

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

<p>A.S., Appellant</p> <p>and</p> <p>U.S. POSTAL SERVICE, POST OFFICE, Maspeth, NY, Employer</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. 09-1589</p> <p>Issued: May 13, 2010</p>
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Appearances:
Paul Kalker, Esq., for the appellant
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 June 3, 2009 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated December 10, 2008 and May 14, 2009. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective December 21, 2008 on the grounds that she had no residuals of a July 13, 2002 employment injury; and (2) whether appellant established that she had any continuing employment-related disability or condition after that date due to her accepted condition.

¹ The record contains a July 18, 2008 decision that suspended appellant's monetary compensation, effective August 3, 2008, on the grounds that she failed to submit a requested Form EN1032. Appellant submitted the form and her compensation was resumed, effective August 3, 2008. She did not seek review of the July 18, 2008 decision.

On appeal, appellant's attorney contends that the medical evidence establishes that appellant continues to be disabled from her employment and that the Office should have found the weight of medical opinion provided by her attending physician.

FACTUAL HISTORY

On July 13, 2002 appellant, then a 44-year-old city carrier, sustained a traumatic injury when a dog bit her right hand. The claim was accepted by the Office for a dog bite to the right hand. It accepted that appellant sustained recurrence of disability on August 9, September 7 and 30, 2002. A September 26, 2002 right upper extremity electromyographic and nerve conduction study demonstrated a right median nerve injury involving the sensory and motor fibers. Appellant was treated by Dr. Alan M. Freedman, Board-certified in plastic and hand surgery, Dr. Matthew Miller, a family practitioner, and Dr. Barbara Schwartz, a Board-certified physiatrist. She returned to full-time modified duty on October 25, 2002.

The Office referred appellant to Dr. Eduardo V. Alvarez, a Board-certified orthopedic surgeon, for a second opinion evaluation. Based on Dr. Alvarez' January 14, 2003 report, it accepted the condition of right carpal tunnel syndrome. The Office accepted that appellant sustained a recurrence of disability on February 13, 2003, when Dr. Randall S. Feingold, Board-certified in plastic surgery, performed decompression of the right median nerve. Appellant was placed on the periodic rolls. She began hand therapy at that time.

On June 11, 2003 the Office referred appellant to Dr. Robert J. Orlandi, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a July 10, 2003 report, Dr. Orlandi advised that she had an excellent result from her right carpal tunnel release of February 13, 2003, that she had no disability and that she could return to her carrier duties without restriction. Appellant did not return to work and was treated with therapy and pain management.

By letter dated February 5, 2007, appellant's attorney forwarded a check for \$104,594.65 in satisfaction of a third-party claim. In letters dated March 15 and June 25, 2007, the Office requested that appellant provide an updated narrative medical report. In work capacity evaluations dated March 27 and June 19, 2007, Dr. Paul Lerner, a Board-certified neurologist, advised that appellant remained totally disabled due to constant right upper extremity pain and multiple medications caused by a cervical herniated disc, a shoulder strain and RSD.²

On March 31, 2008 the Office referred appellant to Dr. Frank Hudak, a Board-certified orthopedic surgeon, for a second opinion evaluation. In an April 29, 2008 report, Dr. Hudak described the history of injury and noted his review of the medical record. He listed appellant's current complaints of constant pain in the right side of the neck and right shoulder and intermittent numbness into the area of the right thumb and right fourth and fifth fingers. Examination of the cervical spine revealed tenderness in the midline from C5 to C6 and over the right trapezial muscle group. Active and voluntary range of motion of the head and neck was full without pain and spasm was not palpated in either right or left paraspinous or trapezial muscle groups of the cervical spine. Upper extremity examination demonstrated no redness, swelling or deformity of the right shoulder and no atrophy of the muscles of the right shoulder.

² Dr. Lerner's report prior to the March 2007 work capacity evaluation was a treatment note dated April 18, 2006.

Right shoulder range of motion was decreased with pain on extension. Wrist range of motion was equal bilaterally with no pain. Dr. Hudak advised that appellant noted decreased sensation to the entire right upper extremity, including all fingers of the right hand with intact sensation on the left. Right hand grasp was slightly decreased and the remaining motor power was good bilaterally. Biceps, triceps and brachioradialis reflexes were zero and equal. Tinel's tests over the ulnar nerve at both elbows and over the ulnar and median nerves at both wrists were negative and compression test of the ulnar and median nerve was negative bilaterally.

