

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

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**R.Q., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bellmawr, NJ, Employer**

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**Docket No. 09-2029  
Issued: May 3, 2010**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 4, 2009 appellant timely appealed an April 17, 2009 merit decision of the Office of Workers' Compensation Programs regarding the termination of her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits effective April 13, 2008.

**FACTUAL HISTORY**

On August 31, 2005 appellant, then a 34-year-old temporary mail distribution clerk, filed a claim for compensation alleging that she hurt her left hand after continuous keying. She began working for the employing establishment in a temporary capacity on December 11, 2004. Appellant stopped work on August 31, 2005 and sought treatment from the emergency room where a physician with an illegible signature diagnosed carpal tunnel syndrome and provided her

with a splint. On September 19, 2005 Dr. David A. Fuller, a Board-certified orthopedist specializing in hand surgery, examined appellant and noted an impression of left upper extremity pain. He opined that her history and provocative test did not fit with carpal tunnel. Dr. Fuller opined that she could work light duty and no further medical treatment was necessary. He noted a rheumatologist could be consulted if her problem continued.

In an October 3, 2005 report, Dr. Scott M. Fried, an orthopedic and hand surgeon, noted appellant had worked at her present job for about one year and three months, where she was required to carry loaded trays to the machine, load the machine and key labels for change of address on mail. He indicated the work was fast paced and the machine required aggressive and repetitive keying activities. Appellant related the onset of intermittent symptoms began in November 2004. Dr. Fried noted the history of injury and presented examination findings. He diagnosed a ligament tear of the left wrist, bilateral median neuropathy, left radial and ulnar neuropathy, left vascular long thoracic neuritis, and repetitive strain injury of both upper extremities and left wrist synovitis. Dr. Fuller stated that there was “no doubt a direct cause and effect relationship between this patient’s work activities and the current clinical complaints and physical manifestations of these injuries.” He recommended appellant stay off work and undergo bilateral diagnostic testing. In an October 3, 2005 disability certificate, Dr. Fried indicated appellant’s restrictions.

On October 17, 2005 appellant filed another occupational disease claim alleging that the repetitive keying, carrying mail trays, and loading machinery caused bilateral carpal tunnel syndrome, left ulnar and radial neuropathy and other conditions of her left wrist.

On November 10, 2005 the Office accepted appellant’s claims for tenosynovitis of the left wrist. It noted it was unable to accept bilateral carpal tunnel syndrome as no nerve conduction or electromyogram (EMG) studies found carpal tunnel syndrome. Appellant began receiving appropriate wage-loss compensation,

Appellant underwent nerve conduction velocity and EMG studies on November 22, 2005. In a December 29, 2005 report, Dr. Fried indicated that the studies demonstrated bilateral moderate ulnar neuropathy and mild right brachial plexopathy. He noted his findings, stated that his impression was unchanged and recommended physical therapy. In a February 8, 2006 attending physician’s report, Dr. Fried noted appellant’s EMG findings. He provided therapy and splints and referred appellant to a neurologist. Appellant commenced physical therapy on January 24, 2006.

After appellant’s attorney inquired as to whether additional conditions should be accepted, the Office referred appellant to Dr. Robert A. Smith, a Board-certified orthopedist, for second opinion to further develop the medical evidence regarding the caused extent of appellant’s employment-related condition.

In a March 6, 2006 report, Dr. Smith, a second opinion physician, reviewed a statement of accepted facts, appellant’s medical treatment and her medical record, including diagnostic testing, which he noted was negative for carpal tunnel syndrome. He advised that on August 31, 2005 appellant felt a sudden onset of left middle finger and wrist pain and, thereafter, she was seen by Dr. Fuller who noted generally normal findings and opined that appellant could return to

work. Dr. Smith noted that appellant advised him that she did not develop any pain in her right hand until after she stopped working in August 2005. He opined, therefore, that appellant's right upper extremity complaints were unrelated to her federal employment activities. Dr. Smith related only examining appellant's left upper extremity for which she had accepted left wrist tenosynovitis. Appellant reported that the wrist had no deformity or swelling and a full range of motion without crepitation or any signs of ongoing tenosynovitis. She had normal grip, pinch and opposition strength with no atrophy or skin changes. Tinel's and Phalen's testing were negative at the wrist as was an aided Tinel's sign at the elbow. Elbow range of motion was full without evidence of instability or crepitation.

