

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

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**B.C., Appellant**

**and**

**GENERAL SERVICES ADMINISTRATION,  
Washington, DC, Employer**

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**Docket No. 10-44  
Issued: September 20, 2010**

*Appearances:*  
*Appellant, pro se*  
*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 October 5, 2009 appellant filed a timely appeal from an April 28, 2009 decision of the Office of Workers' Compensation Programs that terminated his wage-loss compensation and rescinded carpal tunnel syndrome as an accepted condition. 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The issues are: (1) whether the Office properly rescinded right carpal tunnel syndrome as an accepted condition; and (2) whether the Office properly terminated appellant's wage-loss compensation effective April 28, 2009.

On appeal, appellant contends that he is in constant physical pain and disabled for work.

**FACTUAL HISTORY**

On March 27, 2007 appellant, then a 44-year-old building manager, sustained injury to his neck and back in a work-related motor vehicle accident on that date when a car ran into the back of his car.

Appellant was treated by Dr. Rida N. Azer, a Board-certified orthopedic surgeon. In a May 25, 2007 report, Dr. Azer diagnosed acute cervical strain to rule out herniated cervical disc with radiculopathy versus double crush injury with bilateral carpal tunnel syndrome; acute lumbosacral strain, rule out herniated L5-S1 disc; and post-traumatic headaches with head injuries. He opined that these conditions were caused by appellant's March 27, 2007 work injury. Dr. Azer ordered appellant to remain off work. In a September 7, 2007 report, he noted that an August 10, 2007 magnetic resonance imaging scan showed a C3-4 central disc herniation that contacted the spinal cord without deformation of the spinal cord. There was no evidence of spinal stenosis or fragments. Dr. Azer recommended that appellant be seen by a spinal surgeon and should avoid strenuous activities.

Dr. Azer referred appellant to Dr. Hampton J. Jackson, Jr., a Board-certified orthopedic surgeon, who first examined appellant on October 3, 2007 and diagnosed cervical disc herniation at C3-4 as a result of the March 27, 2007 work injury. Dr. Jackson advised appellant to stop work and all activities lest he develop severe unremitting neck pain radiating to the shoulders or headaches, bowel or bladder dysfunction symptoms.

On January 11, 2008 the Office accepted appellant's claim for sprains of the neck and lumbar spine and right carpal tunnel syndrome. It paid compensation for wage-loss and medical benefits.

In a June 13, 2008 report, Dr. Jackson treated appellant with pain management measures and noted that therapy measures provided partial temporary relief. Appellant was to avoid all activities that might aggravate or accelerate his work-related condition.

The Office referred appellant to Dr. Kevin Hanley, a Board-certified orthopedic surgeon, for a second opinion. In a September 3, 2008 report, Dr. Hanley advised that appellant had a "very low-grade garden variety type of sprain/strain and unfortunately his condition has been worsened by his management and intervention." He found no evidence that carpal tunnel syndrome could be caused by a car impact collision in view of the fact that the mechanics did not allow for significant hyperextending of the wrist and there was no evidence that appellant sustained a wrist injury that would have caused post-traumatic carpal tunnel syndrome. Dr. Hanley recommended that the diagnoses be stricken from the record and no longer accepted as work related. With regard to the accepted neck and low back sprain, he opined that these conditions were related to the accident by direct cause but were self-limited and had long since resolved. Appellant's continuing symptoms represented symptom magnification enabled by his treating physician and that there was no reason to believe that he required further intervention or medical treatment. Dr. Hanley found appellant capable of any and all work activities he wished to pursue with no physical restriction of any sort.

In an October 31, 2008 report, Dr. Jackson reviewed Dr. Hanley's report. He stated that, after treating appellant for more than a year and reviewing the treatment record, appellant's cervical disc herniation was symptomatic. Dr. Jackson noted that the reasons for appellant's persistent neck and low back pain were cervical disc herniation at C3-4, lumbar disc injury at L4-5 and torn ligaments and tendons in the cervical and lumbar spine, all related to the injury of March 27, 2007. He stated that all the diagnoses were made based on objective testing, not just guessing. Dr. Jackson advised that these conditions would be made worse by work activities that

could aggravate or accelerate the deterioration of these injuries. He noted that nothing would heal appellant's disc injuries, including surgery.

On December 5, 2008 the Office proposed terminating appellant's compensation based on the opinion of Dr. Hanley and gave appellant an opportunity to respond.

In a letter dated December 20, 2008, appellant stated that he spoke only 10 minutes with Dr. Hanley and contended that the physician was unprofessional and disrespectful. He requested a third opinion.

The Office found a conflict in medical opinion between Dr. Jackson and Dr. Hanley with regard to whether appellant had any continuing disability causally related to the accepted injury. On February 10, 2009 it referred appellant to Dr. Michael A. Franchetti, a Board-certified orthopedic surgeon, for an impartial medical examination. In a March 18, 2009 report, Dr. Franchetti stated that appellant frankly informed him that carpal tunnel syndrome was not related to the accident of March 27, 2007 and that he did not sustain any wrist or hand injury during the accident. He diagnosed chronic cervical strain with cervical disc herniation at C3-4 and chronic lumbosacral strain as a result of the injuries sustained on March 27, 2007. Dr. Franchetti believed that these diagnoses were causally connected to the March 27, 2007 employment injury. He indicated that appellant did suffer from a severe disability due to his severe back injury sustained at work on May 20, 1991 which resulted in both a thoracic and lumbar spinal compression fracture. Dr. Franchetti opined that this preexisting back condition as worsened by the injury sustained on March 27, 2007. He noted that appellant continued to suffer as a result of this March 27, 2007 employment injury. Dr. Franchetti opined that appellant needed no further active management at this time as related to the injuries of March 27, 2007. He noted that he reviewed the job description for the building manager position and felt that appellant was capable of performing these regular duties. Dr. Franchetti limited appellant to eight hours of work per day with a lifting restriction of 20 pounds.

