



federal employment. He stopped work on December 2, 2006. The Office accepted the claim for bilateral carpal tunnel syndrome.

The Office paid appellant compensation for total disability beginning January 27, 2007. On May 15, 2007 Dr. Amelia L. Tabuena, a physiatrist, found that appellant was unable to perform his usual employment. By letter dated May 29, 2007, the Office referred appellant to Dr. Steven J. Valentino, an osteopath certified by the American Osteopathic Association in orthopedic surgery, for a second opinion examination. On June 20, 2007 Dr. Valentino diagnosed resolved bilateral carpal tunnel syndrome and found that he could resume his usual employment.

On July 5, 2007 the Office requested that Dr. Tabuena review Dr. Valentino's report and provide a current medical opinion. Dr. Tabuena referred appellant to Dr. Randall W. Culp, a Board-certified orthopedic surgeon, for an examination. On August 27, 2007 Dr. Culp found a positive Phalen's test bilaterally and diagnosed bilateral carpal tunnel syndrome. He recommended a right carpal tunnel release. On September 20, 2007 Dr. Culp performed a right carpal tunnel release and median nerve neurolysis.

The Office determined that a conflict in medical opinion existed between appellant's attending physicians, Drs. Tabuena and Culp, and the Office referral physician, Dr. Valentino, on the issue of whether appellant had any further disability or need for medical treatment due to his accepted condition of bilateral carpal tunnel syndrome. It referred appellant to Dr. Richard Mandel, a Board-certified orthopedic surgeon, for an impartial medical examination.

On January 31, 2008 Dr. Mandel reviewed the history of injury and the medical evidence of record. On examination of the upper extremities, he found no muscle atrophy or swelling and inconsistent effort on grip strength. Dr. Mandel determined that the neurological examination was normal and that appellant had a negative Phalen's test and Tinel's sign bilaterally. He noted that diagnostic testing on January 23, 2007 showed severe right carpal tunnel syndrome. Dr. Mandel opined that appellant had recovered from his right carpal tunnel surgery September 2007 and stated:

“This is based upon a restoration of normal sensation in the median nerve distribution of the right hand and an absence of any clinical evidence of residual carpal tunnel syndrome in the right hand. [Appellant] demonstrated borderline normal sensation over all digits on the right as well as sub-maximal effort and evidence of embellishment during grip strength testing on the right. Overall, I was not able to substantiate his remaining complaint on the right, that of grip weakness. In fact, he demonstrated evidence of embellishment and sub-maximal effort on grip strength testing on the right.

“With regard to the diagnosis of any ongoing left carpal tunnel syndrome, sensory testing today was well within normal range, suggesting that any carpal tunnel syndrome on the left has resolved.

“With regard to return to work, in terms of the accepted injuries, it is my opinion that [appellant] is capable of returning to full regular duty work.”

On March 6, 2008 the Office notified appellant of its proposed termination of his compensation and medical benefits. It found that Dr. Mandel's opinion constituted the weight of the medical evidence and established that he had no further disability or need for medical treatment.<sup>1</sup> By decision dated April 7, 2008, the Office finalized its termination of appellant's benefits and authorization for medical treatment effective April 7, 2008.

In an April 4, 2008 statement, received by the Office on April 10, 2008, appellant contested the proposed termination of his benefits. He completed a Form CA-7 on April 15, 2008 requesting compensation from March 29 through April 11, 2008. By decision dated April 17, 2008, the Office denied appellant's claim for compensation for March 29 through April 11, 2008. It noted that it had paid compensation until April 6, 2008 and that he was not entitled to compensation after that date based on the termination decision.

On March 3 and 31 and April 30, 2008 Dr. Nicholas Diamond, an osteopath, diagnosed lumbar disc syndrome, right rotator cuff tendinitis, a right knee meniscus tear and lumbar radiculopathy. He found that appellant was unable to work.

On May 13, 2008 appellant requested reconsideration. He contended that Dr. Valentine did not know why he was examining him and that Dr. Mandel lied about his findings in order to receive payment. By decision dated August 15, 2008, the Office denied modification of its April 7, 2008 termination decision.

### **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. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>2</sup> The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup>

Section 8123(a) 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.<sup>4</sup> The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>5</sup> In situations where there exist opposing medical reports of virtually equal weight and

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<sup>1</sup> A March 15, 2008 x-ray which revealed unremarkable right wrist findings.