Based on his examination findings, Dr. Smith opined that the accepted condition of tenosynovitis of the left wrist had resolved and appellant was at maximum medical improvement. He indicated there were no indication for further treatment, diagnostic testing or activity modification related to the accepted work incident and appellant could return to work in a regular-duty capacity. Dr. Smith further opined that appellant's other complaints, including ulnar neuropathy, thoracic outlet syndrome and complaints regarding the right hand were unrelated to her federal employment. He also completed a Form OWCP-5c work capacity evaluation indicating that appellant could perform her usual job and had no work restrictions.

By letter dated March 13, 2006, the Office provided Dr. Fried with a copy of Dr. Smith's second opinion report and requested that he review the report and provide comments. No response was received.

On January 5, 2007 the Office proposed to terminate appellant's compensation benefits on the basis that the weight of the medical evidence of record, represented by Dr. Smith's report, established that her injury-related condition had resolved and she was capable of resuming her full, regular duties. Appellant was afforded 30 days to provide additional evidence. No additional evidence was received.

By decision dated April 3, 2008, the Office terminated appellant's compensation benefits effective April 13, 2008 on the basis that the medical evidence of record established that her injury-related condition and disability had ceased.

On April 7, 2008 appellant's attorney requested a hearing, which was held *via* videoconference on August 28, 2008. Appellant's attorney argued that Dr. Smith's report was not based on a complete and accurate factual history. He noted that Dr. Smith stated that her right arm complaints did not begin until after appellant stopped working, while appellant's complaints began in November 2004 as indicated in Dr. Fried's October 3, 2005 report. In the alternative, counsel argued a conflict in medical opinion was created between Dr. Fried and Dr. Smith.

By decision dated April 17, 2009, an Office hearing representative affirmed the April 3, 2008 decision, finding that the Office met its burden of proof to terminate benefits and that appellant had also not provided any rationalized medical opinion supporting that any other diagnosed condition was causally related to her employment factors.

## LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> It may not terminate compensation without establishing that disability 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>

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that an employee no longer has residuals of an employment-related condition, which require further medical treatment.<sup>4</sup>

## ANALYSIS

The Office accepted appellant's claim for left wrist tenosynovitis and it terminated her entitlement to compensation benefits effective April 13, 2008 on the grounds that the accepted left wrist condition had resolved. Determinative weight was accorded to the second opinion evaluation of Dr. Smith.

The Board finds Dr. Smith's report is sufficiently well rationalized to support a finding that appellant's accepted left wrist tenosynovitis condition had resolved and she is no longer disabled from her regular job. In a comprehensive report dated March 6, 2006, Dr. Smith reviewed a statement of accepted facts and his report accurately summarized the relevant medical evidence. Furthermore, he analyzed the medical evidence and his own findings on examination to support his conclusion that the accepted condition of tenosynovitis of the left wrist had resolved, there was no indication for further treatment, diagnostic testing or activity modification and appellant could return to work in a regular-duty capacity.<sup>5</sup> Dr. Smith found that the examination was unremarkable as appellant had full range of motion in the left wrist, no swelling and no crepitation or any signs of ongoing tenosynovitis. He also referenced Dr. Fuller's September 19, 2005 findings and opinion that appellant could return to work and needed no further medical treatment or testing.

