

tunnel syndrome with surgical releases on November 14 and December 29, 1995.¹ He filed a notice of recurrence of disability on October 1, 1996. The Office denied this claim on January 10, 1997 but found that appellant had established his recurrence of disability by decision dated July 3, 1997. Appellant was entered on the periodic rolls on November 14, 1997.² The Office granted appellant a schedule award for 10 percent impairment of each upper extremity on January 10, 1997.

On March 4, 1999 appellant filed a notice of occupational disease alleging that he developed trigger finger in his left hand. The Office accepted this claim for left third trigger finger on June 21, 1999. On April 5, 2000 appellant filed a notice of occupational disease attributing trigger finger in his right hand to factors of his federal employment. The Office accepted his claim for right trigger finger on April 8, 2002. Appellant underwent right thumb, index and middle finger trigger release on September 6, 2002. He underwent right ring and little finger trigger release on January 27, 2003. Appellant's attending physician, Dr. Allisyn Okawa, a plastic surgeon, performed a tenosynovectomy at the wrist level.

Dr. Okawa examined appellant on March 30, 2004 and diagnosed tendinitis and lateral epicondylitis on the right. She recommended surgery to reconstruct the lateral epicondyle. Dr. Okawa also found arthritis in the right ring finger, which could require surgery in the future. On April 29, 2004 she diagnosed de Quervain's of the right wrist as well as arthritis in the right ring finger.

The Office referred appellant for a second opinion evaluation with Dr. Michael E. Callahan, a Board-certified orthopedic surgeon, on April 19, 2004. In a report dated May 14, 2004, Dr. Callahan noted appellant's history of injury and medical treatment and listed findings on physical examination. He diagnosed chronic cervical and lumbar spine pain, chronic bilateral hand and forearm pain and de Quervain's synovitis of the right wrist. Dr. Callahan found that appellant had no objective or electrodiagnostic evidence of carpal tunnel syndrome. He concluded that appellant was not capable of returning to his date-of-injury position. Dr. Callahan did not recommend further surgical treatment.

The Office found a conflict of medical opinion evidence between Drs. Callahan and Okawa on the issue of whether there were objective findings of the accepted conditions of bilateral carpal tunnel syndrome or bilateral trigger finger and whether appellant's current condition and disability was due to his accepted employment injuries. It referred appellant for an impartial medical examination.

Dr. Robert H. Horne, a Board-certified orthopedic surgeon selected as the impartial medical examiner, completed a report on July 15, 2004. He diagnosed de Quervain's synovitis and recommended surgery for this condition. Dr. Horne stated that this was a continuation of the

¹ On February 16, 1993 appellant, then a 33-year-old electronics worker, filed a traumatic injury alleging that he developed a back injury when he slipped on ice in the performance of duty. The Office accepted this claim for strains of the back, neck and right shoulder. Appellant filed a notice of occupational disease on April 11, 2000 alleging that he developed left elbow tendinitis. The Office denied this claim on October 5, 2000 and denied modification on July 7, 2001.

² Appellant has not worked since 1996.

stenosing tenosynovitis and therefore employment related. He was unable to determine the etiology of appellant's current conditions noting that an overuse syndrome usually resolves when the workload is altered and the symptoms disappear while his symptoms had condition despite his work stoppage. Dr. Horne completed a work capacity evaluation and stated that appellant could not work eight hours a day due to his chronic pain syndrome and fibromyalgia-like symptoms.

The Office medical adviser reviewed Dr. Horne's report on February 4, 2005 and recommended additional development before authorizing surgery for appellant's right de Quervain's synovitis. The Office requested a supplemental report from Dr. Horne on February 7, 2005. On June 2, 2005 Dr. Horne stated that he could not find a cause of the continued deterioration of connective tissue disease of stenosing tenosynovitis of multiple tendons where there is no employment activity. He could only attribute appellant's deterioration to aging or an underlying connective tissue disease. Dr. Horne stated that he did not believe that appellant's stenosing tenosynovitis was work related, but that as the Office had accepted other conditions as work related then his current condition would have resulted from the same cause. He stated, "I agree that a rheumatologist could be petitioned to evaluate this case, but with a positive ANA test and elevated sedimentation rate, to conclude that they are related to work when there was no work is not medically reasonable."

