

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

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**M.I., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Roswell, NM, Employer**

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**Docket No. 10-491  
Issued: October 18, 2010**

*Appearances:*

*Alan J. Shapiro, 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 December 16, 2009 appellant, through his attorney, filed a timely appeal from a November 10, 2009 merit decision of the Office of Workers' Compensation Programs terminating his compensation. Pursuant to 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 properly terminated appellant's compensation effective May 12, 2008 on the grounds that he had no further disability causally related to his July 8, 1988 employment injury; and (2) whether he established that he had any continuing employment-related disability after May 12, 2008.

**FACTUAL HISTORY**

The Office accepted that on July 8, 1988 appellant, then a 30-year-old distribution clerk, sustained a tear of the sagittal band of the right second finger and complex regional pain syndrome (CRPS) Type I, also known as reflex sympathetic dystrophy (RSD) of the right hand.

He stopped work on August 21, 1988. Appellant underwent a surgical repair of the sagittal band tear on November 1, 1988.

Appellant began working as a lens grinder in February 1994. The Office reduced his compensation effective February 18, 1994 based on its finding that his actual earnings as a lens grinder fairly and reasonably represented his wage-earning capacity.

On February 10, 2006 the Office referred appellant to Dr. F. Thomas Bryant, a Board-certified orthopedic surgeon, for a second opinion examination. On March 1, 2006 Dr. Bryant opined that appellant's tear of the sagittal band of the long finger had healed after surgical treatment. He listed subjective findings of right hand temperature intolerance and pain extending to the shoulder. Dr. Bryant diagnosed RSD due to the July 8, 1988 work injury. He opined that appellant's work injury had not ceased and that the RSD was a permanent condition. Dr. Bryant found that he required ongoing treatment. In an accompanying work restriction evaluation, he determined that appellant could work eight hours a day with restrictions on performing repetitive movements of the wrists or elbows of one-half hour.

On May 15, 2006 the Office requested that Dr. R.E. Pennington, a Board-certified physiatrist and appellant's attending physician, review and discuss Dr. Bryant's work restrictions. On May 20, 2006 Dr. Pennington completed a work restriction evaluation. He found that appellant was unable to work due to chronic pain. On August 6, 2007 Dr. Pennington diagnosed CRPS and advised that appellant was totally disabled from all employment.

On November 26, 2007 the Office determined that a conflict arose regarding whether appellant was disabled from employment and the extent of any disability. It referred him to Dr. Randy Pollet, a Board-certified orthopedic surgeon, for an impartial medical examination. On January 30, 2008 Dr. Pollet discussed appellant's history of injury and treatment received. On examination he found "no evidence of reflex sympathetic dystrophy -- no psuedomotor changes, no circulatory insufficiency, no sweating, no atrophy, no color changes, no increased hair growth or any signs of reflex sympathetic dystrophy." Dr. Pollet determined that appellant was intact neurologically and had no swelling and sufficient range of motion over the right long finger. He noted degenerative changes of the metacarpal joint bilaterally. Dr. Pollet opined that appellant's work injury was satisfactorily treated and that he currently had no signs of RSD. He found that appellant could resume his usual work duties. In an accompanying work restriction evaluation, Dr. Pollet advised that appellant could work in his usual employment without limitations.

On April 10, 2008 the Office notified appellant of its proposed termination of his compensation based on Dr. Pollet's finding that he had no further employment-related disability.

By decision dated May 12, 2008, the Office finalized its termination of his compensation effective that date. The Office did not terminate authorization for medical treatment.

On May 28, 2008 appellant requested reconsideration. In a report dated June 22, 2008, Dr. Dwight M. Santiago Perez, an internist, noted that his review was preliminary as he did not yet have all medical evidence available. He diagnosed a tear of the right third and fourth finger sagittal band, status post surgical repair of the sagittal band and RSD, accepted as CRPS, of the

right upper extremity. Dr. Perez listed findings on examination of dysesthesia of the right hand. Assuming appellant was truthful, Dr. Perez stated that it was probable that the CRPS and sagittal band tear were due to his work injury. Dr. Perez listed work restrictions for the right hand and upper extremity.

In a decision dated September 5, 2008, the Office denied modification of its May 12, 2008 decision.

On November 5, 2008 Dr. Perez disagreed with Dr. Pollet that appellant's right hand did not show findings suggesting RSD. He advised that appellant had dysesthesia, paresthesias, allodynia and weakness of the right hand. Dr. Perez was currently treating appellant for CRPS, which he noted "encompasses the diagnosis of RSD." He attributed the RSD to appellant's work injury. Dr. Perez noted that, if requested, he would review all medical records and provide a comprehensive opinion.

In 2008 and 2009 medical status form reports, Dr. Perez diagnosed RSD/CRPS and a sagittal band tear post surgery. He checked "yes" that the diagnosis was related to the injury and found that appellant was disabled from work.

