

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

G.A., Appellant

and

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

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**Docket No. 10-376
Issued: November 29, 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 November 23, 2009 appellant, through her attorney, filed a timely appeal from an August 24, 2009 merit decision of the Office of Workers' Compensation Programs affirming the termination of her compensation benefits. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's medical and wage-loss compensation effective January 18, 2009; and (2) whether appellant met her burden of proof to establish that she had any continuing disability or medical condition after January 18, 2009 causally related to her employment injury.

On appeal appellant, through her attorney, contends that the Office improperly gave weight to the opinion of the impartial medial examiner as his opinion is inconsistent, not well rationalized and speculative.

FACTUAL HISTORY

On March 16, 2005 appellant, then a 57-year-old clerk, filed an occupational disease claim alleging that repetitive motions performed during her federal employment caused injury to her hands and wrists. On April 1, 2005 the Office accepted her claim for bilateral carpal tunnel syndrome. On October 3, 2005 appellant underwent a right carpal tunnel release. On February 28, 2006 she underwent a left carpal tunnel release.

In a July 13, 2006 report, Dr. Mark A.P. Filippone, an attending Board-certified physiatrist, noted that appellant continued to complain of the left hand falling asleep with pain and numbness in the left thumb, index and ring fingers and in the volar aspect of the left wrist. He noted that the right hand was better but still has residual weakness and numbness in the right ring finger. In an August 10, 2006 report, Dr. Filippone advised that appellant continued to be unable to work in any capacity.

On August 31, 2006 the Office referred appellant to Dr. David Rubinfeld, a Board-certified orthopedic surgeon, for a second opinion. In a September 18, 2006 report, Dr. Rubinfeld diagnosed status post right and left carpal tunnel release. He listed appellant's prognosis as fair. Dr. Rubinfeld noted that she continued to have objective findings of bilateral carpal tunnel syndrome consisting of decreased sensitivity in both hands which represented residuals of carpal tunnel syndrome. He advised that the condition had not yet resolved and that appellant was not able to perform the full duties of a mail clerk. Dr. Rubinfeld noted that appellant's bilateral carpal tunnel syndrome represented a repetitive trauma disorder which had been slow to resolve after surgery. While no further treatment was indicated, reevaluation in six months was recommended to monitor her progress. Dr. Rubinfeld found that appellant's bilateral wrist disability was due to her employment and that there were no nonoccupational factors or incidents causing disability. On November 1, 2006 he reiterated that there was residual disability but it might resolve in six months. When Dr. Rubinfeld stated that appellant had reached maximum medical improvement, he meant that her condition would benefit from additional medical treatment but might improve over time without any additional treatment. Appellant was able to work but was to avoid repetitive motion of her wrists of more than three hours, which he noted was not a requirement of her job.

In an April 23, 2007 report, Dr. Filippone conducted an electromyogram (EMG) which showed evidence of bilateral carpal tunnel syndrome and a left C5-6 cervical radiculopathy.

On June 29, 2007 the Office notified appellant of a conflict in medical opinion between Dr. Filippone and Dr. Rubinfeld. It referred her to Dr. Andrew Carollo, a Board-certified orthopedic surgeon, to resolve the conflict with regard to whether there was a causal relationship between appellant's condition and the accepted work injury and her current condition and to determine whether appellant had any continuing disability. In a July 31, 2007 report, Dr. Carollo noted that appellant's complaints were compatible with a diagnosis of bilateral carpal tunnel syndrome. He noted that the relationship of the employment to appellant's situation was complicated by the fact that she had a history of diabetes as well as thyroid problems, both of which are associated carpal tunnel symptomologies. Dr. Carollo advised that appellant had residuals of carpal tunnel syndrome based upon the underlying medical conditions. He noted

that appellant underwent bilateral carpal tunnel release surgery that usually gave excellent results in uncomplicated cases. Dr. Carollo stated:

“The fact that [appellant] has had bilateral carpal tunnel releases performed in what would appear to be a satisfactory mode and remain symptomatic lends credence to the fact that her underlying symptomatology may be more related to diabetes and thyroid problems than a work-related condition. The fact that she was reassigned in work to a less demanding task which put less strain and stress on her hands also underwent bilateral surgical releases and remained symptomatic further leads me to believe that her underlying symptomatology at the present time is related to her medical condition and not solely based upon work-related conditions.”

