



## FACTUAL HISTORY

Appellant, a 45-year-old mail handler, has an accepted claim for bilateral carpal tunnel syndrome, which arose on or about January 13, 2006. She underwent a right carpal tunnel release on September 15, 2006, followed by a left carpal tunnel release on January 12, 2007. Appellant received wage-loss compensation. Following her January 2007 surgery, she returned to work in a full-time, limited-duty capacity on March 30, 2007. OWCP also accepted that appellant sustained a recurrence of disability beginning October 31, 2008. At the time, appellant's attending physician restricted her to part-time (five hours/day), limited-duty work. OWCP resumed payment of wage-loss compensation. Appellant returned to full-time, limited-duty work as of August 22, 2009.

By decision dated July 26, 2010, OWCP granted schedule awards for two percent impairment of each upper extremity. It based its decision on the February 1, 2010 report of Dr. Jeffrey F. Lakin, a Board-certified orthopedic surgeon and OWCP referral physician. Applying the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008), Dr. Lakin found two percent upper extremity impairment of both arms due to entrapment/compression neuropathy.<sup>2</sup> The schedule award covered a period of 12.48 weeks from February 1 to April 29, 2010.

In a decision dated December 21, 2010, the Branch of Hearings & Review affirmed the July 26, 2010 decision.<sup>3</sup>

On January 5, 2011 OWCP issued a notice of proposed termination of wage-loss compensation and medical benefits based on the December 1, 2010 report of Dr. Andrew Carollo, a Board-certified orthopedic surgeon and impartial medical examiner,<sup>4</sup> who examined appellant on November 29, 2010 and found that her bilateral carpal tunnel syndrome had resolved. Dr. Carollo noted no significant objective findings of residuals and advised that appellant was able to perform her regular duties as a mail handler without restriction. Appellant claimed that she had no sensation involving the fifth finger and thumb on both hands but

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<sup>2</sup> Dr. Andrew A. Merola, the district medical adviser, concurred with Dr. Lakin's two percent rating under Table 15-23, A.M.A., *Guides* 449 (6<sup>th</sup> ed. 2008).

<sup>3</sup> At the November 5, 2010 hearing, appellant's counsel argued that there was an unresolved conflict in medical opinion between Dr. Lakin's February 1, 2010 impairment rating and a January 8, 2010 impairment rating from Dr. David Weiss, a Board-certified orthopedic surgeon. As the hearing representative explained in her December 21, 2010 decision, the record at the time did not include Dr. Weiss' January 8, 2010 rating under the A.M.A., *Guides* (6<sup>th</sup> ed. 2008). Counsel had apparently neglected to submit Dr. Weiss' January 8, 2010 report and absent such evidence, there was no conflict in medical opinion regarding the extent of appellant's bilateral upper extremity impairment.

<sup>4</sup> OWCP declared a conflict in medical opinion between Dr. Lakin and appellant's treating physician, Dr. Mark A.P. Filippone, a Board-certified physiatrist. In a supplemental report dated June 11, 2010, Dr. Lakin indicated that appellant's bilateral carpal tunnel syndrome had totally resolved and she was able to return to full duty, eight hours per day, without restrictions. In contrast, Dr. Filippone provided a June 22, 2010 duty status report (Form CA-17) with work restrictions that included a 20-pound lifting/carrying limitation and a two-hour (intermittent) pulling/pushing limitation of 10 pounds. He subsequently imposed the same work restrictions on August 3, September 15 and November 2, 2010.

Dr. Carollo found her complaints to be exaggerated. Dr. Carollo further noted that appellant's subjective complaints did not correspond with objective findings, including her electrodiagnostic studies, which revealed no evidence of ulnar nerve neuropathy.<sup>5</sup> He concluded that appellant's bilateral carpal tunnel syndrome was resolved. OWCP afforded appellant 30 days to respond to its January 5, 2011 notice of proposed termination of benefits.

Appellant's counsel responded on January 13, 2011. He argued that a new conflict in medical opinion had arisen regarding whether appellant continued to have residuals of her work injury. The conflict was between Dr. Lakin, OWCP's referral physician, and Dr. Carollo, the impartial medical examiner. OWCP later received a January 24, 2011 follow-up report from appellant's physician, Dr. Filippone, who imposed work restrictions.

On February 18, 2011 OWCP issued a final decision terminating compensation and medical benefits.

OWCP received additional follow-up reports and CA-17s from Dr. Filippone dated March 9 to July 26, 2011. On March 21, 2011 Dr. Filippone set appellant's lifting/carrying and pulling/pushing restrictions to 35 pounds, eight hours per day.<sup>6</sup> As of May 7, 2011, he released appellant to resume her regular, full-time duties without restrictions. On July 26, 2011 Dr. Filippone noted that appellant still had numbness, tingling and aching in both hands despite taking various medications. He also reported positive Tinel's and Phalen's sign referable to the median nerves at the wrists. But even with her symptoms, appellant continued working full-time, regular duty.

