

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

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**D.B., Appellant**

**and**

**FEDERAL JUDICIARY, CHIEF PROBATION  
OFFICE, Sacramento, CA, Employer**

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**Docket No. 10-494  
Issued: September 22, 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 December 16, 2009 appellant filed a timely appeal from the July 9, 2009 merit decision of the Office of Workers' Compensation Programs denying her schedule award claim. 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 appellant sustained any permanent impairment of her right arm.

**FACTUAL HISTORY**

In April 2000 the Office accepted that appellant, then a 41-year-old probation clerk, sustained right carpal tunnel syndrome (CTS) due to her repetitive work duties. Appellant received compensation for periods of disability.

In an August 11, 2006 report, Dr. Michael Piansky, an attending Board-certified internist, determined that appellant had sustained a permanent impairment in both of her hands. He also

noted that her transverse myelitis was aggravating her underlying bilateral hand weakness and numbness.

On January 26, 2007 appellant was referred for a second opinion evaluation with a Board-certified neurologist to determine whether she had residuals of right CTS. On February 28, 2007 Dr. Charles Nicol, a Board-certified neurologist, found that appellant's neurological examination was fairly normal and that she did not have right CTS.

On July 30, 2007 appellant was referred for a referee evaluation to resolve a conflict in medical opinion between Dr. Nicol, the second opinion examiner, and the attending physician Dr. Piansky. On August 23, 2007 the referee examiner, Dr. David Cohen, a Board-certified neurologist, opined that the diagnostic testing was consistent with transverse myelitis, a condition unrelated to CTS.

In a July 10, 2008 decision, an Office hearing representative determined that appellant should be referred for another referee examination with a professorial level neurological specialist to ascertain her current work-related diagnosis or diagnoses.

Appellant was referred to Dr. Joseph D. Weissman, a Board-certified professorial level neurologist, for an impartial medical examination. In an August 7, 2008 report, Dr. Weissman opined that appellant did not have right CTS and that her current condition was transverse myelitis or multiple sclerosis. He stated:

“There have been no objective findings on examination to support a diagnosis of significant CTS. Not discussed previously by the patient are the previously documented decreased visual acuity in the left eye that persists and the asymmetric pupillary responses. Various diagnoses have been proposed including (1) [CTS], (2) thoracic outlet syndrome, (3) cervical radiculopathy and (4) transverse myelitis/multiple sclerosis.

“I think her current diagnosis is transverse myelitis which may actually be [multiple sclerosis] when viewed in the entirety of her clinical history and data. It would explain all of her symptoms. I do not see evidence of a clinically significant or disabling [CTS] at this time. In the past it does not look like there was a[n] objectively diagnosed case of [CTS].”

In a November 19, 2008 decision, the Office denied appellant's claim for a schedule award for the right arm. It found that the weight of evidence regarding whether appellant continued to have the accepted condition of right CTS rested with the well-rationalized opinion of Dr. Weissman. The Office noted that Dr. Weissman found no such condition and there was no basis to grant her a schedule award.

Appellant requested reconsideration of her claim contending that the Office did not provide adequate due process with regard to submitting evidence and did not give adequate credence to the opinions of her attending physicians. She submitted several medical reports that relate to medical conditions not relevant to the present claim, including treatment of a subsequently acquired ganglion cyst.

In a July 9, 2009 decision, the Office affirmed its November 9, 2009 decision finding that the additional evidence submitted by appellant did not establish that she had right CTS.

### **LEGAL PRECEDENT**

An employee seeking compensation under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of her claim, including that she sustained an injury in the performance of duty as alleged and that an employment injury contributed to the permanent impairment for which schedule award compensation is alleged.<sup>2</sup>

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>3</sup>

Section 8123(a) of the Act provides in pertinent part: "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> 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>5</sup>

### **ANALYSIS**

The Office properly determined that there was a conflict in the medical opinion between Dr. Piansky, an attending Board-certified internist, and Dr. Nicol, a Board-certified neurologist acting as an Office referral physician, on the issue of whether appellant had residuals of the accepted right CTS such that she would have permanent impairment. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Weissman, a Board-certified neurologist of professorial rank, for an impartial medical examination and an opinion on the matter.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Bobbie F. Cowart*, 55 ECAB 476 (2004). In *Cowart*, the employee claimed entitlement to a schedule award for permanent impairment of her left ear due to employment-related hearing loss. The Board determined that appellant did not establish that an employment-related condition contributed to her hearing loss and, therefore, it denied her claim for entitlement to a schedule award for the left ear.

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

<sup>4</sup> 5 U.S.C. § 8123(a).

<sup>5</sup> *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Weissman, the impartial medical specialist selected to resolve the conflict in the medical opinion. The report of Dr. Weissman establishes that appellant did not have right CTS and therefore could not have an employment-related permanent impairment of the right arm.

In an August 7, 2008 report, Dr. Weissman indicated that there had been no objective findings on examination to support a diagnosis of significant CTS. Various diagnoses were proposed including: (1) CTS; (2) thoracic outlet syndrome; (3) cervical radiculopathy; and (4) transverse myelitis/multiple sclerosis. Dr. Weissman stated that appellant's current diagnosis was transverse myelitis which might actually be multiple sclerosis when viewed in the entirety of her clinical history and data. He did not see evidence of a clinically significant or disabling CTS at this time.

The Board has carefully reviewed the opinion of Dr. Weissman and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Weissman provided a thorough factual and medical history and accurately summarized the relevant medical evidence.<sup>6</sup> He provided medical rationale for his opinion by explaining that appellant's continuing problems were caused by a nonwork-related condition. Dr. Weissman's report establishes that there is no basis to grant appellant a schedule award for her right arm.

On appeal appellant argued that Dr. Weissman did not perform a comprehensive evaluation of her condition. The Board notes that Dr. Weissman carried out an extensive review of the relevant medical evidence and performed a thorough examination of appellant's right arm. Appellant argued that the reports of attending physicians established her right to schedule award compensation, but she did not adequately explain how these reports showed permanent impairment of her right arm. She claimed that the Office violated her due process rights with respect to submitting evidence challenging the termination of her compensation. However, the matter of the termination of appellant's compensation is not currently before the Board.

### **CONCLUSION**

The Board finds that appellant did not establish that she sustained any permanent impairment of her right arm.

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<sup>6</sup> See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 9, 2009 is affirmed.

Issued: September 22, 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