

claim for right CTS and a permanent aggravation of CTS secondary to surgical scarring. In a decision dated January 9, 2002, the Board found that OWCP had properly terminated compensation for wage-loss and medical benefits effective April 4, 1993.² The Board also found that appellant had submitted sufficient medical evidence to create a conflict under 5 U.S.C. § 8123(a) as to whether she continued to be entitled to compensation after April 4, 1993. The case was remanded for referral to a referee physician to resolve the conflict.

By order dated August 4, 2006, the Board remanded the case to OWCP.³ The Board found that the referee physician selected, Dr. Britt Daniel, a Board-certified neurologist, had not properly resolved the issue as to whether appellant continued to have an employment-related disability after April 4, 1993.⁴ The case was remanded to properly resolve the disability issue.

By decision dated September 8, 2008, the Board again remanded the case.⁵ The Board found that the new referee physician, Dr. Sandy Kimmel, an osteopath Board-certified in neurology, had not addressed the issue of whether appellant had a continuing employment-related disability from April 4, 1993. The case was remanded again to properly resolve the conflict.

OWCP then selected Dr. Edward Hemphill, a Board-certified orthopedic surgeon, to resolve the conflict. In a brief report dated December 1, 2009, Dr. Hemphill provided a history but did not include results on examination. He opined that, while appellant had residual CTS bilaterally, she was not disabled on or after April 4, 1993.

On February 10, 2013 OWCP advised appellant that Dr. John Sampson, a Board-certified neurosurgeon, had been selected as a referee physician. Appellant, along with a January 10, 2013 statement of accepted facts (SOAF) and medical evidence, was referred to Dr. Sampson for examination. In a report dated March 5, 2013, Dr. Sampson provided a history and results on physical and neurological examination. He indicated that appellant did not have a documented CTS until August 1989, although he noted that it was possible to have CTS in the setting of a normal diagnostic study. Dr. Sampson noted that appellant had normal nerve conduction studies in January 1993.⁶ In response to a question as to any period of disability since April 1993, he stated, “[Appellant] had normal studies in January 1993. According to [her], she had also ceased working since 1988. Therefore, I do not believe [that appellant] had any further disability related to work duties or related treatment.”

² Docket No. 00-1942 (issued January 9, 2002).

³ Docket No. 06-529 (issued August 4, 2006).

⁴ The Board noted that, in a May 10, 2002 letter, OWCP indicated that appellant continued to be entitled to medical benefits.

⁵ Docket No. 07-2123 (issued September 8, 2008).

⁶ The record contains a January 5, 1993 report from Dr. William Curtin, a Board-certified neurologist, who provided results of nerve conduction testing and opined that there was no dysfunction or disease involving the peripheral nervous system or muscles.

By decision dated December 3, 2013, OWCP denied the claim for wage-loss compensation commencing April 4, 1993. It found that the weight of the medical evidence rested with Dr. Sampson.

Appellant, through counsel, requested a review of the written record by an OWCP hearing representative. By decision dated November 14, 2014, the hearing representative affirmed the December 3, 2013 decision. The hearing representative found that the weight of the evidence was represented by Dr. Sampson.

LEGAL PRECEDENT

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to the claimant. To prevail, the claimant must establish by the weight of the reliable, probative, and substantial evidence that he or she had an employment-related disability, which continued after the termination of benefits.⁷

It is well established that when a case is referred to a referee 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.⁸ Medical rationale is a medically sound explanation for the opinion offered.⁹

ANALYSIS

In its January 9, 2002 decision, the Board affirmed OWCP's termination of appellant's compensation benefits. The Board also found that there was an unresolved conflict under 5 U.S.C. § 8123(a) with respect to whether appellant continued to have an employment-related disability from April 4, 1993.¹⁰ Following the Board's September 8, 2008 decision, remanding the case to properly resolve the conflict, Dr. Hemphill was selected as the referee physician, but his December 1, 2009 report was merely a brief report that did not provide results on examination or other relevant detail. This report was of limited probative value and was not sufficient to resolve the conflict.¹¹ OWCP ultimately selected Dr. Sampson, as the referee

⁷ See *I.J.*, 59 ECAB 408 (2008).

⁸ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁹ See *Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator the conclusion drawn is rational, sound and logical).

¹⁰ FECA 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 the examination. 5 U.S.C. § 8123(a). 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 OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee or impartial examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. 20 C.F.R. § 10.321.

¹¹ See *John E. Lemker*, 45 ECAB 258 (1993) (a report lacking results on examination, other detail, and medical rationale is of little probative value).

physician, to resolve the conflict. As noted above, a rationalized opinion from a referee physician is entitled to special weight.

The Board finds that Dr. Sampson's opinion represents the weight of the medical evidence in this case. Dr. Sampson was provided a complete factual and medical background with a SOAF and medical records. He provided a history and detailed results on examination. Dr. Sampson opined that appellant did not have an employment-related disability on or after April 4, 1993. To support this opinion, he noted that she had not worked since 1988 and diagnostic studies in January 1993 were normal. Dr. Sampson offered a rationalized medical opinion based on a complete background. The Board finds that his opinion is entitled to special weight and resolves the conflict in the medical evidence.

On appeal counsel contends that Dr. Sampson's report is not sufficient to constitute the weight of the medical evidence. He argues that his report was not based on a complete background, as he questioned the permanency of the aggravation of CTS. As noted above, Dr. Sampson was provided with an accurate background and he provided a history and detailed findings. He indicated that any continuing aggravation after April 4, 1993 would not be disabling.

Counsel also argues that Dr. Sampson's report was internally inconsistent with respect to diagnostic studies. He argues that Dr. Sampson admitted that it was possible to have both CTS and normal studies, but then relied on January 1993 normal diagnostic studies to support his opinion. The reference to the possibility of CTS with normal studies was made with respect to appellant's condition prior to August 1989. Dr. Sampson was referring to a possibility that she may have had CTS prior to the initial evidence of CTS found in diagnostic studies from August 1989. It is not inconsistent for Dr. Sampson to find no employment-related disability on or after April 1993 based on the specific results of a January 1993 study.

The Board accordingly finds that OWCP properly denied appellant's claim for compensation commencing April 4, 1993.

Appellant may submit new evidence or argument with a written 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 appellant has not established an employment-related disability on or after April 4, 1993.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 14, 2014 is affirmed.

Issued: June 9, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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