Dr. Hudak diagnosed status post dog bites to the right forearm and right wrist with subsequent development of right carpal tunnel syndrome. In answer to specific questions, he stated that there were no treatment records in close time proximity to the July 13, 2002 incident to confirm that appellant sustained an employment-related cervical sprain, right shoulder sprain or cervical radiculopathy. Moreover, a bone scan was negative for RSD. For these reasons causal relationship of these conditions to the work injury could not be established. Dr. Hudak advised that, based on his review of the records and lack of objective findings, appellant had reached maximum medical improvement, had no disability with regard to the July 13, 2002 dog bite injury and resulting carpal tunnel syndrome, did not require additional medical treatment and could return to her regular full-time work. In an attached work capacity evaluation, he advised that appellant could perform her usual job without restrictions. Dr. Lerner provided an August 28, 2008 work capacity evaluation in which he advised that appellant was indefinitely totally disabled.³

On September 19, 2008 the Office proposed to terminate appellant's compensation benefits based on Dr. Hudak's report, which established that she no longer had residuals or disability due to the accepted conditions. Appellant did not respond to the proposed termination.

In a December 10, 2008 decision, the Office finalized the termination effective December 21, 2008.

On February 23, 2009 appellant requested reconsideration. In a December 30, 2008 treatment note, Dr. Barry Katzman a Board-certified orthopedic surgeon, stated that he had not seen her for about three years. He advised that she was complaining of right finger pain and that x-rays showed arthritic changes.

In a January 12, 2009 report, Dr. Lerner advised that he first evaluated appellant on October 23, 2003 for neck stiffness, right shoulder and arm pain and numbness and coldness that had been present since she was bitten by a dog on July 13, 2002. He described his examination findings and medical care from that time. During the course of treatment, appellant received injections and was prescribed many medications for pain including narcotics, anticonvulsants and muscle relaxants and an antidepressant by a psychiatrist. She was last evaluated on December 18, 2008, still complaining of neck and right upper extremity pain and increased pain in the fourth digit. Dr. Lerner noted appellant's report of intermittent swelling and red discoloration of the hand and advised that there had been no significant changes on neurologic examination. He reviewed Dr. Hudak's report and disagreed with his stated conclusions, noting that Dr. Hudak ignored appellant's decreased right shoulder range of motion in addressing

³ *Id.*

disability and failed to address the effects of appellant's medications, the presence of a herniated cervical disc and subsequent spondylosis and its clinical correlation with appellant's neck and right arm pain. Dr. Lerner diagnosed RSD of the right arm/hand associated with cervical radiculitis, disc herniation and disc/ridge complex, traumatic median nerve entrapment for which she had surgery and right shoulder strain and opined that these conditions resulted in a moderate to severe degree of impairment and disability at the cervical spine and right upper extremity including pain and loss of normal range of motion such that she was unable to return to work as a letter carrier. He stated, considering that appellant's symptoms had persisted with lack of resolution, the conditions and associated impairments were considered permanent and she had reached maximal medical improvement but would require indefinite care for treatment of pain. Dr. Lerner concluded that, based on his review of her records, the history and his examination findings, the diagnosed conditions and associated impairments were causally related to the employment related July 13, 2002 dog bite injury. On January 27, 2009 Dr. Katzman noted that appellant was seen for follow up. Tinel's, Phalen's and carpal compression tests were negative.

In a merit decision dated May 14, 2009, the Office denied modification of the prior 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.⁴ 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.⁵

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective December 21, 2008. The accepted conditions in this case are a dog bite to the right arm and resulting carpal tunnel syndrome. The medical evidence relevant to the Office's termination includes work capacity evaluations dated March 27, 2007 to August 28, 2008, in which Dr. Lerner, an attending neurologist, advised that appellant was totally disabled from work due to constant right upper extremity pain and multiple medications caused by a cervical herniated disc, a shoulder strain and RSD. However, these conditions were not accepted by the Office. It asked that Dr. Lerner provide a narrative report, but he did submit a report. Appellant submitted no other medical evidence prior to the termination of benefits on December 21, 2008. The conditions of a cervical herniated disc, a shoulder strain and RSD have not been accepted as employment related. In his reports, Dr. Lerner did not provide sufficient rationale to support a finding that these conditions were caused by the July 13, 2002 dog bite. Furthermore, he provided no physical examination findings in the reports dated March 27, 2007 to August 28, 2008. To establish causal relationship, a claimant must submit a physician's report in which the physician reviews the employment factors identified as causing the claimed

⁴ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *Id.*

condition and, taking these factors into consideration as well as findings upon examination, states whether the employment injury caused or aggravated the diagnosed conditions and presents medical rationale in support of his or her opinion.⁶ Dr. Lerner submitted insufficient rationale in this case to establish additional accepted conditions.

