



opinion to terminate appellant's compensation as it was not based on a complete review of the entire case record or well rationalized.

### **FACTUAL HISTORY**

On May 9, 2005 appellant, then a 55-year-old city letter carrier, filed an occupational disease claim alleging that on April 14, 2005 she first became aware of her bilateral carpal tunnel syndrome and realized that the condition was caused by her federal employment. By letter dated June 28, 2005, the Office accepted her claim for bilateral carpal tunnel syndrome. Appellant returned to limited-duty work as a lobby host four hours per day effective September 18, 2006.

By letter dated September 26, 2006, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed to Dr. Mabanta, a Board-certified neurologist, for a second opinion medical examination.

In an October 20, 2006 medical report, Dr. Mabanta noted appellant's hand and neck symptoms. He reviewed a history of her medical treatment and social and family background. Dr. Mabanta reported normal findings on physical examination. After discussing other findings on diagnostic testing, he concluded that appellant should continue her part-time work duties until the recommended treatment was completed. In a December 12, 2006 addendum report, Dr. Mabanta stated that a November 20, 2006 electromyogram (EMG) study was abnormal. It demonstrated moderate right carpal tunnel syndrome and borderline left carpal tunnel syndrome. Dr. Mabanta was unable to complete a work capacity form without the results of a functional capacity evaluation (FCE).

In a May 3, 2007 disability certificate, Dr. Fried stated that appellant was under his care for an upper extremity employment injury, which had worsened due to increased symptoms and that she was unable to work.<sup>1</sup> He reported that he would reevaluate her on June 18, 2007.

By letter dated June 6, 2007, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed to Dr. John E. Fitzpatrick, a Board-certified neurologist, for a second opinion examination. In a June 20, 2007 report, Dr. Fitzpatrick reviewed a history of appellant's employment injury, medical treatment and family and social background. On physical examination, he reported essentially normal findings with the exception of limited range of motion of the cervical spine, a weakly positive Tinel's sign and positive Phalen's sign. On neurological examination, Dr. Fitzpatrick reported essentially normal findings except diminished light touch and pinprick along the ulnar aspect of the right hand and fingers, left first, second and fifth digits and left C5-6 dermatome. He diagnosed bilateral median sensory neuropathy compression of the left wrist, bilateral cervical radiculopathy due to degenerative cervical spondylosis. Dr. Fitzpatrick opined that appellant was capable of working as a letter carrier. Appellant had no disability or limitations regarding her work duties. Dr. Fitzpatrick stated that further diagnostic testing was not necessary. He found that appellant did not have any additional conditions that prevented her from returning to

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<sup>1</sup> By decision dated July 17, 2007, the Office accepted that appellant sustained a recurrence of disability on April 25, 2007 causally related to her accepted employment injury. It paid her compensation for the period May 11 through July 7, 2007.

full-time work. Dr. Fitzpatrick advised that she remained at maximum medical improvement after being out of work for four weeks. He concluded that appellant would not benefit from an FCE.

On August 3, 2007 the Office found that a conflict in medical opinion arose between Dr. Fried and Dr. Fitzpatrick as to whether appellant had any continuing employment-related residuals or disability. By letter dated September 21, 2007, it referred her, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Carta, a Board-certified neurologist for an impartial medical examination.

In an October 3, 2007 report, Dr. Carta reviewed a history of appellant's employment injury and medical, family and social background. She also reviewed appellant's case record, noting that pages 1 through 195 were illegible. On physical examination, Dr. Carta reported normal findings. She stated that appellant's chief complaint of bilateral carpal tunnel syndrome had resolved with conservative management. Appellant's history of cervical stenosis was related to her occupational claim. Dr. Carta found no evidence of brachial plexopathy by clinical symptomatology, neurological examination or EMG report. An April 15, 2005 EMG report indicated that all of appellant's nerve conduction studies with the exception of the distal median motor latencies that were slightly prolonged, were within normal limits. There was no abnormality in any of the muscles tested with the exception of the opponens pollicis muscle which revealed a slight decrease in recruitment. In the absence of any other abnormalities it was considered voluntary. A repeat EMG study revealed evidence of mild right-sided carpal tunnel syndrome and borderline left-sided carpal tunnel syndrome. Dr. Carta stated that appellant had reached maximum medical improvement and that no further treatment or diagnostic testing was necessary. She noted that appellant had not worked since the spring of 2007 and, thus, her job had not aggravated her present condition. Dr. Carta opined that appellant was capable of working as a letter carrier and that she had zero percent permanent disability. She concluded that the cervical spine findings were related to the normal degeneration of the cervical spine in middle age and not appellant's employment.

After reviewing the entire case record, Dr. Carta stated in an October 31, 2007 report that appellant could perform her letter carrier duties with restrictions. She also stated that appellant reached maximum medical improvement in September 2006. Dr. Carta concluded that appellant would benefit from an FCE and work-hardening program based on her subjective complaints which were not supported by objective findings.

