



that there was not a conflict under 5 U.S.C. § 8123(a) and the medical evidence did not contain a rationalized medical opinion on the issue presented. The history of the case as set forth in the Board's prior decision is incorporated herein by reference.

The Office referred appellant to Dr. Clifford Posman, an orthopedic surgeon, for a second opinion evaluation. In a report dated March 12, 2008, Dr. Posman provided a history and results on examination. He diagnosed chronic severe bilateral carpal tunnel syndrome, chronic bilateral ulnar neuropathy, status post left Dupuytren's band excision and right Dupuytren's contracture of the fourth and fifth digits. Dr. Posman opined that the right Dupuytren's contracture was not casually related to appellant's federal employment. In a supplemental report dated March 17, 2008, he stated that according to a medical text, Dupuytren's contracture "points to a hereditary factor," most common in patients of Scandinavian and Celtic origin. Dr. Posman stated the possibility of trauma and manual labor as causative agents had been studied and the current consensus in the literature was that Dupuytren's contracture was not employment related. He concluded that this was also his opinion within a reasonable degree of medical certainty.

In a memorandum dated April 1, 2008, the Office found that the opinion from Dr. Posman created a conflict with the opinion of attending osteopath, Dr. Scott Fried, a Board-certified orthopedic surgeon.<sup>3</sup> In a report dated January 2, 1997, Dr. Fried opined that bilateral Dupuytren's involvement was secondary to aggressive gripping of bundles and bags. To resolve the conflict, the Office referred appellant, together with a statement of accepted facts and medical records, to Dr. Edward Kahn, a Board-certified orthopedic surgeon.

In a report dated May 8, 2008, Dr. Kahn provided a history of medical treatment and results on examination. He diagnosed bilateral carpal tunnel syndrome and bilateral Dupuytren's contracture. With respect to causal relationship, Dr. Kahn reviewed the medical literature. He noted one text stated the etiology of Dupuytren's was "felt to be strongest for a genetic predisposition with an autosomal dominant transmission with variable penetrants. Other unproven factors included inflammation, trauma, neoplasia, diabetes and seizure disorder." Another text noted Dupuytren's was completely an inherited disorder. Dr. Kahn advised that appellant's heritage was from Ireland and England; he had no diabetes, seizure disorder or major trauma to his hands. He concluded, "The overwhelming medical opinion at this time is that genetic predisposition is the predominant cause for the Dupuytren's contracture. There are absolutely no studies that show a conclusive link between repetitive work and Dupuytren's contracture. Therefore, I do not feel that [appellant's] Dupuytren's contractures are related to his work at the [the employing establishment] and therefore are not related to his job and/or work related."

By decision dated June 18, 2008, the Office found that the diagnosed right Dupuytren's contracture was not employment related.

Appellant requested a hearing before an office hearing representative, which was held on November 20, 2008. At the hearing, the hearing representative found that Dr. Kahn did not

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<sup>3</sup> As the Board noted in its prior decision, Dr. Fried performed a left hand Dupuytren's contracture excision. An Office hearing representative remanded the case for further development on the issue of a bilateral Dupuytren's contracture, based on reports from Dr. Fried.

address the issue of whether appellant's work activities had aggravated the Dupuytren's contracture. The case was remanded to the Office for further development.

By letter dated December 17, 2008, the Office requested that Dr. Kahn address the issue of whether the right Dupuytren's contracture was aggravated, precipitated or accelerated by work activities. In a report dated December 26, 2008, Dr. Kahn stated that, in response to the question of whether the right Dupuytren's contracture was aggravated, precipitated or accelerated by work activities, he "can unequivocally say no it has not." He noted the two major review articles on causative factors discussed in his prior reports. Dr. Kahn concluded, "Therefore to repeat my conclusion with the repetitive work that [appellant] did at the [employing establishment] had nothing to do with the development of his Dupuytren's contracture."

In a decision dated January 28, 2009, the Office found the right Dupuytren's contracture was not employment related based on the weight of the evidence. Appellant requested a review of the written record. He argued that Dr. Kahn did not address the aggravation factor.

By decision dated February 18, 2010, an Office hearing representative affirmed the January 28, 2009 Office decision. The hearing representative found Dr. Kahn represented the weight of the medical evidence on the issue presented.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> Whether a particular injury causes an employee to be disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>5</sup>

Under the Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>6</sup> When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.<sup>7</sup> If the employment causes a permanent condition, the employee may be entitled to continuing compensation.<sup>8</sup>

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<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

<sup>6</sup> *Raymond W. Behrens*, 50 ECAB 221 (1999); *James L. Hearn*, 29 ECAB 278 (1978).

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

<sup>8</sup> *James C. Ross*, 45 ECAB 424 (1994); *Gerald D. Alpaugh*, 31 ECAB 589 (1980).

It is well established that when a case is referred to a referee 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.<sup>9</sup>

### ANALYSIS

The Office determined that a conflict under 5 U.S.C. § 8123(a) on the issue of causal relationship between a diagnosed right Dupuytren's contracture and factors of appellant's federal employment as a mail handler.<sup>10</sup> Attending Physician Dr. Fried had opined that the condition was causally related to employment, while Second Opinion Dr. Posman opined that the condition was not employment related.

To resolve the conflict, the Office sought the opinion of Dr. Kahn, a Board-certified orthopedic surgeon, selected as a referee physician. Dr. Kahn provided a complete background and reviewed the medical literature. In his May 8, 2008 report, he explained that the known etiology of Dupuytren's contracture was a genetic predisposition. As to other unproven factors mentioned in the medical literature, Dr. Kahn noted that appellant did not have any of these factors. He concluded that appellant's Dupuytren's contractures were not causally related to his work activities. In a supplemental report, Dr. Kahn specifically addressed the issue of whether work aggravated an underlying condition, and he provided an unequivocal opinion negating causal relationship with employment. While appellant argued that Dr. Kahn did not address the aggravation issue, his December 26, 2008 report establish that he understood the question and he provided an unequivocal opinion based on his examination, history and review of the medical literature.

As noted above, a rationalized opinion from a referee physician is entitled to special weight. The Board finds that Dr. Kahn's opinion represents the weight of the medical evidence in this case.

On appeal, appellant submitted his 2007 brief previously submitted to the Board. It did not address Dr. Kahn's report.

### CONCLUSION

The Board finds the medical evidence does not establish a right Dupuytren's contracture as causally related to appellant's federal employment.

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<sup>9</sup> *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

<sup>10</sup> The Act provides that, 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 the examination. 5 U.S.C. § 8123(a). The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion 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. 20 C.F.R. § 10.321 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 18, 2010 is affirmed.

Issued: April 14, 2011  
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