



during the course of her federal employment. The Office accepted the claim for right carpal tunnel syndrome.<sup>1</sup>

On August 24, 2007 appellant filed a claim for compensation (Form CA-7) requesting compensation for disability from April 13 to November 1, 2006. By decision dated October 5, 2007, the Office found that the medical evidence was insufficient to show that she was disabled from April 13 to November 1, 2006 due to her right carpal tunnel syndrome.

On December 20, 2007 appellant, through her attorney, requested reconsideration. The attorney submitted a report dated October 29, 2007 from Dr. Michael A. Franchetti, a Board-certified orthopedic surgeon, who related that appellant was unable to perform her regular duties from April 13 to November 1, 2006 due to her carpal tunnel syndrome “irrespective of her other orthopedic conditions.”<sup>2</sup> He explained that she could not have used her right hand or wrist to perform repetitive tasks or lift more than five pounds.

By decision dated March 25, 2008, the Office vacated its October 5, 2007 decision and accepted that appellant was disabled from April 13 to November 1, 2006 due to her right carpal tunnel syndrome. It found that Dr. Franchetti’s October 29, 2007 medical report established that she was disabled due to her work injury.

On April 4, 2008 the Office rescinded its March 25, 2008 decision. It found that Dr. Franchetti’s October 29, 2007 report was insufficiently rationalized to establish a period of disability. The Office indicated that it would refer appellant for a second opinion examination to determine if she was disabled due to her right carpal tunnel syndrome from April 13 to November 1, 2006. It informed appellant that its April 4, 2008 issuance did not constitute a final decision regarding her request for reconsideration of its October 5, 2007 decision. In an internal memorandum, the Office noted that the April 4, 2008 issuance was not a final decision as it required additional medical evidence.

The Office referred appellant to Dr. William I. Smulyan, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated May 13, 2008, Dr. Smulyan found that appellant had symptoms of carpal tunnel syndrome but was “capable of working with these symptoms between April 12 and November 1, 2006. He asserted that she was unable to work subsequent to her carpal tunnel surgery.”<sup>3</sup> Dr. Smulyan stated that between April 13 and November 1, 2006 she was not disabled “exclusively because of carpal tunnel syndrome.”

By decision dated May 23, 2008, the Office denied modification of its October 5, 2007 decision.

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<sup>1</sup> By decision dated January 24, 2007, the Office denied appellant’s claim on the grounds that she did not establish a medical condition due to factors of her federal employment. On August 1, 2007 it vacated its January 24, 2007 decision and accepted the claim for right carpal tunnel syndrome.

<sup>2</sup> On February 19, 2008 appellant underwent an authorized right carpal tunnel release.

<sup>3</sup> Appellant underwent authorized surgery for right carpal tunnel syndrome on February 19, 2008.

## LEGAL PRECEDENT -- ISSUE 1

Section 8128 of the Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.<sup>4</sup> The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128 of the Act and where supported by the evidence, set aside or modify a prior decision and issue a new decision.<sup>5</sup> The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.<sup>6</sup>

It is well established that, once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits.<sup>7</sup> This holds true where the Office later decides that it erroneously accepted a claim.<sup>8</sup> 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. It is required to provide a clear explanation of the rationale for rescission.<sup>9</sup>

## ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained right carpal tunnel syndrome due to factors of her federal employment. She filed a claim for disability compensation from April 13 to November 1, 2006. By decision dated October 5, 2007, the Office denied her claim; however, on March 25, 2008 the Office vacated its October 5, 2007 decision and found that the medical evidence established that she was disabled from April 13 to November 1, 2006 due to her right carpal tunnel syndrome.

On April 4, 2008 the Office rescinded its March 25, 2008 decision. It indicated that it was not rendering a final decision. Section 10.126 of the Office's regulations provides that a decision of the Office shall contain findings of fact and a statement of reasons and is accompanied by information about the claimant's appeal rights.<sup>10</sup> In its April 4, 2008 correspondence, the Office evaluated the evidence and rescinded its acceptance of a period of disability. It is the content and not the Office's identification of a decision that is significant. The Board finds that the April 4, 2008 issuance of the Office constituted a final decision.

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<sup>4</sup> 5 U.S.C. § 8128; *see also* 20 C.F.R. § 10.610.

<sup>5</sup> *John W. Graves*, 52 ECAB 160 (2000); *Eli Jacobs*, 32 ECAB 1147 (1981).

<sup>6</sup> *John W. Graves*, *supra* note 5; *Doris J. Wright*, 49 ECAB 230 (1997).

<sup>7</sup> *Linda L. Newbrough*, 52 ECAB 323 (2001).

<sup>8</sup> *Id.*

<sup>9</sup> *Andrew Wolfgang-Masters*, 56 ECAB 411 (2005); *see also* 20 C.F.R. § 10.610.

<sup>10</sup> 20 C.F.R. § 10.126.

The Board further finds that the Office did not meet its burden of proof in rescinding its acceptance of appellant's claim for disability from April 13 through November 1, 2006. As the Office determined that appellant sustained disability causally related to her federal employment, it may not terminate compensation without establishing either that the disability ceased or that it is no longer related to the employment.<sup>11</sup> This holds true where the Office later decides that it erroneously accepted a claim.<sup>12</sup> In its April 4, 2008 decision, the Office determined that Dr. Franchetti's October 29, 2007 report contained insufficient rationale to meet appellant's burden of proof to show that she sustained employment-related disability for the period in question. The Office did not identify any medical evidence that affirmatively established that her disability had ceased or was not related to her employment. Instead, the Office concluded that it should further develop the medical evidence to determine whether she was disabled due to her employment injury from April 13 through November 1, 2006. It should have further developed the medical evidence before making a determination as to whether its acceptance of the period of disability should be rescinded and therefore has failed to meet its burden of proof to rescind the acceptance of the claim.<sup>13</sup>

### CONCLUSION

The Board finds that the Office improperly rescinded its acceptance of appellant's claim for compensation for disability from April 13 through November 1, 2006.<sup>14</sup>

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<sup>11</sup> See *Linda L. Newbrough*, *supra* note 7.

<sup>12</sup> *Id.*

<sup>13</sup> See *Robert A. Redmond*, 40 ECAB 796 (1989).

<sup>14</sup> In view of the Board's resolution of the first issue, the issue of whether appellant established entitlement to compensation from April 13 through November 1, 2006 is moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated May 23 and April 4, 2008 are reversed.

Issued: February 19, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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