

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

J.M., Appellant

and

**DEPARTMENT OF AGRICULTURE, FOREST
SERVICE, Dillon, MT, Employer**

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**Docket No. 08-957
Issued: March 25, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 13, 2008 appellant filed a timely appeal from an April 25, 2007 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective April 16, 2006 on the grounds that he had no residuals of the accepted bilateral carpal tunnel syndrome; and (2) whether appellant established that he had any continuing employment-related disability or condition after that date due to his accepted condition.

FACTUAL HISTORY

On November 20, 1984 appellant, then a 35-year-old seasonal forestry aid, filed an occupational disease claim, alleging that factors of his federal employment caused carpal tunnel syndrome. He resigned from the employing establishment on August 16, 1984 stating that he

was leaving to go to college and seek other work. Appellant underwent corrective surgical procedures in 1985. On July 9, 1987 the Office accepted his claim for bilateral carpal tunnel syndrome and he was placed on the periodic rolls.

By decision dated December 27, 1993, the Office determined that the selected position of security guard fairly and reasonably represented appellant's wage-earning capacity and reduced his compensation accordingly. On March 22, 1994 appellant was granted a schedule award for a 10 percent impairment of the right arm and a 10 percent impairment of the left arm. In a July 13, 2001 decision, the Office denied appellant's claim that a right rotator cuff and elbow conditions were employment related.

On February 15 and April 15, 2005 the Office requested that appellant provide an updated medical report. Appellant did not respond.¹ On September 13, 2005 the Office referred appellant to Dr. Dale M. Peterson, a Board-certified neurologist, for a second opinion evaluation. In an October 7, 2005 report, Dr. Peterson reviewed the record and provided findings on examination. He advised that, while appellant had fleeting, nonspecific pains and numbness in his hands and arms, there were no clinical neurological findings to support a diagnosis of bilateral carpal tunnel syndrome. Dr. Peterson concluded that appellant was capable of working. In an attached work capacity evaluation, he advised that maximum medical improvement had been reached and that appellant could work eight hours daily with no restrictions.

On March 8, 2006 the Office informed appellant that it proposed to terminate his wage-loss compensation on the grounds that Dr. Peterson found that he had no residuals of the accepted carpal tunnel condition. By letter dated March 22, 2006, appellant disagreed with the proposed termination.

In an April 11, 2006 decision, the Office terminated his wage-loss compensation effective April 16, 2006.

On December 19, 2006 appellant requested reconsideration, stating that he disagreed with Dr. Peterson's findings and conclusions and noted that he was a disabled veteran. In a December 14, 2006 report, Dr. Peter P. Wendt, a Board-certified orthopedic surgeon, stated that "This man still has residuals of bilateral carpal tunnel syndrome. Recent EMG [electromyography] at V[eterans] A[dministration] confirms this."²

In a merit decision dated April 25, 2007, the Office denied modification of the April 11, 2006 decision. The Board notes that Dr. Wendt did not provide any narrative of his examination, objective findings or a rationalized explanation as to how appellant's current findings were related to work exposure in 1984.

¹ The most recent medical evidence of record at that time was a report dated April 23, 2001 in which Dr. Allen M. Weinert, Jr., an attending Board-certified physiatrist, provided examination findings and advised that appellant continued to have mild right hand intrinsic weakness related to his occupational disease and subsequent surgeries. Dr. Weinert noted that a May 2, 1996 functional capacity evaluation placed appellant in the medium physical demand category and that he could exert up to 50 pounds of force occasionally and 25 pounds frequently.

² Appellant also submitted an August 1, 2005 computerized tomography (CT) scan of the chest that demonstrated an inflammatory process.

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.³ 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.⁴

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits due to his bilateral carpal tunnel syndrome effective April 16, 2006. The only medical evidence contemporaneous with the Office's termination is Dr. Peterson's comprehensive October 7, 2005 report. Dr. Peterson provided examination findings and advised that appellant had no clinical findings, including neurological findings, of carpal tunnel syndrome and could work eight hours a day without restriction. While appellant disagreed with the proposed termination, he submitted no additional medical evidence. His attending physiatrist, Dr. Weinert, had not provided a report since April 23, 2001.

The Board notes that Dr. Wendt did not provide any narrative of his examination, objective findings or a rationalized explanation as to how appellant's current findings were related to work exposure in 1984.

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report⁵ and contemporaneous evidence is entitled to greater probative value than later evidence.⁶ The Board finds that the weight of the medical evidence rests with the opinion of Dr. Peterson who advised that appellant had no clinical evidence of carpal tunnel syndrome and could work eight hours a day without restriction. Thus, the Office properly found that appellant had no residuals of the accepted bilateral carpal tunnel syndrome and terminated his compensation benefits effective April 16, 2006.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's wage-loss compensation on February 24, 2003, the burden shifted to him to establish that he had any continuing disability

³ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁴ *Id.*

⁵ *Michael S. Mina*, 57 ECAB 379 (2006).

⁶ *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

causally related to his accepted right shoulder injury.⁷ 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 factual and medical background, supporting such a causal relationship.⁸ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

ANALYSIS -- ISSUE 2

The Board finds that appellant submitted insufficient medical evidence with his December 19, 2006 reconsideration request to establish that he continued to be disabled from the accepted bilateral carpal tunnel syndrome after April 16, 2006. With his reconsideration request, appellant submitted a brief December 14, 2006 report in which Dr. Wendt advised that appellant had residuals of bilateral carpal tunnel syndrome as demonstrated on recent EMG studies. Dr. Wendt, however, did not provide a copy of the study or discuss specific findings and did not provide an opinion regarding whether appellant continued to be disabled. The Board therefore finds that, as appellant did not provide a rationalized medical opinion sufficient to meet his burden of proof, he did not substantiate that any claimed disability on or after April 16, 2006 was causally related to the accepted bilateral carpal tunnel syndrome.¹¹

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective April 16, 2006 and that appellant failed to meet his burden of proof to establish that he had any disability after April 16, 2006 causally related to his accepted right shoulder condition.¹²

⁷ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

⁸ *Jennifer Atkerson*, 55 ECAB 317 (2004)..

⁹ *Id.*

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ See *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹² The Board notes that appellant submitted evidence to the Office after the April 25, 2007 decision and with his appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 25, 2007 be affirmed.

Issued: March 25, 2009
Washington, DC

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

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

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