

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

V.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Southeastern, PA, Employer**

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**Docket No. 11-1556
Issued: January 13, 2012**

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 10, 2011 appellant, through her attorney, filed a timely appeal from a February 28, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 OWCP properly terminated appellant's authorization for medical benefits effective August 26, 2010 on the grounds that she had no further residuals of her accepted employment injury.

FACTUAL HISTORY

On August 27, 2001 appellant, then a 51-year-old postal clerk, filed an occupational disease claim alleging that she developed a back condition as a result of repetitive heavy lifting,

¹ 5 U.S.C. § 8101 *et seq.*

pushing and pulling at work. OWCP accepted her claim for right carpal tunnel syndrome.² On December 17, 2007 appellant returned to light duty.

On June 21, 2010 OWCP referred appellant to Dr. Robert Allen Smith, a Board-certified orthopedic surgeon, for a second-opinion examination to determine whether her current conditions and complaints of her right wrist were attributed to her accepted employment injury, whether she was in need of ongoing treatment related to her accepted right carpal tunnel syndrome, whether the current medical treatment was reasonable and necessary and whether she could return to full duty without restrictions.

In his July 22, 2010 second-opinion report, Dr. Smith noted appellant's complaints of bilateral hand pain and a sensation of weakness and tingling in all her fingers and reviewed her medical history. He observed that the October 2006 and July 2007 electrodiagnostic tests demonstrated problems with the right radial and left ulnar nerve, but did not mention any right side carpal tunnel syndrome. The examination of the right upper extremity revealed no dystrophic signs and no focal atrophy in the arm, forearm or hand. Dr. Smith observed that appellant had active range of motion in the upper extremity and her grip, pinch and opposition strength were satisfactory. Tinel's sign and Phalen's test were nonspecific. Appellant related a sensation of tingling and pain in her wrist when the Tinel's sign and Phalen's test were performed. Dr. Smith stated that her examination was objectively normal with regards to the median nerve and he was unsure about what her complaints related to. He reported that there was no clinical or electrodiagnostic evidence to support that appellant still had right carpal tunnel syndrome. Dr. Smith concluded that her right hand carpal tunnel syndrome had resolved and she would not require any additional treatment for her right hand causally related to the October 1997 incident.

On July 26, 2010 OWCP informed appellant of its proposed termination of her medical benefits as the evidence established that she had no further residuals of her accepted work injury.

In an August 5, 2010 report cosigned by a physician's assistant and Dr. Scott M. Fried, a hand surgeon, they noted that appellant was upset and stressed at having her claim terminated. Appellant continued to complain of proximal pain that spread down into the wrist and hands and unchanged numbness and tingling. She described her work duties as a modified mail clerk. Upon examination, Dr. Fried observed that the Phalen's test revealed bilateral wrist pain and Tinel's sign was positive for the median nerve at the left and right wrist. Compression and Tinel's sign testing were also positive for the radial nerves of the right and left elbow. Dr. Fried diagnosed bilateral wrist radial neuropathy, left ulnar neuropathy, bilateral brachial plexopathy, capsulitis of the left shoulder and bilateral carpal tunnel median neuropathy of the upper extremities secondary to work activities. He stated that appellant remained significantly symptomatic and was still limited. Dr. Fried reported that she needed further treatment for the above-noted injuries.

² Appellant filed claims for left carpal tunnel syndrome (File No. xxxxxx245) and a left foot claim (File Nos. xxxxxx430 and xxxxxx106), which were denied.

In a decision dated August 26, 2010, OWCP finalized its termination of appellant's benefits effective August 26, 2010 finding that the medical evidence demonstrated that she no longer had any residuals or disability causally related to her accepted employment injury.³

On August 31, 2010 appellant, through her representative, requested an oral hearing. On December 15, 2010 a hearing was held. Counsel was present. He stated that appellant's employing establishment was having trouble finding time for her to work and contended that, between Dr. Smith and Dr. Fried, there was definite divergence in whether or not she still suffered from carpal tunnel syndrome and if she was disabled. Counsel noted that Dr. Fried had provided numerous reports confirming that appellant's right arm and upper extremity was giving her difficulty with numbness and tingling in both hands. He specifically pointed out that Dr. Fried's August 5, 2010 report revealed a positive Tinel's sign over the median nerve of the right wrist and a diagnosis of bilateral carpal tunnel syndrome, secondary to her work activities. Counsel also noted that Dr. Smith stated in his July 22, 2010 report that appellant's Tinel's sign and Phalen's test were nonspecific and she still complained of tingling upon the Tinel's sign and Phalen's test in the upper extremities. Thus, he contended that Dr. Smith's report should not have been given special weight of evidence or, in the alternative, that OWCP should have found a conflict between Drs. Smith and Fried reports and recommended the case for a referee examination.