<sup>2</sup> *Willa M. Frazier*, 55 ECAB 379 (2004); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>3</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>4</sup> 5 U.S.C. § 8123(a).

<sup>5</sup> 20 C.F.R. § 10.321.

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.<sup>6</sup>

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

The Office accepted that appellant sustained bilateral carpal tunnel syndrome due to factors of his federal employment. Appellant stopped work on December 2, 2006 and did not return. The Office paid him compensation for total disability beginning January 27, 2007.

The Office determined that a conflict in medical opinion arose between Dr. Culp, appellant's attending physician, and Dr. Valentino, the Office referral physician, on the issue of whether he had continuing disability or need for further medical treatment for his carpal tunnel syndrome. 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.<sup>7</sup> The Board finds that the opinion of Dr. Mandel, a Board-certified orthopedic surgeon selected to resolve the conflict in opinion, is well rationalized and based on a proper factual and medical history. Dr. Mandel accurately summarized the relevant medical evidence, provided detailed findings on examination and reached conclusions about appellant's condition which comported with his findings.<sup>8</sup> On January 31, 2008 he reviewed the medical evidence of record, including the results of diagnostic studies. On examination Dr. Mandel found a bilateral negative Phalen's test and Tinel's sign and opined that appellant's neurological examination was normal. He asserted that appellant had recovered from his right carpal tunnel syndrome, and provided rationale for his opinion by noting the restoration of sensation in the medial nerve distribution of the right hand, and the lack of clinical findings of carpal tunnel syndrome. Dr. Mandel further determined that appellant had no residuals of his left carpal tunnel syndrome based on the results of sensory testing. He opined that appellant could perform his usual employment. As Dr. Mandel's report is detailed, well rationalized and based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner. The Office thus met its burden of proof to terminate appellant's compensation benefits for the accepted conditions of bilateral carpal tunnel syndrome.

### **LEGAL PRECEDENT -- ISSUE 2**

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>9</sup> To terminate authorization for medical treatment, the

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<sup>6</sup> *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

<sup>7</sup> *Id.*

<sup>8</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>9</sup> *Roger G. Payne*, 55 ECAB 535 (2004); *Pamela K. Guesford*, 53 ECAB 727 (2002).

Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>10</sup>

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

The Office met its burden of proof to terminate authorization for medical benefits through the opinion of Dr. Mandel, the impartial medical examiner, who found that appellant had no residuals of his bilateral carpal tunnel syndrome. Dr. Mandel explained that the clinical examination revealed that the right and left carpal tunnel syndrome had resolved. As his opinion is detailed and well rationalized, it is entitled to the special weight accorded an impartial medical examiner and establishes that appellant has recovered from his accepted employment injury.

### **LEGAL PRECEDENT -- ISSUE 3**

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to him to establish that he had continuing disability after that date related to his accepted injury.<sup>11</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 medical and factual background, supporting such a causal relationship.<sup>12</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence

### **ANALYSIS -- ISSUE 3**

Appellant submitted reports dated March 3 and 31 and April 30, 2008 from Dr. Diamond, who diagnosed lumbar disc syndrome, right rotator cuff tendinitis, a right knee meniscus tear and lumbar radiculopathy. Dr. Diamond opined that appellant was unable to work. The Office did not accept a low back, rotator cuff or right knee condition as employment related. Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment through the submission of rationalized medical evidence.<sup>13</sup> Dr. Diamond did not; however, address the causal relationship between the diagnosed conditions and factors of appellant's employment as a mail handler. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>14</sup> Appellant has not submitted medical evidence sufficient to overcome the weight accorded Dr. Mandel as the impartial medical examiner and thus has not met his burden of proof to establish that he has any continuing employment-related disability.

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<sup>10</sup> *Id.*

<sup>11</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

<sup>12</sup> *See Manuel Gill*, *supra* note 8.

<sup>13</sup> *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>14</sup> *Conard Hightower*, 54 ECAB 796 (2003).

**CONCLUSION**

The Board finds that the Office properly terminated appellant's compensation and authorization for medical treatment effective April 7, 2008 on the grounds that he had no further disability due to his accepted employment injury of bilateral carpal tunnel syndrome. The Board further finds that he has not established that he had any continuing employment-related disability after April 7, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 15 and April 17 and 7, 2008 are affirmed.

Issued: July 10, 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