

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

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M.I., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,  
Roswell, NM, Employer

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**Docket No. 12-265  
Issued: October 19, 2012**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
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 November 26, 2011 appellant, through his attorney, filed a timely appeal from an August 24, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) finding that he had not established continuing disability. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 appellant established that he had continuing employment-related disability subsequent to May 12, 2008.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> In a decision dated October 18, 2010, the Board affirmed a November 10, 2009 decision terminating appellant's compensation effective May 12, 2008 on the grounds that he had no further disability due to his July 8, 1988 work injury and finding that he had no continuing employment-related disability after May 12, 2008.<sup>3</sup>

OWCP properly found a conflict in medical opinion between Dr. F. Thomas Bryant, a Board-certified orthopedic surgeon who performed a second opinion examination, and Dr. R.E. Pennington, an attending Board-certified physiatrist, regarding the extent of disability. The Board found that the opinion of Dr. Randy Pollet, a Board-certified orthopedic surgeon and impartial medical examiner, represented the special weight of the evidence and established that appellant had no further disability due to his Type 1 CRPS of the right hand, also known as RSD, and a tear of the sagittal band of the right second finger. The Board further found that the evidence submitted subsequent to the termination of compensation was insufficient to show that he had any continuing disability after May 12, 2008 due to his July 8, 1988 employment injury. The facts and circumstances as set forth in the prior decision are hereby incorporated by reference.

On November 17, 2010 appellant requested reconsideration. He asserted that he remained disabled from his accepted work injury. In a letter dated January 7, 2011, appellant, through his attorney, again requested reconsideration. In an undated report received November 18, 2010, Dr. Jan J. Kraemer, a Board-certified anesthesiologist, discussed appellant's work injury and continued complaints of pain and allodynia in the right hand radiating into the forearm. He performed a right ganglion block, which revealed a "sympathetic mediated pain which is one of the symptoms of [CRPS], Type 1." Dr. Kraemer related that following the ganglion block appellant's right hand edema decreased. He diagnosed sympathetic mediated pain and chronic pain due to Type 1 CRPS.<sup>4</sup>

In a report dated March 14, 2011, Dr. Dwight M. Santiago, a Board-certified internist, disagreed with Dr. Pollet's finding that appellant had no further evidence of CRPS Type 1.<sup>5</sup> He related that he had treated appellant at least bimonthly since May 2008. Dr. Santiago asserted

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<sup>2</sup> In an order dated September 8, 2009, the Board set aside May 12 and September 5, 2008 decisions terminating appellant's compensation and modifying his wage-earning capacity to zero after finding that the Director of OWCP had not transmitted the entire record for review. It remanded the case for reconstruction of the case record, to be followed by the issuance of an appropriate decision. *Order Remanding Case*, Docket No. 09-61 (issued September 8, 2009).

<sup>3</sup> Docket No. 10-491 (issued October 18, 2010). OWCP accepted that on July 8, 1988 appellant, then a 30-year-old distribution clerk, sustained a tear of the sagittal band of the second finger of the right hand and complex regional pain syndrome (CRPS) Type 1, of the right hand, also known as reflex sympathetic dystrophy (RSD). Appellant stopped work on August 21, 1988 and received compensation for disability. OWCP reduced appellant's compensation effective February 18, 1994 after finding that his actual earnings as a lens grinder fairly and reasonably represented his wage-earning capacity.

<sup>4</sup> In another undated report from Dr. Kraemer received January 10, 2011, he described appellant's work injury and current symptoms. He diagnosed RSD/CRPS of the upper extremity and depressive disorder. Appellant submitted the same report from Dr. Kraemer on March 22, 2011 containing a report date of November 16, 2010.

<sup>5</sup> Dr. Santiago advised that he was inaccurately referred to as Dr. Perez, his mother's name, in a prior decision.

that on examination he found changes in the color and temperature of the right hand, swelling of the palm and fingers of the right hand, occasional allodynia on sensory examination, rigidity of the fingers of the right hand and complaints of paresthesia and dysthesia. When he last evaluated appellant on February 3, 2011, he found swelling of the right hand with blanching/mottling, a mild decreased in temperature, loss of circumference of the fingers, mild allodynia, sweating of the right palm and loss of range of motion. Dr. Santiago opined that the objective findings on physical examination confirmed that he had CRPS, Type 1, which he found “developed as a consequence of [appellant’s] work-compensation hand injury and need for surgery of the right hand.”<sup>6</sup>

By decision dated April 7, 2011, OWCP denied modification of its prior decision.<sup>7</sup> It found that neither Dr. Kraemer nor Dr. Santiago addressed whether appellant was disabled due to his work injury.

In a May 16, 2011 addendum to his March 14, 2011 report, Dr. Santiago stated:

“[Appellant’s] right hand with CRPS [this is his dominant hand] is dysfunctional and cannot be used for any gainful work or any activity requiring repetitive actions, writing, gripping, carrying weight or any action requiring strength or endurance, [etcetera]. He cannot return to work in his prior job or any job requiring the use of the right hand due to the weakness and pain.”