By decision dated February 28, 2011, OWCP's hearing representative affirmed the August 26, 2010 decision finding that the weight of medical evidence resided with Dr. Smith's July 22, 2010 second-opinion report which established that appellant had no further residuals of her right carpal tunnel syndrome and therefore she did not require any further medical treatment to her right hand.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁵ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.⁶

Section 8123(a) of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who

³ Appellant filed various claims for disability compensation for the period July 18 to September 24, 2010. As OWCP has not issued a decision regarding these claims, they are not before the Board at this time.

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

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

⁶ *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *A.P.*, *id.*

shall make an examination.⁷ This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁸

ANALYSIS

OWCP accepted that appellant sustained right carpal tunnel syndrome as a result of repetitive duties as a postal worker. Appellant stopped work and returned to light duty on December 17, 2007. In a decision dated August 26, 2010, OWCP finalized its July 26, 2010 preliminary termination of her benefits finding that the medical evidence demonstrated that she no longer had any residuals or disability causally related to her accepted employment injury. By decision dated February 28, 2011, OWCP's hearing representative affirmed the August 26, 2010 decision finding that the medical evidence established that appellant had no further residuals of right carpal tunnel syndrome and did not require any further medical treatment. The Board finds that OWCP did not meet its burden of proof to terminate appellant's medical benefits for the accepted employment injury as a conflict of medical opinion exists between Drs. Smith's and Fried's reports.

The Board finds that a conflict in medical evidence has been created by the opinions of Dr. Smith and Dr. Fried regarding whether further medical treatment was necessary for appellant's employment injury. In a July 22, 2010 report, Dr. Smith reported that appellant's Tinel's sign and Phalen's test were nonspecific. He stated that her examination was objectively normal with regards to the median nerve and that there was no clinical or electrodiagnostic evidence to support that she still had right carpal tunnel syndrome. Dr. Smith concluded that appellant's right hand carpal tunnel syndrome had resolved and she would not require any additional treatment for her right hand causally related to her employment injury. In an August 5, 2010 report cosigned by a physician's assistant and Dr. Fried, they noted that appellant continued to complain of proximal pain that spread down into the wrist and hands and unchanged numbness and tingling. Upon examination, Dr. Fried observed that the Phalen's test revealed bilateral wrist pain and Tinel's sign was positive for the median nerve at the left and right wrist. He diagnosed bilateral carpal tunnel median neuropathy of the upper extremities and opined that appellant needed further treatment for her injuries.

On appeal and in his oral argument, counsel contends that OWCP should have referred appellant to a referee medical examination in light of the conflicting opinions of Drs. Smith and Fried. The Board finds a conflict of medical opinion exists between Dr. Smith and Dr. Fried as to whether appellant still suffered from right carpal tunnel syndrome as a result of her employment activities and required further medical treatment. Thus, Dr. Smith's opinion is alone insufficient to establish that appellant's right carpal tunnel syndrome had resolved and is insufficient to constitute the weight of the medical evidence. As the record contains an

⁷ 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

⁸ 20 C.F.R. § 10.321.

unresolved conflict in medical opinion, the Board consequently finds that OWCP has not met its burden of proof to terminate appellant's medical benefits for the accepted employment injury.⁹

CONCLUSION

The Board finds that OWCP improperly terminated appellant's authorization for medical benefits effective August 26, 2010.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 28, 2011 is reversed.

Issued: January 13, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁹ See *G.S.*, Docket No. 09-1670 (issued May 19, 2010); *Lori E. Rayner-Brown*, Docket No. 02-375 (issued July 12, 2002).