

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

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**H.P., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Mount Laurel, NJ, Employer**

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**Docket No. 13-42  
Issued: March 26, 2013**

*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  
PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On October 5, 2012 appellant, through her attorney, filed a timely appeal from a June 28, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.

**ISSUES**

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's compensation benefits on January 23, 2012; and (2) whether appellant established continuing disability caused by residuals of her accepted bilateral carpal tunnel and right shoulder conditions after January 23, 2012.

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

## **FACTUAL HISTORY**

On April 29, 1998 appellant, a 48-year-old distribution clerk, filed a Form CA-2 occupational claim allergy bilateral carpal tunnel syndrome causally related to employment factors. OWCP accepted the claim for bilateral carpal tunnel syndrome under case number xxxxxx253. Appellant stopped work and received temporary total disability compensation.

In a January 12, 2010 report, Dr. Scott Fried, an osteopath and treating physician, stated that appellant noted ongoing but stable symptoms since her most recent visit. She did not experience any problems or pain as long as she remained careful with her activities, did not engage in prolonged activities or exceed her physical limitations. Appellant continued to have intermittent numbness in both hands but it was not significant. Dr. Fried noted that she continued to work part time, modified duty for three hours a day.

In a statement of accepted facts dated May 7, 2010, it was noted that appellant had filed a claim for a right shoulder injury, which occurred on December 5, 1996. OWCP accepted the claim for right shoulder sprain. The cases were combined into case number xxxxxx253.

In order to determine appellant's current condition and whether she had residuals of her accepted conditions, OWCP referred her for a second opinion examination to Dr. Lawrence Barr, Board-certified in orthopedic surgery. In a May 28, 2010 report, Dr. Barr reviewed the medical history and the statement of accepted facts and listed findings on examination. He noted that appellant sustained a partial tear of the supraspinatus tendon in her right shoulder. Dr. Barr stated that she showed no pain in range of motion testing and had no atrophy in her hands or shoulders. A Phalen's test of appellant's wrist was negative; a Tinel's test of the left elbow displayed a mild signal; Tinel's test of the right elbow was negative; and flexion test of the left elbow was positive. Dr. Barr diagnosed a partial rotator cuff tear in the right shoulder, a history of cervical radiculopathy and left cubital tunnel syndrome. He opined that she had reached maximum medical improvement and required no further medical treatment. Dr. Barr concluded that she could return to full duty without restrictions.

On January 4, 2011 OWCP found that there was a conflict in the medical opinion between Dr. Fried and Dr. Barr, as to the extent of disabling residuals due to her accepted conditions. It referred appellant to Dr. George P. Glenn, Board-certified in orthopedic surgery, for a referee medical examination.

In an April 19, 2011 report, Dr. Glenn stated that appellant related that she experienced minimal difficulty involving her right upper extremity and denied any history of numbness, tingling, pain or burning involving the right hand or upper extremity. On examination, appellant displayed no discomfort and had normal range of motion in the right shoulder. Dr. Glenn stated that she had no residual, permanent impairment of the right shoulder attributable to the December 5, 1996 employment injury. While appellant did not receive a diagnosis of right shoulder sprain in December 1996, the injury had occurred 14 years prior. Dr. Glenn noted a report of a possible right rotator cuff tear; but stated that, if this condition had ever existed or posed a problem, it had long since resolved. He concluded that appellant was neurologically intact and showed no residual evidence of a right shoulder sprain.

With regard to appellant's accepted bilateral carpal tunnel syndrome, Dr. Glenn noted that she had recently undergone electromyogram and nerve conduction testing to her arms and wrists. It showed some bilateral nerve involvement, but her physical examinations had been normal. Dr. Glenn opined that appellant had minimal evidence of involvement of the left ulnar nerve at the elbow; however, he did not consider it significant. He found no evidence of any brachial plexus involvement on clinical examination and no evidence of radial nerve involvement bilaterally on physical examination. Dr. Glenn opined that there was no clinical evidence of any residual carpal tunnel syndrome either on the right or the left. Although, as noted above, there was some residual compromise of the left ulnar nerve at the left elbow, he did not consider appellant's condition to be work related and found that it was of insufficient severity to cause any level of impairment. Dr. Glenn also noted that Dr. Barr did not find any clinical evidence of bilateral carpal tunnel syndrome. He was not able to substantiate appellant's subjective complaints with concrete objective findings. Dr. Glenn concluded that based on her normal physical examination that she was capable of returning to full duty and did not require any further medical care or treatment.