By letter dated December 3, 2007, the Office issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the medical opinion of Dr. Carta. It allowed appellant 30 days to respond to this notice.

In a December 12, 2007 letter, appellant's attorney disagreed with the proposed action. He contended that Dr. Carta's report was not well rationalized. Counsel stated that Dr. Carta acknowledged that a November 20, 2006 EMG revealed the existence of moderate right carpal tunnel syndrome and borderline left carpal tunnel syndrome but, stated that appellant's carpal tunnel syndrome had resolved. He further stated that Dr. Carta did not provide any medical rationale to support her conclusion. Dr. Carta also failed to discuss the diagnostic evidence.

Counsel argued that Dr. Carta should explain why appellant had restrictions in light of her opinion that her employment-related condition had resolved.

By letter dated January 8, 2008, the Office requested that Dr. Carta review a July 2007 EMG study and provide her findings. It also requested that she review an October 5, 2007 MRI scan and determine whether appellant sustained a right shoulder injury causally related to the accepted employment injury.

In a January 18, 2008 report, Dr. Carta stated that the July 17, 2007 EMG findings were consistent with brachial plexopathy. She could not fully comment on whether the MRI scan findings regarding the shoulder were related to the accepted employment injury. Although Dr. Carta stated that it appeared appellant sustained degenerative changes in the shoulder, which was expected in a middle-aged woman and there was no documentation of a full thickness rotator cuff tendon tear, she recommended that an orthopedic specialist address this issue. She concluded that there was no change in her opinions set forth in the October 3 and 31, 2007 reports.

By decision dated February 1, 2008, the Office terminated appellant's compensation for wage-loss and medical benefits with regard to her accepted employment injury, effective that date. It found that she no longer had any residuals or disability causally related to her accepted employment injury.

By letter dated February 5, 2008, appellant, through her attorney, requested an oral hearing before an Office hearing representative.

In an August 7, 2008 decision, an Office hearing representative affirmed the February 1, 2008 decision. She accorded special weight to Dr. Carta's opinion as an impartial medical examiner in finding that appellant no longer had any residuals or disability causally related to her accepted employment injury.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>2</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>3</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.<sup>4</sup>

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<sup>2</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>3</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>4</sup> *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

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>5</sup> Where 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 a proper factual and medical background must be given special weight.<sup>6</sup>

### ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome due to her employment factors. The issue is whether it has met its burden of proof in terminating appellant's wage-loss compensation and medical benefits after February 1, 2008. The Board finds that the Office did not meet its burden of proof to terminate her compensation benefits.

The Board finds that a conflict existed in the medical evidence between Dr. Fried, an attending physician, and Dr. Fitzpatrick, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to her accepted employment injury. Dr. Fried opined that appellant continued to suffer from residuals and total disability due to the accepted employment injury. Dr. Fitzpatrick opined that appellant's employment-related bilateral carpal tunnel syndrome had resolved and she could return to work with no restrictions.

The Office properly referred appellant to Dr. Carta, as the impartial medical specialist. In an October 3, 2007 report, Dr. Carta noted that the case record was incomplete but, provided her findings on physical examination and objective testing. She opined that the accepted condition of bilateral carpal tunnel syndrome had resolved with conservative management. Dr. Carta further opined that appellant's cervical stenosis was related to the normal degeneration of the cervical spine in middle age and not to her employment. She found that appellant had reached maximum medical improvement and that she did not require any further treatment or diagnostic testing. Dr. Carta concluded that appellant could perform her letter carrier duties and that she was not partially disabled. However, following a complete review of the entire case record, she stated in an October 31, 2007 report that appellant could perform her letter carrier duties with restrictions. Dr. Carta also recommended that appellant undergo an FCE and work-hardening program. The Board finds that the opinion of Dr. Carta is not entitled to the special weight of the medical opinion evidence because it was not sufficiently rationalized. Dr. Carta did not address whether appellant's restrictions or the FCE and work-hardening program were due to the accepted employment injury or to a nonwork-related condition. Given the inconsistent and conclusory nature of her opinion, Dr. Carta's medical reports are of diminished probative value and insufficient to establish that all residuals and disability related to appellant's accepted employment-related condition had resolved.<sup>7</sup> Therefore, the Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

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<sup>5</sup> 5 U.S.C. § 8123(a). See also *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

<sup>6</sup> *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

<sup>7</sup> See *William C. Thomas*, 45 ECAB 591, 594 (1994).

**CONCLUSION**

The Board finds that the Office improperly terminated appellant's compensation for wage-loss and medical benefits effective February 1, 2008 on the grounds that she no longer had any causally related to her accepted employment-related injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 7 and February 1, 2008 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: September 22, 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