In an April 29, 2008 report, Dr. Hudak, the Office referral physician, described the history of injury and appellant's complaints. He provided cervical spine examination findings noting full range of motion without pain and no spasm. Upper extremity examination demonstrated decreased right shoulder range of motion with pain on extension. Wrist range of motion was equal bilaterally with no pain. Right hand grasp was slight decreased and Tinel's and compression tests were negative bilaterally. Dr. Hudak diagnosed status post dog bites to the right forearm and right wrist with subsequent development of right carpal tunnel syndrome and advised that the conditions of cervical sprain, right shoulder sprain and cervical radiculopathy were not causally related to the July 13, 2002 dog bites and that the diagnosis of RSD was not established. He concluded that, based on his review of the records and lack of objective findings on examination, appellant had reached maximum medical improvement, had no disability with regard to the July 13, 2002 dog bites and resulting carpal tunnel syndrome, did not require additional medical treatment and could return to her regular full-time work. In an attached work capacity evaluation, Dr. Hudak advised that appellant could perform her usual job without restrictions.

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.⁷ The Board finds that the Office properly credited the opinion of Dr. Hudak who provided a comprehensive report in which he outlined examination findings and provided a rationalized explanation for his opinion that appellant's accepted conditions of dog bite and carpal tunnel syndrome had resolved and that she could return to her city carrier job without restrictions. The Office therefore met its burden of proof to terminate her compensation benefits effective December 21, 2008.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits on December 21, 2008, the burden shifted to her to establish that she had any continuing disability causally related to her accepted right upper extremity injury.⁸ 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.⁹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical

⁶ *J.M.*, 58 ECAB 303 (2007).

⁷ *C.B.*, 60 ECAB ____ (Docket No. 08-1583, issued December 9, 2008).

⁸ *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

⁹ *Jennifer Atkerson*, 55 ECAB 317 (2004).

evidence.¹⁰ 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.¹¹

ANALYSIS -- ISSUE 2

The Board finds that appellant submitted insufficient medical evidence with her February 23, 2009 reconsideration request to establish that she continued to be disabled after December 21, 2008 due to the accepted right arm dog bite and right carpal tunnel syndrome. Appellant submitted treatment notes from Dr. Katzman dated December 30, 2008 and January 27, 2009. Dr. Katzman advised that she was complaining of right finger pain and had arthritic changes on x-ray. He also advised that Tinel's, Phalen's and carpal compression tests were negative. His reports provides no medical opinion explaining how those findings relate to the accepted injury and are therefore not probative regarding the issue disability or residuals accepted dog bite injury.

In a January 12, 2009 report, Dr. Lerner outlined appellant's treatment beginning on October 23, 2003, 15 months after the employment injury of July 13, 2002. He diagnosed RSD of the right arm/hand associated with cervical radiculitis, disc herniation and disc/ridge complex, traumatic median nerve entrapment, for which she had surgery and right shoulder strain. These conditions rendered appellant incapable of working as a letter carrier; but as noted they have not been accepted as employment related. Dr. Lerner did not describe the mechanics of how these additional conditions were caused by the July 13, 2002 dog bite injury. His opinion is insufficient to establish that these conditions are employment related.¹² Disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.¹³ The medical evidence is therefore insufficient to establish that appellant continues to have work-related disability due to the accepted dog bite and carpal tunnel syndrome. Appellant did not meet her burden of proof to establish that she continued to be disabled due to the July 13, 2002 employment injury.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective December 21, 2008 and that she failed to meet her burden of proof to establish that she had any disability after December 21, 2008 causally related to the accepted right upper extremity dog bite and carpal tunnel syndrome.

¹⁰ *Id.*

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *Jennifer Atkerson*, *supra* note 9.

¹³ *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 14, 2009 and December 10, 2008 be affirmed.

Issued: May 13, 2010
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