On October 11, 2011 OWCP issued a notice of proposed termination of compensation to appellant. It found that the weight of the medical evidence, as represented by Dr. Glenn's impartial opinion, established that her accepted bilateral carpal tunnel condition had ceased and that she had no work-related residuals stemming from these conditions.

In an October 24, 2011 report, Dr. Fried stated that appellant's symptoms remained stable and that she continued to be careful managing her activities. He advised that her right side was doing pretty well as long as she avoided activities which aggravating her symptoms. Dr. Fried noted that appellant continued to work part-time, modified duty for four hours per day. He indicated that following the winter months he would try to gradually increase her work hours and eventually attempt to return her to full time, modified duty; he would schedule appellant for functional capacity testing to evaluate her capabilities and limitations.

In a December 19, 2011 report, Dr. Fried disagreed with Dr. Glenn's opinion that appellant had no residuals from her accepted right shoulder and bilateral carpal tunnel conditions. He stated that he was awaiting functional capacity testing before making a determination as to her ability to perform work, in light of her ongoing, accepted work-related conditions. Dr. Fried noted that appellant still displayed symptoms of her bilateral carpal tunnel syndrome, including numbness, tingling, pain and discomfort from the hands and wrists and radiating up the arms. He stated:

"I would have to strongly disagree with Dr. Glenn's report and statement that the accepted medical conditions of carpal tunnel syndrome and right shoulder strain have ceased and are no longer problematic. The weight of the evidence lies significantly with the fact that this lady has ongoing and severe limitations. [Appellant's] functional capacity testing shows that she is severely limited and it would be with medical reasoning to assume that this lady could return to these activities without harm to herself and jeopardizing the progress that she has made. It is clear that she cannot perform her previous full work activities. Indeed it is reasonable to consider increasing her time at work but staying within the limits outlined. Not to do so would be putting this lady in danger. In fact Dr. Glenn

goes out of his way to state that he has no medical or [physician]/[appellant] relationship with this patient and no responsibility for the consequences of following through on his recommendations. As her treating physician, I feel releasing her back to full[-]duty work and having her function outside of the limitations we [ha]ve outlined is not only dangerous but not a medically well-reasoned judgment. [Appellant's] work[-]related injuries have not resolved and it is her change in activity level and care limiting her use of her arms that has made these livable. This is very different then the problem going away. The problem exists and is ongoing. [Appellant's] bilateral carpal tunnel and right shoulder strain are still medically pertinent issues and continue to limit her with respect to her capabilities. She can indeed work but has limitations. These limitations are directly and causally related to her work injuries and accepted diagnoses. These limitations are permanent.”

By decision dated January 23, 2012, OWCP terminated appellant's compensation for medical benefits, finding that Dr. Glenn's impartial opinion represented the weight of the medical evidence.

On January 26, 2012 appellant, through her representative, requested an oral hearing, which was held on April 12, 2012.

In a March 3, 2012 report, Dr. Fried stated that appellant had undergone functional capacity testing on January 27, 2012. The tests encompassed various forms of grip strength testing in addition to simulated work activities such as handwriting, typing and casing mail. Appellant showed significantly increased symptoms with repetitive activities in the upper extremities. Dr. Fried opined that she would not be able to return to her original job as this would aggravate all of her medical problems.

By decision dated June 28, 2012, an OWCP hearing representative affirmed the January 23, 2012 termination decision.

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

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>2</sup>

Section 8123(a) 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 an examination.<sup>3</sup> It is well-established that, when a case is referred to an impartial medical 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>4</sup>

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<sup>2</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>3</sup> *Regina T. Pellecchia*, 53 ECAB 155 (2001).