In letter dated June 6, 2005, the Office proposed to terminate appellant's compensation benefits on the grounds that his current condition was not caused by his employment and that he had no continuing disability resulting from his work injuries. By decision dated July 8, 2005, it finalized the termination decision effective July 10, 2005.

Appellant disagreed with the Office's termination contending that Dr. Horne's report supported continued treatment. He requested a review of the written record. In a report dated June 30, 2005, Dr. Okawa noted appellant's history of injury and diagnosed right de Quervain's tenosynovitis, lateral epicondylitis and radial neuritis. She opined that these conditions were work related.

By decision dated January 11, 2006, an Office hearing representative affirmed the July 8, 2005 decision, finding that Dr. Horne's reports were entitled to the weight of the medical evidence.

Appellant requested reconsideration on February 6, 2006 and disputed the findings and conclusions in Dr. Horne's reports. By decision dated May 12, 2006, the Office denied modification of the January 11, 2006 termination decision.

Appellant, through his attorney, requested reconsideration on May 30, 2006. By decision dated July 17, 2006, the Office declined to reopen appellant's claim for consideration of the merits on the grounds that he failed to submit relevant new evidence.

Appellant, through his attorney, again requested reconsideration on November 10, 2006. He submitted reports dated May 19 and October 26, 2006 from Dr. Okawa opining that appellant's de Quervain's disease was caused by the repetitive nature of his heavy work at the employing establishment. Dr. Okawa stated that appellant reported wrist pain while still

working at the employing establishment, but felt that this condition was overlooked due to his carpal tunnel syndrome and trigger finger. By decision dated February 16, 2007, the Office denied modification of its prior decisions.

In a report dated April 19, 2007, Dr. Okawa opined that appellant's de Quervain's syndrome was due to heavy lifting in the performance of duty rather than a connective tissue disease as a connective tissue disease would cause systemic symptoms rather than merely in one extremity. Appellant again requested reconsideration on May 18, 2007. In a note dated April 16, 2007, Dr. Marco Anderson, a family practitioner, opined that appellant's de Quervain's syndrome was due to overuse at work and stated that he did not believe that appellant had a connective tissue disorder. Dr. Okawa reported on May 11, 2007 that the results of testing confirmed that appellant did not have a connective tissue disorder causing his multiple problems. She opined that overuse of appellant's hands and arms at work "significantly exacerbated his previous problems."

By decision dated August 23, 2007, the Office again denied modification of its prior decisions.

Appellant requested reconsideration on August 12, 2008. In support of this request, he submitted a January 9, 2008 report from Dr. Horne. Based on appellant's test results, appellant probably did not have a connective tissue disease. However, he stated that he could not offer a definite opinion on the cause of appellant's current condition as he had not worked for 10 years. In a report dated March 7, 2008, Dr. Anderson noted appellant's employment history and accepted diagnosis of carpal tunnel syndrome. He diagnosed de Quervain's tenosynovitis and opined that this condition was related to appellant's federal employment. Dr. Anderson stated that this condition "was part of the initial problem that was only partially corrected by having carpal tunnel surgery done." In a report dated September 3, 2008, Dr. Horne opined that as the Office had accepted additional conditions arising after appellant's employment ended, logically his currently diagnosed de Quervain's synovitis should also be accepted.

By decision dated November 7, 2008, the Office denied modification of its prior decisions. It found that Dr. Horne based his conclusions on the results of diagnostic testing the reports, of which were not available for review by Dr. Horne or by the Office. The Office also noted that Dr. Horne's conclusions were not based on recent physical examination or diagnostic testing.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.³ It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.⁴ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical

³ *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

⁴ *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

opinion evidence based on a proper factual and medical background.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement of disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.⁶

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.⁷

ANALYSIS -- ISSUE 1

The Board finds that the Office properly found that there was a conflict of medical opinion in this case between appellant's attending physician, Dr. Okawa, a plastic surgeon, and the Office second opinion physician, Dr. Callahan, a Board-certified orthopedic surgeon, regarding the continuing nature and extent of appellant's employment-related conditions. The Office referred appellant to Dr. Horne to resolve this conflict.