By decision dated September 7, 2011, the Branch of Hearings & Review affirmed the February 18, 2011 termination of benefits.

With respect to the July 26, 2010 schedule award, appellant requested reconsideration and submitted a January 8, 2010 impairment rating from Dr. Weiss, who related seven percent impairment of each upper extremity under Table 15-23, A.M.A., *Guides* 449 (6<sup>th</sup> ed. 2008).

OWCP found a conflict in medical opinion between Dr. Weiss and Dr. Lakin on the extent of permanent impairment to each arm.

Dr. David S. Wolkstein, a Board-certified orthopedic surgeon and impartial medical examiner, examined appellant on August 16, 2011 and found one percent upper extremity impairment of each arm pursuant to Table 15-23, A.M.A., *Guides* 449 (6<sup>th</sup> ed. 2008).

In a report dated September 12, 2011, Dr. Henry J. Magliato, the district medical adviser, reviewed the record, including Dr. Wolkstein's August 16, 2011 report. He recommended that OWCP obtain clarification from Dr. Wolkstein. Dr. Magliato noted that, under Table 15-23, A.M.A., *Guides* 449 (6<sup>th</sup> ed. 2008), the default rating for grade modifier 1 impairment was two percent, but Dr. Wolkstein found only one percent upper extremity impairment, bilaterally.

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<sup>5</sup> Appellant's latest electrodiagnostic study was administered on November 3, 2009.

<sup>6</sup> See *supra* note 4.

Because Dr. Wolkstein did not adequately explain why he reduced the rating, Dr. Magliato recommended that Dr. Wolkstein clarify his opinion on impairment.

In a September 23, 2011 decision, OWCP denied appellant's claim for an increased schedule award. It found that the medical evidence did not support impairment in excess of the previous two percent upper extremity rating to each arm.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.<sup>7</sup> FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.<sup>8</sup> Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).<sup>9</sup>

FECA provides that, if there is disagreement between an OWCP-designated examining physician and the employee's physician, OWCP shall appoint a third physician who shall make an examination.<sup>10</sup> For a conflict to arise the opposing physician's viewpoints must be of "virtually equal weight and rationale."<sup>11</sup> Where OWCP has referred the case to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>12</sup>

### **ANALYSIS -- ISSUE 1**

OWCP granted schedule awards for two percent upper extremity impairment of each arm based on Dr. Lakin's February 1, 2010 impairment rating. Appellant submitted a January 8, 2010 impairment rating from Dr. Weiss, who rated seven percent bilateral upper extremity impairment. OWCP found a conflict in medical opinion and referred the case to Dr. Wolkstein who found one percent upper extremity impairment to each arm under Table 15-23, A.M.A.,

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<sup>7</sup> For a total or 100 percent loss of use of an arm, an employee shall receive 312 weeks' compensation. 5 U.S.C. § 8107(c)(1).

<sup>8</sup> 20 C.F.R. § 10.404.

<sup>9</sup> See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

<sup>10</sup> 5 U.S.C. § 8123(a); see 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

<sup>11</sup> *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

<sup>12</sup> *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

*Guides* 449 (6<sup>th</sup> ed. 2008).<sup>13</sup> Upon review, Dr. Magliato stated that Dr. Wolkstein did not adequately explain how he applied Table 15-23 and recommended that OWCP obtain clarification from Dr. Wolkstein. No clarification was sought from the impartial specialist as to his impairment ratings.

Under Table 15-23, “[g]rade [m]odifier 1” entrapment/compression neuropathy impairment has a range of 1 to 3 percent, with two percent being the default upper extremity impairment rating.<sup>14</sup> The rating process allows for further modification of the grade based on functional scale, which is determined by the *QuickDASH* score.<sup>15</sup>

Dr. Wolkstein found that appellant had a grade modifier average of 1.33 based on test findings (1), physical findings (1) and history (2).<sup>16</sup> As noted, under Table 15-23, a grade modifier 1 has a corresponding default upper extremity impairment rating of two percent. Dr. Wolkstein rated one percent bilateral upper extremity impairment. The unexplained downward adjustment could perhaps be justified by a low *QuickDASH* score. However, Dr. Wolkstein’s August 16, 2011 report did not reference a *QuickDASH* score or corresponding functional scale modifier. In contrast, both Dr. Lakin and Dr. Weiss assessed functional scale in their respective reports. The Board finds that Dr. Wolkstein did not adequately explain his rating of one percent impairment to each arm.

The report of an impartial specialist must fulfill the purpose for which it was intended; it must resolve the conflict in medical opinion.<sup>17</sup> OWCP should ensure that the report is comprehensive, clear and definite and that it is based on current information and supported by substantial medical reasoning, as well as a review of the case file.<sup>18</sup> If the report is vague,

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<sup>13</sup> Appellant’s counsel argued that OWCP improperly selected Dr. Wolkstein as the impartial medical examiner. According to counsel, OWCP bypassed a Dr. Kent S. Lerner without explanation. To the contrary, the record indicates that OWCP properly utilized its Medical Management (MM) system in selecting Dr. Wolkstein as the impartial medical examiner. The system selected Dr. Lerner before Dr. Wolkstein, but OWCP bypassed Dr. Lerner because he did not accept Department of Labor (DOL) patients. The “Bypass Doctor” screenshot provided by OWCP notes MM system Code D -- “Physician does not accept DOL patients.” See Federal (FECA) Procedure Manual, Part 3 -- Medical, *OWCP Directed Medical Examinations*, Chapter 3.500.6 (July 2011).