<sup>4</sup> *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

## ANALYSIS -- ISSUE 1

OWCP determined that a conflict in medical opinion arose between appellant's treating physician, Dr. Fried and Dr. Barr, the second opinion physician, as to whether she had residuals of her accepted bilateral carpal tunnel condition or right shoulder condition. On appeal, appellant's attorney argues that Dr. Glenn's impartial medical report was vague, insufficiently rationalized and presented inaccurate conclusions regarding her capacity to perform her work duties. He argued that his report did not merit the special weight of a referee medical examiner.

In an April 19, 2011 report, Dr. Glenn found that appellant had no residuals from her accepted right shoulder or bilateral carpal tunnel conditions. With regard to the right shoulder, he noted on examination that she displayed no discomfort and had a normal range of motion. Dr. Glenn advised that appellant had sustained a right shoulder sprain 14 years prior but was neurologically intact at the present time and showed no residual evidence of the injury. He found that she had no residual, permanent impairment of the right shoulder attributable to the December 5, 1996 employment injury.

Dr. Glenn opined that there was minimal, clinical evidence that appellant had any residuals from her accepted bilateral carpal tunnel syndrome. While appellant's recent diagnostic tests demonstrated a small degree of bilateral nerve involvement, her physical examinations demonstrated normal results. Dr. Glenn found no evidence of any brachial plexus involvement on clinical examination or evidence of radial nerve involvement bilaterally on physical examination. He opined that there was no clinical evidence of any residual carpal tunnel syndrome on the right or the left. Dr. Glenn advised that appellant's subjective complaints were not substantiated by objective findings with regard to her accepted condition. Based on her normal physical examinations he opined that she was capable of returning to full duty and did not require any further medical care or treatment. OWCP relied on Dr. Glenn's opinion in its January 23, 2012 decision, finding that appellant had no continuing disability or impairment causally related to her right shoulder or bilateral carpal tunnel conditions.

The Board finds that Dr. Glenn's impartial opinion constitutes the special weight of medical opinion. The medical evidence establishes that appellant no longer has any residuals from her accepted right shoulder or bilateral carpal tunnel conditions.<sup>5</sup> Dr. Glenn's opinion is sufficiently probative, rationalized and based upon a proper factual background. Therefore, OWCP properly accorded his opinion the special weight of an impartial medical examiner.<sup>6</sup> The Board therefore finds that Dr. Glenn's opinion constituted the weight of medical opinion and supports OWCP's January 23, 2012 decision to terminate appellant's compensation benefits.

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<sup>5</sup> Appellant's attorney argued that Dr. Glenn failed to consider the fact that Dr. Barr, OWCP's referral physician, had diagnosed a partial right rotator cuff tear. The Board notes, however, that OWCP never accepted this condition. Further, Dr. Barr found that appellant could return to full duty. Dr. Glenn noted that a partial right rotator cuff had been diagnosed but opined that this had no effect on her ability to perform her work duties and found that appellant's right shoulder was normal on examination.

<sup>6</sup> Gary R. Seiber, 46 ECAB 215 (1994).

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

Following a proper termination of compensation benefits, the burden of proof shifts back to the claimant to establish continuing employment-related disability.<sup>7</sup>

## **ANALYSIS -- ISSUE 2**

Appellant subsequently requested an oral hearing and submitted the March 3, 2012 report from Dr. Fried. This report reviewed findings from a new functional capacity test she underwent on January 27, 2012 and indicated that she displayed difficulty when asked to engage in grip strength tests, repetitive activity and simulated work tasks. However, Dr. Fried's report merely restates one side of the conflict in medical evidence which was resolved by Dr. Glenn's opinion. The tasks which purported to be work related are merely simulated activities; they do not constitute a depiction of her actual work duties. Dr. Fried did not provide a well reasoned and sufficiently supported opinion that would vitiate OWCP's January 23, 2012 determination that appellant did not have any employment-related disability or residuals stemming from her accepted right shoulder and bilateral carpal tunnel conditions. Thus the Board will affirm the hearing representative's June 28, 2012 decision.

Appellant may submit new evidence or argument with a request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

## **CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate compensation benefits. Appellant has not met her burden to establish continuing disability.

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<sup>7</sup> *John F. Glynn*, 53 ECAB 562 (2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 28, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 26, 2013  
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