Dr. Santiago opined that appellant was totally disabled before and subsequent to May 12, 2008 and that he would not be “able to return to any gainful work due to the chronic CRPS of the right hand/arm.” He referred to his March 14, 2011 report for a prior “extensive discussion.”

On May 26, 2011 appellant requested reconsideration. In a letter dated July 21, 2011, his attorney again asked for reconsideration based on Dr. Santiago’s May 16, 2011 report.

In a decision dated August 24, 2011, OWCP denied modification of the April 7, 2011 decision.<sup>8</sup>

### **LEGAL PRECEDENT**

As OWCP met its burden of proof to terminate appellant’s compensation benefits, the burden shifted to him to establish that he had continuing disability after that date related to his accepted injury.<sup>9</sup> To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal

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<sup>6</sup> In disability certificates dated October 28 and December 28, 2010 and February 3, 2011, Dr. Santiago found that appellant was disabled.

<sup>7</sup> Appellant appealed to the Board. In an order dated July 26, 2011, the Board dismissed his appeal at his request. *Order Dismissing Appeal*, Docket No. 10-1378 (issued July 28, 2011).

<sup>8</sup> OWCP found that appellant had to establish clear evidence of error to modify the April 7, 2011 decision. The clear evidence of error standard, however, applies only to untimely requests for reconsideration. Any error is harmless, however, as OWCP weighed the evidence in its denial of modification.

<sup>9</sup> *Manual Gill*, 52 ECAB 282 (2001).

relationship.<sup>10</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>11</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 examination.<sup>12</sup> 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 OWCP medical adviser, OWCP shall appoint a third physician to make an examination. 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.<sup>13</sup>

### ANALYSIS

On prior appeal the Board affirmed OWCP's termination of appellant's compensation benefits effective May 12, 2008 on the grounds that he had no further disability due to his July 8, 1988 employment injury and affirmed its determination that he had not established continuing disability. The Board found that the opinion of Dr. Pollet, the impartial medical examiner, represented the special weight of the evidence and established that appellant had no disability due to his RSD or CRPS, of the right hand or the tear of the sagittal band of his right second finger.

On November 17, 2010 appellant requested reconsideration and submitted medical evidence to support his allegation of continuing employment-related disability. In a report received November 18, 2010, Dr. Kraemer indicated that a right ganglion block revealed symptoms of CRPS. In a report dated March 14, 2011, Dr. Santiago found that, contrary to Dr. Pollet's opinion, appellant had continuing objective findings of CRPS, Type 1. He related that on bimonthly examinations, since May 2008, he found changes in the color and temperature of the right hand, swelling of the right palm and fingers, occasional allodynia and rigidity of the right hand fingers. On February 3, 2011 the date of Dr. Santiago's last examination, he found blanching and mottling of the right hand, a mild reduction in temperature, atrophy of the fingers, mild allodynia and decreased range of motion. He opined that the objective findings supported continuing CRPS, Type 1 due to appellant's employment injury and resulting surgery. In an addendum dated May 16, 2011, Dr. Santiago asserted that he was totally disabled from CRPS due to the pain and weakness of his right hand. He found that appellant was unable to write or perform any repetitive action or action requiring strength or endurance with the right hand. Dr. Santiago concluded that he was totally disabled after May 12, 2008 due to CRPS of the right hand and arm.

The Board finds that the March 14 and May 16, 2011 reports from Dr. Santiago created a conflict in medical opinion with Dr. Pollet, the impartial medical examiner. Dr. Santiago made objective findings of CRPS on examination and asserted that appellant was totally disabled. His

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<sup>10</sup> *Id.*

<sup>11</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>12</sup> 5 U.S.C. § 8123(a).

<sup>13</sup> 20 C.F.R. § 10.321.

opinion is based on a complete and accurate factual history and bolstered by findings on clinical examination. Dr. Santiago additionally provided rationale for his opinion by explaining that appellant's subjective complaints were consistent with objective clinical findings and established that he had CRPS as a result of his accepted work injury. While the Board previously affirmed OWCP's termination of compensation after finding that Dr. Pollet's opinion represented the special weight of the evidence, the new evidence from Dr. Santiago is detailed, rationalized, based on a proper medical history and in opposition with the opinion of Dr. Pollet, who found no evidence of RSD on examination. Given the disagreement between the two physicians, the Board finds that a conflict exists on the issue of continuing disability.<sup>14</sup> The case will be remanded to OWCP for referral of appellant to an appropriate impartial medical examiner. After such further development as it deems necessary, OWCP shall issue an appropriate decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 24, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: October 19, 2012  
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

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<sup>14</sup> See *Richard Coonradt*, 50 ECAB 360 (1999); *Margaret Ann Connor*, 40 ECAB 214 (1988).