm. By letter dated April 4, 2000, the Office placed appellant on the periodic rolls.

He stated that he agreed with Dr. Sullivan that appellant was capable of performing his date-of-injury position as an aircraft electrician equipment technician without restrictions. Dr. Sturtz stated that appellant “has only mild carpal tunnel syndrome and Dr. Mitchell’s examination [was] basically unremarkable.”

On March 13, 2008 the Office proposed to terminate appellant’s compensation benefits based on Dr. Sturtz’s report.

In a March 25, 2008 letter, appellant disagreed with the proposed termination. He requested that he be referred for vocational rehabilitation.

By decision dated May 9, 2008, the Office terminated the proposed termination of appellant’s wage-loss compensation effective May 11, 2008.

### **LEGAL PRECEDENT**

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 his 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>

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 shall appoint a third physician who shall make an examination.<sup>6</sup> It is well established that, when 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 proper factual and medical background must be given special weight.<sup>7</sup>

### **ANALYSIS**

The Office accepted appellant’s claim for bilateral carpal tunnel syndrome. The issue to be determined is whether the Office has met its burden of proof to establish that appellant had no remaining disability due to his accepted injury.

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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> 5 U.S.C. § 8123(a); *see T.C.*, 60 ECAB \_\_\_ (Docket No. 08-2112, issued June 12, 2009); *Y.A.*, 59 ECAB \_\_\_ (Docket No. 08-254, issued September 9, 2008).

<sup>7</sup> *B.K.*, 60 ECAB \_\_\_ (Docket No. 08-2002, issued June 16, 2009); *J.M.*, *supra* note 5.

The Office referred appellant for a second opinion evaluation with Dr. Mitchell, a Board-certified orthopedic surgeon, who found that appellant was capable of working with restrictions on his wrists and shoulders. Appellant's attending physician, Dr. Sullivan, a Board-certified orthopedic surgeon, concluded that appellant was capable of working with no restrictions from a hand standpoint. The Office properly found a conflict of medical opinion evidence between Drs. Mitchell and Sullivan and referred appellant for an impartial medical evaluation with Dr. Sturtz, a Board-certified orthopedic surgeon, to resolve this conflict.

In a January 16, 2008 report, Dr. Sturtz reviewed the statement of accepted facts, the medical records and performed a physical examination. He diagnosed work-related bilateral carpal tunnel syndrome. Dr. Sturtz reported appellant had negative normal wrist and elbow range of motion, a negative bilateral Phalen's and Durkan's tests, a slightly positive left wrist Tinel's sign and negative right wrist Tinel's sign. He also reported that there was no electrodiagnostic change between 1992 and January 2001. Dr. Sturtz stated that he agreed with Dr. Sullivan that appellant was capable of performing his date-of-injury position of an aircraft electrician equipment technician with no restrictions from his accepted bilateral carpal tunnel syndrome. His rationale for this conclusion was the fact that appellant "has only mild carpal tunnel syndrome and Dr. Mitchell's examination [was] basically unremarkable."

As the impartial medical examiner, Dr. Sturtz's report is entitled to the special weight of the medical evidence. He based his conclusions on a proper factual background and provided medical reasoning for concluding that appellant was capable of returning to his date-of-injury position. Dr. Sturtz noted that appellant had no objective findings of disability due to his accepted employment-related condition and, thus, concluded that he was capable of returning to his date-of-injury job with no restrictions. The Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation benefits.

Appellant submitted a letter with his appeal contending the Office should have consolidated his claims for cancer under claim number xxxxxx270, tinnitus/bilateral hearing loss under claim number xxxxxx960 and vertigo under claim number xxxxxx212 with his bilateral carpal tunnel syndrome under claim number xxxxxx242 in order for the Office to accurately determine his work capability. As case numbers xxxxxx270 (cancer), tinnitus/bilateral hearing loss under claim number xxxxxx960 and vertigo under claim number xxxxxx212 involved either a hearing injury or bladder injury and this case involves a hand injury, the cases involve separate injuries and are appropriately addressed in separate decisions. Therefore, the sole issue on appeal is whether the Office properly terminated appellant's wage-loss compensation benefits effective May 11, 2008 as he no longer had any disability due to his accepted bilateral carpal tunnel syndrome. Therefore, appellant's contentions regarding his other claims on appeal are not relevant to the issue currently before the Board.<sup>8</sup> He contends that Dr. Sturtz is not impartial based on his observation of the physician's manner and attitude on entering Dr. Sturtz's office. However, the Board notes that appellant has submitted no evidence supporting his contention of bias on the part of Dr. Sturtz. The impartial medical examiner found that appellant no longer had

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<sup>8</sup> Appellant noted that the Office erred in terminating his benefits for his accepted cancer claim in 1992 as his cancer was not cured and referenced a Board's decision in this case, which was Docket No. 00-2056. He contends that his medical restrictions from his other claims preclude him from returning to his date-of-injury position.

any disability from his accepted bilateral carpal tunnel syndrome. The Office properly accorded Dr. Sturtz's report special weight and terminated appellant's benefits as of May 11, 2008.

On appeal appellant also contended that the Office should have referred him to vocational rehabilitation and combined all his claims to determine his medical disabilities. It is clear from the Act and its implementing regulations that vocational rehabilitation is provided and administered as a discretionary component of the federal compensation program and is not an entitlement. Section 8104(a) of the Act provides, in pertinent part, that the "Secretary of Labor may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Secretary shall provide for furnishing the vocational rehabilitation services."<sup>9</sup> Section 10.518(a) of the Office's implementing regulations provides, in pertinent part, that the Office "may, in its discretion, provide vocational rehabilitation services as authorized by 5 U.S.C. § 8104."<sup>10</sup>

Because appellant had no residual disability due to his accepted employment injury, vocational rehabilitation services are not appropriate.<sup>11</sup> As previously stated, the purpose of vocational rehabilitation is to assist a disabled employee unable to return to his date-of-injury job. The Board, therefore, finds that, as appellant had no employment-related disability, the Office did not abuse its discretion in denying his request for continuing vocational rehabilitation services.

### CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation effective May 11, 2008 on the grounds that he no longer had any disability due to his accepted bilateral carpal tunnel syndrome.

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<sup>9</sup> 5 U.S.C. § 8104(a); *see also* *R.H.*, 58 ECAB \_\_\_\_ (Docket No. 07-74, issued August 16, 2007); *S.F.*, 59 ECAB \_\_\_\_ (Docket No. 08-426, issued July 16, 2008).

<sup>10</sup> 20 C.F.R. § 10.518(a).

<sup>11</sup> *Id.* *See Roniva Brown*, 38 ECAB 338, 343-44 (1987) (finding that the claimant was not entitled to vocational rehabilitation benefits because the medical evidence established that the claimant was able to return to his date-of-injury position). When an employee is no longer disabled within the meaning of the Act and there is no loss of wage-earning capacity, there is no entitlement to vocational rehabilitation benefits under the Act.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 9, 2008 be affirmed.

Issued: December 16, 2009  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board