



## **FACTUAL HISTORY**

On July 27, 2009 appellant, then a 54-year-old supervisor, filed an occupational disease claim alleging bilateral carpal tunnel syndrome as employment related. He first became aware that the condition was employment related on April 14, 2009.<sup>2</sup> On April 20, 2010 OWCP accepted appellant's claim for bilateral carpal tunnel syndrome and authorized surgery. On July 21, 2010 a right carpal tunnel surgery was performed. A left carpal tunnel surgery was performed on November 1, 2010. Appellant stopped work on July 21, 2010. On August 3, 2010 OWCP placed him on the periodic rolls.

On April 11, 2011 Dr. Lance L. Altenau, a treating Board-certified neurological surgeon, reviewed a surveillance videotape of appellant performing work and released him to his date-of-injury position. He stated that it appeared that appellant's "use of both hands is consistent with a fully recovered carpal tunnel treatment" bilaterally. Based on his review of the videotape, Dr. Altenau found that appellant was capable of performing his duties as a supervisor which did not require significant physical activity.

By decision dated April 14, 2011, OWCP terminated appellant's wage-loss and medical benefits effective April 12, 2011.<sup>3</sup>

## **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.<sup>4</sup> After it has determined that an employee has disability causally related to her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>7</sup> To terminate authorization for medical treatment, OWCP must

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<sup>2</sup> Appellant noted April 28, 2009 as the date he first became aware of the condition.

<sup>3</sup> The Board notes that, following the April 14, 2010 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>4</sup> *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

<sup>5</sup> *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

<sup>6</sup> *See I.R.*, Docket No. 09-1229 (issued February 24, 2010); *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

<sup>7</sup> *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.<sup>8</sup>

OWCP procedures provide that notice is required prior to termination in all cases where benefits are being paid on the periodic rolls.<sup>9</sup> Pretermination notice is not required when the claimant dies, returns to work, is convicted of defrauding FECA program or forfeits compensation by failing to report earnings.<sup>10</sup> The Board has held that OWCP must follow its procedures and provide notice an opportunity to respond prior to the termination of compensation benefits.<sup>11</sup>

### ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel condition, paid wage-loss compensation and authorized medical care. It placed him on the periodic rolls for temporary total disability on August 3, 2010. By decision dated April 14, 2011, OWCP terminated appellant's wage-loss compensation and medical benefits on the grounds that the bilateral carpal tunnel condition had resolved without residuals. There is no evidence of record that appellant was removed from the periodic rolls. There is no evidence of record to establish that one of the exceptions to the pretermination notice requirement was applicable in this case. OWCP should have provided appellant with notice that it intended to terminate his compensation and an opportunity to submit evidence supporting a continuing employment-related disability.

The record contains no evidence that OWCP followed its procedures and issued a pretermination notice prior to the April 14, 2011 final decision. Due process and elementary fairness require that a claimant under the circumstances presented have notice and an opportunity to respond prior to termination of benefits.<sup>12</sup> The Board finds that the April 14, 2011 termination was improper and it will be reversed.

### CONCLUSION

The Board finds that the April 14, 2011 decision terminating wage-loss compensation and medical benefits was improper as OWCP failed to provide notice of the proposed termination.

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<sup>8</sup> *B.K.*, Docket No. 08-2002 (issued June 16, 2009); *Kathryn E. Demarsh*, *supra* note 7; *James F. Weikel*, 54 ECAB 660 (2003).

<sup>9</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(a) (March 1997); *Winton A. Miller*, 52 ECAB 405 (2001).

<sup>10</sup> *Id.* at Chapter 2.1400.6(c) (March 1997).

<sup>11</sup> *Winton A. Miller*, *supra* note 9.

<sup>12</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 14, 2011 is reversed.

Issued: August 21, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board