



stopped work on July 10, 1989 and on August 18, 1989 underwent a left carpal tunnel release. On November 1, 1989 the Office accepted the claim for left carpal tunnel syndrome. Appellant was placed on the periodic compensation rolls. She was referred for vocational rehabilitation and received training as a licensed vocational nurse and college courses in education but dropped out of both programs. By decision dated August 18, 1994, the Office reduced appellant's compensation benefits based on her capacity to earn wages as a cashier II. Appellant continued to receive monetary compensation based on her loss of wage-earning capacity.

Appellant was treated by Dr. Steven Rowlan, a Board-certified orthopedic surgeon, who submitted reports from August 23, 1995. Dr. Rowlan found a negative examination and advised that appellant was capable of most work activities. On September 16, 2007 he noted a history of stroke in 2001 with residual left-sided weakness and a conversion reaction with paralysis, gastrointestinal problems, and complaints of neck pain, cramping left arm pain and numbness and shoulder tightness. Dr. Rowlan advised that appellant could perform sedentary work.<sup>1</sup> In an October 1, 2007 report, Dr. Joseph R. Xavier, a Board-certified physiatrist, noted a history that appellant had a back injury in January 2007 when an elderly gentleman she was caring for fell on her. He advised that left upper extremity examination showed no obvious atrophy or skin changes and advised that she had good grip and muscle strength. Dr. Xavier performed an electromyography (EMG) study of the left upper extremity that was normal with no evidence of left carpal tunnel syndrome or cervical radiculopathy. In a January 27, 2009 report, Dr. Rowlan reviewed Dr. Xavier's findings and noted that appellant had chronic pain complaints involving both upper extremities; however, he saw nothing that required further treatment.

In February 2009, the Office referred appellant to Dr. Robert Holladay, IV, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a March 5, 2009 report, Dr. Holladay reviewed the statement of accepted facts and medical record.<sup>2</sup> He provided findings on physical examination of the cervical spine and upper extremities, noting full extension of all digits bilaterally, motor strengths of 5/5 in all muscle groups of both upper extremities and intact sensory function in all dermatomes of both upper extremities except for decreased sensation on the left index and left middle finger. Tinel's and Phalen's signs were negative. Dr. Holladay diagnosed a history of left carpal tunnel syndrome, postoperative left carpal tunnel release and advised that the condition was not active or disabling. Based on his examination, appellant was physically capable of returning to her date-of-injury job and did not require active treatment for the accepted condition. In an April 6, 2009 report, Dr. Rowlan advised that he agreed with Dr. Holladay's conclusions.

On April 15, 2009 the Office proposed to terminate appellant's compensation benefits on the grounds that the weight of medical evidence from Dr. Holladay and Dr. Rowlan established that she was no longer disabled due to the accepted condition and therefore the wage-earning

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<sup>1</sup> A February 19, 2007 magnetic resonance imaging (MRI) scan of the left shoulder demonstrated a torn rotator cuff. An April 11, 2007 MRI scan of the cervical spine demonstrated degenerative disc disease. A functional capacity evaluation was done on November 14, 2006.

<sup>2</sup> The statement of accepted facts included a description of appellant's regular job duties.

capacity determination should be modified. Appellant was given 30 days to present additional evidence or argument but did not timely respond.<sup>3</sup>

In a June 1, 2009 decision, the Office finalized the termination of appellant's monetary and medical benefits effective June 6, 2009, modifying the wage-earning capacity determination to find she was no longer disabled.

### **LEGAL PRECEDENT**

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment. 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 appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>4</sup>

Appellant's claim was accepted for left carpal tunnel syndrome for which she underwent surgery on August 18, 1989.

### **ANALYSIS**

In 1994 appellant was found to have the wage-earning capacity of a cashier II. The Board has held that once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous.<sup>5</sup> The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.<sup>6</sup> In certain situations, however, if the medical evidence is sufficient to meet the Office's burden of proof to terminate benefits, the same evidence may also negate a loss of wage-earning capacity such that a separate evaluation of the existing wage-earning capacity determination is unnecessary.<sup>7</sup> The Office's burden to demonstrate no further disability is effectively the same, irrespective of whether there is an existing determination in place finding loss of earning capacity. While a claimant may still have unrelated medical conditions or

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<sup>3</sup> In a letter dated May 19, 2009, received by the Office on June 9, 2009, appellant objected to the proposed termination and submitted additional evidence.

<sup>4</sup> *Fred Simpson*, 53 ECAB 768 (2002).

<sup>5</sup> *Stanley B. Plotkin*, 51 ECAB 700 (2000).

<sup>6</sup> *Id.*

<sup>7</sup> *A.P.*, 60 ECAB \_\_\_\_ (Docket No. 08-1822, issued August 5, 2009). There may exist a situation where a separate analysis would be necessary, based on preexisting conditions or other medical conditions, but that situation does not present itself in this case. Should those particular facts arise, this decision does not preclude a further consideration of the matter. *Id.*

impairments, as in this case, the medical evidence must establish that the employment-related disability and medical conditions no longer exist.

The Board finds that the Office properly terminated appellant's compensation benefits effective June 6, 2009. In a March 5, 2009 report, Dr. Holladay, an Office referral physician, reviewed the statement of accepted facts and medical records and provided findings on physical examination. He described examination of appellant's cervical spine and left upper extremity, noting negative Tinel's and Phalen's signs, and normal strength and sensory examinations. Dr. Holladay diagnosed resolved left carpal tunnel syndrome, postsurgical release and found that the accepted condition was not active or disabling. He advised that appellant was physically capable of returning to her date-of-injury job and did not require any ongoing medical treatment for left carpal tunnel syndrome.

The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>8</sup> Dr. Holladay provided a comprehensive evaluation based on his review of the statement of accepted facts and medical record and advised that appellant had no objective findings of left carpal tunnel syndrome on her physical examination, and concluded that there was no need for further treatment referable to the accepted condition. Moreover, Dr. Rowlan, the attending physician, reviewed Dr. Holladay's report and agreed with his conclusions. The weight of the medical evidence establishes that appellant has no residuals of the accepted left carpal tunnel syndrome.

Appellant's disagreement with the probative value of the medical evidence fails to establish any error or deficiency in her examinations. Dr. Holladay provided a thorough report and, contrary to appellant's assertion, did not provide any history that she underwent a liver transplant. Dr. Rowlan who had treated appellant since 1995 agreed with the assessment of Dr. Holladay. The Board finds that the Office properly terminated her compensation benefits.<sup>9</sup>

### CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective June 6, 2009.

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<sup>8</sup> C.B., 60 ECAB \_\_\_\_ (Docket No. 08-1583, issued December 9, 2008).

<sup>9</sup> The Board notes that appellant submitted evidence subsequent to the Office's June 1, 2009 decision and with her appeal to the Board. The Board cannot consider this evidence 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); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 1, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 2, 2010  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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