In an April 28, 2009 decision, the Office rescinded acceptance of appellant's carpal tunnel syndrome as an accepted condition based on the second opinion report, the report of the impartial medical examiner and appellant's statement that it was not related to the March 27, 2007 work injury. It also terminated appellant's wage-loss compensation benefits.

### **LEGAL PRECEDENT -- ISSUE 1**

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>1</sup> The Office may review an award for or against payment of compensation at any time on its own motion or on application.<sup>2</sup>

The Board has upheld the Office's authority to reopen a claim at any time on its own motion and, where supported by the evidence, to set aside or modify a prior decision and issue a

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<sup>1</sup> 5 U.S.C. § 8102(a).

<sup>2</sup> *Id.* at 8128(a); *see also* 20 C.F.R. § 10.610.

new decision.<sup>3</sup> The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can be set aside only in the manner provided by the compensation statute.<sup>4</sup>

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory provisions, where there is good cause for so doing, such as mistake or fraud. It is well established that, once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, the Office later decides that it erroneously accepted a claim for a particular condition. In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of the rationale for rescission.<sup>5</sup>

Section 8123(a) 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 evaluation.<sup>6</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is properly referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background, must be given special weight.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

On May 25, 2007 Dr. Azer, appellant's treating physician, opined that appellant had bilateral carpal tunnel syndrome related to the March 27, 2007 work injury. Dr. Hanley, the second opinion physician, disagreed. He found no evidence that carpal tunnel syndrome could result from a car collision and further noted that there was no evidence that appellant sustained a wrist injury that would have caused a post-traumatic carpal tunnel syndrome. The impartial medical examiner, Dr. Franchetti, did not specifically address whether appellant's carpal tunnel syndrome was related to his motor vehicle accident. Rather, he stated that appellant did not believe the two to be related. As Dr. Franchetti did not provide a fully rationalized opinion on this issue, there remains an unresolved conflict in the medical evidence as to whether appellant's carpal tunnel syndrome is work related. Although the Office indicated that appellant believed the condition was not work related, he is a layperson and cannot provide probative medical opinion.<sup>8</sup> Moreover, the Board notes that if the Office mistakenly accepted appellant's claim for carpal tunnel syndrome, it has the burden of justifying that the prior acceptance was erroneous.

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<sup>3</sup> *Eli Jacobs*, 32 ECAB 1147 (1981).

<sup>4</sup> *Doris J. Wright*, 49 ECAB 230 (1997); *Shelby J. Rycroft*, 44 ECAB 795 (1993).

<sup>5</sup> *Walter L. Jordan*, 57 ECAB 218 (2005).

<sup>6</sup> 5 U.S.C. § 8123(a).

<sup>7</sup> *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James R. Roberts*, 31 ECAB 1010, 1021 (1980).

<sup>8</sup> *See James A. Long*, 40 ECAB 538, 542 (1989).

The Board finds that the Office did not meet its burden of proof to rescind the acceptance of appellant's claim for carpal tunnel syndrome. Accordingly, the Board will reverse this finding.

### **LEGAL PRECEDENT -- ISSUE 2**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.<sup>9</sup> After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability has ceased or that it was no longer related to the employment.<sup>10</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper and factual medical background.<sup>11</sup>

As used in the Federal Employees' Compensation Act,<sup>12</sup> the term disability means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. The general test in determining loss of wage-earning capacity is whether the employment-caused impairment prevents the employee from engaging in the kind of work he was doing when he was injured.<sup>13</sup> In other words, if an employee is unable to perform the required duties of the job in which he was employed when injured, the employee is disabled.<sup>14</sup>

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>15</sup>

### **ANALYSIS -- ISSUE 2**

The Office accepted appellant's claim for sprain of the neck, sprain of the back (lumbar region) and right carpal tunnel syndrome. Dr. Jackson, appellant's treating physician, opined that he remained disabled. Dr. Hanley, the second opinion physician, disagreed and found that appellant was capable of performing all work activities he wished to pursue. Due to the conflict in the medical evidence, the Office referred appellant to Dr. Franchetti for an impartial medical examination. Dr. Franchetti noted that, although appellant still had residuals from his work injury, he was capable of performing the duties of his position as a building manager with only a

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<sup>9</sup> A.W., 59 ECAB \_\_\_ (Docket No. 08-306, issued July 1, 2008).

<sup>10</sup> J.M., 58 ECAB 471 (2007).

<sup>11</sup> See *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>12</sup> 5 U.S.C. §§ 8101-8193, 8102.

<sup>13</sup> See *Marvin T. Schwartz*, 48 ECAB 521 (1997); see also *Patricia A. Keller*, 45 ECAB 278, 286 (1993).

<sup>14</sup> *Id.*

<sup>15</sup> *Darlene R. Kennedy*, 57 ECAB 414 (2006).

lifting restriction and was, accordingly, no longer disabled from his prior employment. Dr. Franchetti's opinion is well rationalized and based on a complete review of appellant's record, employment description and a physical examination. Accordingly, the Board finds that his opinion as the impartial medical examiner, represents the special weight of the medical evidence. The Board will affirm the termination of appellant's wage-loss compensation benefits effective April 28, 2009.

**CONCLUSION**

The Board finds that the Office did not properly rescind acceptance of appellant's carpal tunnel syndrome. The Board finds that the Office met its burden of proof to terminate his wage-loss compensation as of April 28, 2009.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 28, 2009 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: September 20, 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