With regard to causal relationship, he stated there was not a direct causal relationship between appellant’s work conditions and her bilateral carpal tunnel syndrome and that her condition was based upon diabetes and her thyroid condition. Based upon the accepted bilateral carpal tunnel condition, Dr. Carollo saw no reason why she could not return to her work without restriction. He noted that whether or not additional factors such as appellant’s shoulder problems and her spinal stenosis factor into her work-related activities is another matter.

In an August 10, 2007 notice, the Office proposed termination of medical and compensation benefits.

By letter dated August 23, 2007, appellant’s attorney argued that Dr. Carollo’s report was not well reasoned, did not support the proposed action and is not consistent with the statement of accepted facts and that he acknowledges that at least part of appellant’s carpal tunnel syndrome is related to her work.

By decision dated September 11, 2007, the Office terminated appellant’s medical and wage-loss compensation benefits effective that date.

In an August 28, 2007 report, Dr. Filippone stated that the delay in approving appellant’s surgical treatment caused undue additional trauma and injury to the nerve because of a lack of treatment. He stated that Dr. Carollo’s opinion that appellant’s carpal tunnel syndrome was an underlying medical condition was erroneous; contending that it was established that the carpal tunnel syndrome was the result of the repetitive nature of appellant’s work for over 21 years. Based on appellant’s history and clinical presentation she continued to be totally disabled. Dr. Filippone noted that her symptoms continued to persist including constant numbness in her hands. He advised that appellant’s carpal tunnel syndrome had not resolved and was too symptomatic to return to work. Dr. Filippone also stated, “It is also my professional medical opinion that [appellant’s] persistent work-related carpal tunnel syndrome presentation is the sole and direct result of her work for the [employing establishment.]”

By letter dated September 17, 2007, appellant requested a hearing.

In a decision dated November 30, 2007, an Office hearing representative reversed the September 11, 2007 decision, finding that the Office did not meet its burden of proof to terminate benefits. The Office reinstated appellant’s benefits.

In reports dated December 6, 2007 through October 28, 2008, Dr. Filippone advised that appellant remained totally disabled. On February 28, 2008 he indicated that appellant had surgical repair of her right rotator cuff on February 27, 2008. In a July 21, 2008 report, Dr. Filippone concluded that there was nerve conduction and EMG evidence of a bilateral carpal tunnel syndrome and EMG evidence of a left C5-6 cervical radiculopathy, all related to the injuries sustained at work.

The Office requested, on January 25, 2008, that Dr. Carollo review a copy of appellant's job description and clarify his opinion on causal relation. In a March 18, 2008 report, Dr. Carollo opined that he did not believe that appellant's employment contributed in any part to her carpal tunnel syndrome. He stated that she had adequate treatment of her condition, including surgical release of the carpal tunnel bilaterally, which would have alleviated her median nerve compression and subsequent symptomology. Dr. Carollo reiterated that appellant was able to perform her duties as described.

On December 2, 2008 the Office proposed terminating appellant's compensation benefits as the medical evidence established that she no longer had any residuals or disability due to the accepted work injury.

On December 15, 2008 appellant, through her attorney, objected to the proposed termination of benefits. In a November 6, 2008 report, Dr. Filippone noted that appellant continued to be disabled. In a December 4, 2008 report, he noted that he last examined her on November 6, 2008 and that she was still obviously symptomatic. Dr. Filippone reiterated that appellant remained totally disabled and wished to pursue disability retirement.