Dr. Horne relied on the statement of accepted facts and listed his findings on examination. He diagnosed de Quervain's synovitis and recommended surgery for this condition. Dr. Horne stated that he was unable to determine the etiology of appellant's current conditions, but did not attribute these conditions to overwork as appellant had not performed repetitive work activities in over eight years. In a supplemental report, Dr. Horne stated that he could not find a cause of appellant's continued deterioration of connective tissue resulting in stenosing tenosynovitis of multiple tendons when there was no employment activity. He attributed appellant's current condition to age or an underlying connective tissue disease finding that it was not medically reasonable to attribute these conditions to his previous employment activities.

The Board finds that Dr. Horne's reports are sufficiently detailed and well reasoned to constitute the special weight of the medical evidence. His reports were based on an accurate history of injury and included findings on physical examination. Dr. Horne also provided medical reasoning for his conclusions that appellant's current diagnosed conditions were not due to his employment, noting that he had not worked for several years and that conditions arising from overuse abate after the repetitive activity ceases. Therefore, the Board finds that the Office met its burden of proof to terminate appellant's compensation benefits on the grounds that he had no continuing disability or medical residuals resulting from his accepted employment injuries of bilateral carpal tunnel syndrome and trigger fingers bilaterally.

⁵ *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001).

⁶ *Mary A. Lowe*, *supra*, note 4.

⁷ *J.J.*, 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009).

LEGAL PRECEDENT -- ISSUE 2

Once the Office has met its burden of proof in terminating compensation benefits, the burden of proof shifts to appellant to establish that he remains entitled to compensation benefits after the date of termination. To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background to support such a causal relationship.⁸

ANALYSIS -- ISSUE 2

Following the Office's termination of his compensation benefits effective July 10, 2005, appellant submitted additional medical evidence in support of his claim for continuing disability and medical residuals as a result of his accepted employment injuries. Dr. Okawa advised that appellant's conditions were work related due to the repetitive nature of his work and suggested that his de Quervain's synovitis had been overlooked due to the carpal tunnel syndrome. The Board finds that these reports are not sufficient to meet appellant's burden of proof in establishing continuing disability. Dr. Okawa did not provide medical reasoning explaining why and how appellant's employment activities could have continued to impact his condition long after the repetitive motions ceased. She also failed to offer an explanation of why she and others would have failed to diagnose de Quervain's synovitis until April 29, 2004 and instead merely repeated appellant's allegations that this condition was overlooked. For these reasons, Dr. Okawa's reports did not meet appellant's burden of proof and did not overcome the special weight accorded Dr. Horne as the impartial medical examiner. However, as she was on one side of the conflict that Dr. Horne resolved the additional reports from Dr. Okawa are insufficient to overcome the weight accorded Dr. Horne as the impartial medical examiner or to create a new conflict.⁹

Appellant also solicited additional reports from Dr. Horne dated January 9 and September 3, 2008 agreeing that, based on the information provided him, appellant did not appear to have a connective tissue disorder. However, Dr. Horne did not opine that appellant's current conditions were due to his accepted employment injuries or activities. Rather, he again noted that the etiology of appellant's condition was unclear. Dr. Horne suggested that as the Office had accepted appellant's bilateral trigger finger conditions, the de Quervain's synovitis arose from the same etiology, which he considered unknown and logically the Office should accept this condition as well. While based on Dr. Horne's conclusions, the Office may have improperly accepted the trigger finger conditions as employment related, this suggested error does not require that the Office accept additional conditions without supporting medical reasoning. As Dr. Horne repeatedly opined that appellant's current condition was not due to his employment activity. These reports are not sufficient to meet his burden of proof or to suggest that the original reports were in error on the finding that he had no employment-related residuals or disability. The Board further notes that the test results reported by Dr. Okawa are not included in the record and there is no evidence that Dr. Horne reviewed the actual results rather

⁸ *Manuel Gill*, 52 ECAB 282, 287 (2001).

⁹ *Jaja K Asaramo*, 55 ECAB 200, 205 (2004).

than reported findings. Moreover, there is no evidence in the record that Dr. Horne examined appellant following his 2005 reports.

CONCLUSION

The Board finds that the Office met its burden or proof to terminate appellant's compensation and medical benefits. The Board further finds that appellant has not established entitlement to any continuing compensation or medical benefits on or after July 10, 2005.

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 12, 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