Appellant appealed to the Board. On September 8, 2009 the Board noted that the Office had not transmitted the complete case record and remanded the case for reconstruction of the case record.<sup>1</sup>

By decision dated November 10, 2009, the Office denied modification of its May 12, 2008 termination decision. It found that Dr. Pollet's opinion represented the weight of the medical evidence.

### **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.<sup>2</sup> 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.<sup>3</sup>

Section 8123(a) of the Federal Employees' Compensation Act provides that, if there is 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.<sup>4</sup> The implementing regulations states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion

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<sup>1</sup> Docket No. 09-61 (issued September 8, 2009).

<sup>2</sup> *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>3</sup> *J.M.*, 58 ECAB 478 (2007); *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>4</sup> 5 U.S.C. § 8123(a).

physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>5</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>6</sup>

### ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a tear of the sagittal band of the right second finger and RSD of the right upper extremity due to a July 8, 1988 work injury. Appellant had intermittent periods of disability due to his injury. In 1994 the Office reduced appellant's compensation based on his actual earnings as a lens grinder.

The Office determined that a conflict arose between Dr. Pennington, appellant's physician, and Dr. Bryant, an Office referral physician, regarding the extent of his disability for employment. It referred him to Dr. Pollet for an impartial medical examination. Where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>7</sup> The Board finds that the opinion of Dr. Pollet, a Board-certified orthopedic surgeon selected to resolve the conflict in opinion, is well rationalized and based on a proper factual and medical history. Dr. Pollet accurately summarized the relevant medical evidence, provided detailed findings on examination and reached conclusions about appellant's condition which comported with his findings.<sup>8</sup> In a report dated January 30, 2008, he reviewed the medical evidence of record, including the results of diagnostic studies. On examination, Dr. Pollet found no loss of circulation, sweating, atrophy, color changes or increased hair growth. He determined that appellant was neurologically intact with no swelling or loss of motion of the right long finger. Dr. Pollet concluded that appellant had no disability due to his injury to the right hand and right long finger and could resume his usual employment. He provided rationale for his opinion by noting that his examination revealed no evidence of RSD or disability due to the right long finger injury. As Dr. Pollet's report is detailed, well rationalized and based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner.<sup>9</sup> The Office met its proof to terminate appellant's compensation benefits for the accepted conditions of CRPS, Type I, also known as RSD, and a tear of the sagittal band of the right second finger.

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<sup>5</sup> 20 C.F.R. § 10.321.

<sup>6</sup> *R.C.*, 58 ECAB 238 (2006); *David W. Pickett*, 54 ECAB 272 (2002).

<sup>7</sup> *Id.*

<sup>8</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>9</sup> *See J.M.*, *supra* note 3; *Katheryn E. Demarsh*, 56 ECAB 677 (2005).

## LEGAL PRECEDENT -- ISSUE 2

Once the Office properly terminates appellant's compensation benefits, the burden shifts to appellant to establish that he has continuing disability after that date related to his accepted injury.<sup>10</sup> 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 medical and factual background, supporting such a causal relationship.<sup>11</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>12</sup>

## ANALYSIS -- ISSUE 2

Subsequent to the Office's termination of compensation, appellant submitted a June 22, 2008 report from Dr. Perez. Dr. Perez diagnosed CRPS, or RSD, of the right upper extremity and a surgically repaired sagittal band tear. He notes that he could not address causal relationship but that it was probable that the diagnosed conditions resulted from appellant's work injury. Dr. Perez listed work restrictions. As he acknowledged, the report of Dr. Perez is based on an incomplete factual history. It is well established that medical reports must be based on a complete and accurate factual and medical background and that medical opinions based on an incomplete or inaccurate history are of diminished probative value.<sup>13</sup>

In a report dated November 5, 2008, Dr. Perez related that contrary to Dr. Pollet's determination, he found evidence of continued symptoms of CRPS, or RSD, on examination. He did not, however, directly address the pertinent issue of whether appellant remained disabled due to his accepted work injury. Consequently, Dr. Perez' report is insufficient to overcome the weight accorded Dr. Pollet, the impartial medical examiner.

In form reports dated 2008 and 2009, Dr. Perez diagnosed CRPS/RSD and a surgically repaired sagittal band tear. He checked "yes" that the diagnoses were related to the injury and found that appellant was totally disabled. It is well established, however, that a physician's opinion on causal relationship that consists of checking "yes" to a form question is of diminished probative value.<sup>14</sup> Consequently, appellant has not met his burden of proof to establish that he had any continuing disability after May 12, 2008.

## CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective May 12, 2008 on the grounds that he had no further disability causally related to his July 8, 1988

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<sup>10</sup> *Manual Gill*, *supra* note 8.

<sup>11</sup> *Id.*

<sup>12</sup> *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>13</sup> *M.W.*, 57 ECAB 710 (2006); *James R. Taylor*, 56 ECAB 537 (2005).

<sup>14</sup> *Sedi L. Graham*, 57 ECAB 494 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005).

employment injury. The Board further finds that he has not established that he had any continuing employment-related disability after May 12, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 10, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 18, 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