By decision dated January 8, 2009, the Office terminated appellant's compensation benefits effective January 18, 2009.

On January 13, 2009 appellant requested an oral hearing.

In a January 15, 2009 report, Dr. Filippone again disagreed with the opinion of Dr. Carollo. He noted that appellant gave a coherent consistent history of bilateral carpal tunnel, which has not improved with surgery and was interfering with her activities of daily living. Dr. Filippone noted that her physical examination showed multiple abnormalities, including partial atrophy and that the EMG and nerve conduction studies (NCS) confirmed his conclusions. He reiterated that appellant remained totally disabled. On February 12, 2009 Dr. Filippone noted that she continued to have numbness and tingling in both her hands and pain and guarding and spasm persisting in cervical paraspinals.

At the hearing held on May 28, 2009 appellant discussed her employment with the employing establishment and her injuries. She noted that she still had trouble with her carpal tunnel syndrome in that sometimes her hands went numb and there was tingling.

By decision dated August 24, 2009, an Office hearing representative affirmed the January 8, 2009 decision terminating appellant's compensation benefits.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

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.⁴

Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is a 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.⁵ Where a case is referred to an impartial medial 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.⁶

ANALYSIS

In the present case, the Office accepted appellant's claim for bilateral carpal tunnel syndrome. It terminated her medical and wage-loss compensation benefits effective January 18, 2009 finding that she no longer had any disability or residuals due to his accepted work condition.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits. Appellant's treating physician, Dr. Filippone, found that she was totally disabled due to work-related carpal tunnel syndrome. Dr. Rubinfeld, the second opinion physician, advised that appellant had residual disability and should avoid repetitive motion of her wrists for more than three hours, which he noted was not a requirement of her job. The Office terminated her compensation based on the opinion of the impartial medical examiner, Dr. Carollo, selected to resolve the conflict in medical opinion between Drs. Filippone and Rubinfeld.

¹ *I.J.*, 59 ECAB 408 (2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

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

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

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

⁵ 5 U.S.C. § 8123(a); *see also* *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207, 210 (1993).

⁶ *D.F.*, 61 ECAB __ (Docket No. 09-1463, issued August 12, 2010); *Roger Dingess*, 47 ECAB 123, 126 (1995).

Dr. Carollo opined that appellant had surgical release of the carpal tunnel bilaterally which would have alleviated her median nerve compression and subsequent symptomatology. He also opined that she could perform her regular duties. However, the Board finds that the opinion of Dr. Carollo is not sufficiently well rationalized to be entitled to the special weight accorded the impartial medical examiner. On July 31, 2007 Dr. Carollo noted that appellant had residuals after her surgeries and that carpal tunnel release surgeries usually provide excellent results in uncomplicated cases. He concluded that her residuals were due to underlying symptomatology and not solely based upon her work-related conditions. However, Dr. Carollo did not adequately explain appellant's residuals after surgery and how they were related to her preexisting condition rather than the accepted carpal tunnel syndrome. Although he noted her postsurgical EMG/NCS, he did not explain his conclusion in light of these studies that were positive for carpal tunnel syndrome. Dr. Carollo's March 18, 2008 report did not clarify sufficiently his opinion. He simply reiterated that appellant had adequate treatment of her condition which would have alleviated her median nerve compression and subsequent symptomatology. Dr. Carollo advised that he did not "believe" that appellant's employment contributed to her current carpal tunnel syndrome and that she was able to perform her duties.

The Board finds that the medical evidence is insufficient to establish that appellant no longer had residuals of carpal tunnel syndrome causally related to her accepted employment injury. For the foregoing reasons, the Office did not meet its burden of proof to terminate her compensation benefits.⁷

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's medical and wage-loss compensation effective January 18, 2009.

⁷ As the Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits, the second issue is moot.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 24, 2009 is reversed.

Issued: November 29, 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