

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

C.P., Appellant)

and)

**DEPARTMENT OF AGRICULTURE, FOOD
SAFETY & INSPECTION SERVICE,
Carrollton, GA, Employer**)

**Docket No. 10-726
Issued: November 8, 2010**

Appearances:

*Alan J. Shapiro, 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 January 25, 2010 appellant, through her attorney, filed a timely appeal from a December 9, 2009 merit decision of the Office of Workers' Compensation Programs reducing her compensation to zero. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to reduce appellant's compensation benefits to zero on the grounds that she had no further disability due to her accepted employment injury.

FACTUAL HISTORY

On October 21, 1992 appellant, then a 42-year-old food inspector, filed an occupational disease claim alleging that she sustained tenosynovitis of the right wrist and shoulder and an

aggravation of left carpal tunnel syndrome due to factors of her federal employment. The Office accepted the claim, assigned file number xxxxxx216, for tenosynovitis of the right wrist.

The Office also accepted that appellant sustained bilateral carpal tunnel syndrome under file number xxxxxx395 and xxxxxx640. Appellant underwent a right carpal tunnel release on January 11, 1991 and a left carpal tunnel release on February 21, 1997. The Office combined the claims under file number xxxxxx216. Appellant received compensation on the periodic rolls effective January 23, 1993. On December 13, 1993 she returned to work as an accounting technician.

By decision dated March 7, 1994, the Office reduced appellant's compensation based on its finding that her actual earnings as an accounting technician effective December 13, 1993 fairly and reasonably represented her wage-earning capacity.¹

On January 21, 2009 Dr. Stephen M. McCollam, a Board-certified orthopedic surgeon, evaluated appellant for a history of trigger finger in multiple digits.² He advised that she might need surgery if the condition worsened.

On February 20, 2009 the Office referred appellant to Dr. Alexander Doman, a Board-certified orthopedic surgeon, for a second opinion evaluation. On March 18, 2009 Dr. Doman discussed appellant's history of injury and current complaints of triggering in both thumbs and the bilateral index, middle and ring fingers. He diagnosed status post bilateral carpal tunnel releases and a release of the first extensor compartment of the right wrist. Dr. Doman noted that nerve conduction velocity studies revealed normal findings for the right wrist and mild slowing of the median nerve of the left wrist and ulnar nerve probably at the cubital tunnel level. He stated:

“It is my opinion that the accepted conditions of the bilateral carpal tunnel syndrome and tenosynovitis of the right wrist have resolved. [Appellant] has no physical findings of symptoms of carpal tunnel syndrome at this time. [She] has no physical exam[nation] findings of tenderness or exacerbation of the tenosynovitis of the right wrist. This condition has been successfully treated with the surgical procedure. [Appellant] has normal nerve conduction velocity studies on the right wrist. There is mild slowing of the left wrist [that] is not felt to be clinically significant in light of her excellent clinical resolution from the carpal tunnel surgery in addition to the normal physical exam[nation] findings.”

Dr. Doman found that the accepted conditions had resolved and that appellant could work in her usual employment. He opined that her bilateral triggering symptoms were not related to her employment or the accepted conditions and noted that “triggering of the fingers is a

¹ By decision dated September 5, 1997, the Office granted appellant a schedule award for a six percent permanent impairment of the right arm.

² In a report dated September 13, 2005, Dr. Neil C. Berry, a Board-certified orthopedic surgeon, evaluated appellant for ongoing hand pain. He noted a negative Tinel's sign and full range of motion of the wrist with no swelling. Dr. Berry also indicated that March 2005 nerve conduction studies were normal. On August 31, 2006 he diagnosed left trigger thumb and on September 13, 2006 performed a surgical release.

condition seen especially in middle-aged women....” In an accompanying work-restriction evaluation, Dr. Doman found no limitations due to appellant’s employment injury.

On April 24, 2009 the Office advised appellant of its proposed termination of her compensation based on its modification of her loss of wage-earning capacity to zero.

On April 22, 2009 Dr. McCollam treated appellant for multiple trigger fingers bilaterally. On May 13, 2009 he found that she could return to her usual employment effective that date. Dr. McCollam opined that an underlying employment-related tendinitis caused both her carpal tunnel syndrome and trigger fingers.³

By letter dated May 14, 2009, appellant challenged the proposed termination of her compensation.⁴ She argued that the trigger fingers of both hands resulted from her carpal tunnel syndrome.