While the Office provided Dr. Fried, appellant's attending physician, a copy of Dr. Smith's report and asked for comments, no response was received from Dr. Fried. There is

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<sup>1</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

<sup>2</sup> *J.M.*, 58 ECAB 478 (2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> *T.P.*, 58 ECAB 524 (2007); *Larry Warner*, 43 ECAB 1027 (1992).

<sup>4</sup> *T.P.*, *id.*; *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>5</sup> *See Naomi Lilly*, 10 ECAB 560 (1959) (the opportunity for and thoroughness of examination, the accuracy and completeness of the doctor's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion are factors which enter into the weight of an evaluation).

no medical evidence of record subsequent to Dr. Smith's opinion that supports any ongoing work-related left wrist condition. While appellant's attorney argues on appeal that Dr. Smith failed to demonstrate an awareness of appellant's job or refer to the EMG testing to justify his opinion, the Board notes that Dr. Smith did reference the EMG study and he also had the statement of accepted facts, appellant's medical record and provided his own findings on examination to support his conclusion. The Board finds that Dr. Smith's report is based on an accurate factual background and provides sufficient medical rationale for his conclusion.<sup>6</sup> The Office therefore met its burden of proof to terminate appellant's wage-loss and medical compensation benefits as the weight of the medical evidence indicates that the accepted left wrist tenosynovitis condition had resolved.

Before the Office and on appeal, appellant's attorney argued that Dr. Fried's October 3, 2005 report along with the November 22, 2005 EMG supports that appellant's bilateral upper extremity conditions are causally related to her repetitive duties as a distribution clerk and created a conflict in medical opinion with Dr. Smith, who opined appellant's right upper extremity complaints were unrelated to her federal employment. Where a claimant claims that a condition not accepted or approved by the Office was due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.<sup>7</sup>

In his October 3, 2005 report, Dr. Fried diagnosed a ligament tear, bilateral median neuropathy, left radial neuropathy, left and vascular long thoracic neuritis, and repetitive strain injury of both upper extremities and left synovitis of the wrist and recommended appellant stay off work and undergo diagnostic testing. He also referenced the November 22, 2005 EMG study. Dr. Fried's opinion regarding the causal relationship of appellant's right upper extremity conditions, however, is not based on a complete factual and medical background of appellant. The August 31, 2005 emergency room record, Dr. Fuller's September 19, 2005 report and appellant's own statement on the August 31, 2005 claim fail to mention any right upper extremity complaints. Furthermore, appellant reported to Dr. Smith that her right hand pain did not develop until after she stopped working in August 2005. While Dr. Fried reported that appellant's right arm complaints began as early as November 2004, the record contains no contemporaneous factual or medical evidence to support this allegation. Additionally, the record indicates that appellant did not start her federal employment until December 2004, a month after her right arm complaints began, as asserted by Dr. Fried. As Dr. Fried's opinion regarding appellant's right upper extremity complaints is not based on a proper factual and medical background as to when appellant's right upper extremity complaints started, his opinion is insufficient to cause a conflict in medical opinion with Dr. Smith.<sup>8</sup> As noted, Dr. Fried also did not submit a response to Dr. Smith's report, despite being given an opportunity by the Office, to

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<sup>6</sup> *Michael S. Mina*, 57 ECAB 379 (2006) (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 report).

<sup>7</sup> See *T.M.*, 60 ECAB \_\_\_\_ (Docket No. 08-975, issued February 6, 2009).

<sup>8</sup> See *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

indicate that either the accepted left wrist tenosynovitis continued or that any unaccepted condition was employment related. Appellant did not otherwise submit any reasoned medical evidence explaining how any particular nonaccepted conditions were caused or aggravated by appellant's work injury.<sup>9</sup> Thus, appellant did not establish that any other conditions are related to her federal employment.

**CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's medical and wage-loss compensation benefits effective April 13, 2008 on the grounds the accepted left wrist condition had resolved.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs decision dated April 17, 2008 is affirmed.

Issued: May 3, 2010  
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

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<sup>9</sup> See *T.M.*, *supra* note 7.