<sup>14</sup> A.M.A., *Guides* 449 (6<sup>th</sup> ed. 2008).

<sup>15</sup> *Id.* at 448-49. The *QuickDASH* (Disabilities of the Arm, Shoulder and Hand) consists of 11 questions regarding one’s upper extremity symptoms (pain/tingling/difficulty sleeping) and the ability to perform certain activities such as opening a tight or new jar or using a knife to cut food. See Table 15-39, A.M.A., *Guides* 485 (6<sup>th</sup> ed. 2008). Based on the individual responses, a score is calculated from 0 to 100. The *QuickDASH* score is then used to determine what, if any, additional modification should be made based on functional scale. Table 15-23, A.M.A., *Guides* 449 (6<sup>th</sup> ed. 2008).

<sup>16</sup>  $1 + 1 + 2 = 4 \div 3 = 1.33$ .

<sup>17</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing & Evaluating Medical Evidence*, Chapter 2.810.11d(2).

<sup>18</sup> *Id.*

speculative, incomplete or not rationalized, it is OWCP's responsibility to secure a supplemental report to correct any defects.<sup>19</sup>

The Board will remand the case for OWCP to obtain a supplemental report from Dr. Wolkstein clarifying his August 16, 2011 impairment rating. For this reason, the case is not in posture for decision regarding the extent of appellant's permanent impairment. The September 23, 2011 decision shall be set aside and the case remanded for further development.

### **LEGAL PRECEDENT -- ISSUE 2**

Once OWCP accepts a claim and pays compensation, it bears the burden to justify termination of benefits.<sup>20</sup> Having determined that an employee has a disability causally related to her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>21</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>22</sup> To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.<sup>23</sup> Once OWCP has properly modified or terminated benefits, the burden of reinstating benefits shifts to the employee.<sup>24</sup>

### **ANALYSIS -- ISSUE 2**

OWCP found a conflict in medical opinion between appellant's psychiatrist, Dr. Filippone, and OWCP's referral physician, Dr. Lakin. It referred appellant for an impartial medical examination by Dr. Carollo who found that appellant's bilateral carpal tunnel syndrome had resolved. As noted, when a case is referred to an impartial medical examiner to resolve a conflict, the resulting medical opinion, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>25</sup>

The Board finds that Dr. Carollo's December 1, 2010 opinion regarding the resolution of appellant's accepted condition of bilateral carpal tunnel syndrome constitutes the weight of medical opinion. Dr. Carollo noted that appellant's objective and subjective findings with respect to both hands revealed asymptomatic carpal tunnel syndrome. He further indicated that there were no current residuals or disability due to her accepted condition. Dr. Carollo provided a well-reasoned report based on a proper factual and medical history. He accurately summarized

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<sup>19</sup> *Id.*

<sup>20</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>21</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>22</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>23</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

<sup>24</sup> *Joseph A. Brown Jr.*, 55 ECAB 542, 544 n.5 (2004).

<sup>25</sup> *Gary R. Sieber*, *supra* note 12.

the relevant medical evidence and relied on the statement of accepted facts. Dr. Carollo examined appellant and provided a thorough review of her relevant medical records. His report included detailed findings and medical rationale supporting his opinion. As the impartial specialist, Dr. Carollo's December 1, 2010 opinion was entitled to special weight.

Subsequent reports from a physician who was on one side of a medical conflict that has since been resolved are generally insufficient to overcome the weight accorded an impartial specialist.<sup>26</sup> Dr. Filippone was on one side of the conflict addressed by Dr. Carollo. His follow-up reports and CA-17s covering the period March 9 to July 26, 2011 are insufficient to overcome the special weight accorded to Dr. Carollo's December 1, 2010 opinion and are insufficient to create a new conflict in medical opinion. To a certain extent, Dr. Filippone's subsequent reports buttress Dr. Carollo's opinion, particularly with respect to ongoing injury-related disability. He modified appellant's previous work restrictions beginning March 21, 2011 and he eliminated them entirely as of May 7, 2011. The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective February 18, 2011.

### **CONCLUSION**

The issue of whether appellant has greater than two percent bilateral upper extremity impairment is not in posture for decision. The Board further finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective February 18, 2011.

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<sup>26</sup> *I.J.*, 59 ECAB 408, 414 (2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 7, 2011 decision of the Office of Workers' Compensation Programs regarding the termination of benefits is affirmed. However, the September 23, 2011 decision regarding entitlement to a schedule award is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: September 4, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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