On June 11, 2009 an Office medical adviser opined that trigger finger did not result from either carpal tunnel syndrome or a carpal tunnel release. He noted that carpal tunnel syndrome involved the median nerve while trigger finger involved the flexor tendon.

By decision dated July 1, 2009, the Office finalized its reduction of appellant’s loss of wage-earning capacity to zero. It determined that the medical evidence established that her bilateral carpal tunnel syndrome and right wrist tenosynovitis did not prevent her from returning to her date-of-injury position.

On July 7, 2009 appellant, through her attorney, requested a telephone hearing that was held on October 9, 2009. Counsel asserted that he did not challenge the termination of compensation benefits, but argued that she was entitled to continuing medical care and a schedule award.

In a December 9, 2009 decision, an Office hearing representative affirmed the July 1, 2009 decision. He found, however, that the record contained a conflict in medical evidence regarding the cause of appellant’s bilateral trigger fingers and instructed the Office to refer her for an impartial medical examination. The hearing representative noted that the Office had not denied medical coverage for the accepted conditions.

LEGAL PRECEDENT

A wage-earning capacity decision is a determination that a specific amount of earnings, either actual earnings or earnings from a selected position, represents a claimant’s ability to earn

³ In a progress report dated December 31, 2008, received by the Office on June 11, 2009, Dr. McCollam indicated that tenosynovitis caused carpal tunnel syndrome and trigger finger and found both conditions directly related.

⁴ Appellant submitted multiple reports from a physician’s assistant.

wages.⁵ Compensation payments are based on the wage-earning capacity determination and it remains undisturbed until properly modified.⁶

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.⁷ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁸

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome and tenosynovitis of the right wrist due to factors of her federal employment. Appellant returned to work as an accounting technician on December 13, 1993. The Office reduced appellant's compensation based on her findings that her actual earnings as an accounting technician fairly and reasonably represented her wage-earning capacity. As it is seeking modification of the loss wage-earning capacity determination, it has the burden to establish that the original rating was in error, that the injury-related condition has improved or that the claimant has been vocationally rehabilitated.⁹

The Board finds that the Office presented sufficient medical evidence to modify appellant's loss in wage-earning capacity to zero. In a report dated March 18, 2009, Dr. Doman, an Office referral physician, reviewed the history of injury and discussed appellant's complaints of trigger finger in her thumbs and bilateral index, middle and ring fingers. He diagnosed status post bilateral carpal tunnel releases and a release of the first extensor compartment of the right wrist. Dr. Doman found that nerve conduction velocity studies revealed normal studies for the right wrist and mild slowing of the median nerve of the left wrist and ulnar nerve probably at the cubital tunnel level. He opined that the accepted conditions of bilateral carpal tunnel syndrome and right wrist tenosynovitis had resolved. Dr. Doman provided rationale for his opinion by explaining that there were no physical findings of carpal tunnel syndrome or right wrist tenosynovitis on examination or indicated by diagnostic studies. He noted that appellant had a mild slowing at the left wrist on nerve conduction study, but found that it was not clinically significant in view of the examination findings. Dr. Doman advised that she had no physical limitations resulting from her employment injury.¹⁰ His report, which is thorough and supported

⁵ See 5 U.S.C. § 8115 (determination of wage-earning capacity).

⁶ *S.M.*, 58 ECAB 166 (2006); *Sharon C. Clement*, 55 ECAB 552 (2004).

⁷ *Harley Sims, Jr.*, 56 ECAB 320 (2005); *Tamra McCauley*, 51 ECAB 375, 377 (2000); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.11 (June 1996).

⁸ *Id.*

⁹ *Id.*

¹⁰ Dr. Doman further found that appellant's trigger fingers were not related to her employment. The Office is developing the record on this issue.

by medical rationale, is sufficient to meet the Office's burden of proof to modify appellant's loss of wage-earning capacity to zero.

On May 13, 2009 Dr. McCollam noted that Dr. Doman believed that appellant's triggering symptoms were unrelated to her employment. He disagreed with his conclusion. Dr. McCollam did not address whether appellant had any further disability due to her accepted bilateral carpal tunnel syndrome or right wrist tenosynovitis and, thus, his opinion is of diminished probative value on this issue.

CONCLUSION

The Board finds that the Office met its burden of proof to reduce appellant's compensation benefits to zero on the grounds that she had no further disability due to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2009 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 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