

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

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T.C., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
TRANSPORTATION SECURITY )  
ADMINISTRATION, Houston, TX, Employer )

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**Docket No. 14-2083  
Issued: March 25, 2015**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 30, 2014 appellant, through her attorney, filed a timely appeal from a June 6, 2014 decision of a hearing representative 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 the case.

**ISSUE**

The issue is whether OWCP met its burden of proof to terminate appellant's monetary compensation, effective October 20, 2013, on the grounds that she was no longer disabled from work due to the accepted bilateral carpal tunnel syndrome.

On appeal appellant's attorney asserts that the June 6, 2014 decision is contrary to law and fact.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

## **FACTUAL HISTORY**

On June 6, 2007 appellant, then a 41-year-old transportation security officer, filed an occupational disease claim alleging that she experienced numbness, tingling, and shooting pain down her arms following a fall at work. She was terminated by the employing establishment on June 11, 2007 for violence in the workplace. OWCP accepted that appellant sustained employment-related bilateral carpal tunnel syndrome, and on September 7, 2007 Dr. Mark H. Henry, Board-certified in orthopedic and hand surgery, performed left carpal tunnel release. Appellant was placed on the periodic compensation rolls.<sup>2</sup> On December 4, 2007 Dr. Henry performed right carpal tunnel release. On January 25, 2008 he advised that she could return to modified duty.

Appellant moved from Houston, Texas, to New Orleans, Louisiana, in April 2008, and she was referred to vocational rehabilitation. She continued to be treated by Dr. Henry, who indicated that she had developed bilateral de Quervain's tenosynovitis. On January 16, 2009 Dr. Henry performed authorized left de Quervain's release. On February 10, 2009 he indicated that appellant could return to modified duty. In an April 28, 2009 report, Dr. Dan K. Eidman, a Board-certified orthopedist, advised that appellant had multiple symptoms including neck and lower back, in addition to pain in both hands. He advised that she was unable to work. On May 29, 2009 Dr. Henry advised that appellant had no current restriction but could require future treatment for right de Quervain's tenosynovitis.

The employing establishment indicated that it would not reemploy appellant because she had been terminated for cause. On June 9, 2009 OWCP proposed to terminate appellant's wage-loss compensation based on Dr. Henry's May 29, 2009 report in which he indicated that she had no continuing disability due to the accepted condition. Appellant did not respond, and by decision dated July 16, 2009, OWCP finalized the termination of monetary compensation, effective August 2, 2009.

Appellant timely requested a hearing, and submitted additional medical evidence. This included a February 4, 2009 report in which Dr. Robert W. Sickler, Board-certified in anesthesiology and pain medicine, noted her complaint of left hand pain. He diagnosed complex regional pain syndrome of the left upper extremity. In reports dated March 9 to July 27, 2009, Dr. Eidman described appellant's neck, back, and upper extremity complaints. His diagnoses included de Quervain's of the right wrist, and he advised that appellant could not work. In an August 2, 2009 report, Dr. J. Robert Barnes, a Board-certified psychiatrist, noted treating appellant since January 30, 2009 for major depression, panic disorder with agoraphobia, and post-traumatic stress disorder caused by sexual harassment at the employing establishment, and that she also reported petit mal seizures. He recommended referral to a neurologist to assess the seizures and continued psychiatric treatment. In an August 24, 2009 report, Linda K. Nelson, a

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<sup>2</sup> The instant claim was adjudicated under file number xxxxxx480. The record indicates that appellant has a separate claim, adjudicated by OWCP under file number xxxxxx554. File number xxxxxx554 claim was initially denied by OWCP. In an order dated December 27, 2007, the Board remanded the case to OWCP to consider additional medical evidence timely submitted by appellant. The claim was thereafter accepted for major depression, single episode and expanded to include brachial and thoracic or lumbar neuritis or radiculitis.

social worker, noted treating appellant since August 25, 2008. In an August 30, 2009 report, Dr. John W. Bick, a psychiatrist, indicated that appellant needed ongoing psychiatric treatment.

At the hearing, held on December 8, 2009, appellant testified that she continued to have physical therapy on her right hand and that Dr. Eidman, who also treated her upper extremity condition, advised her not to work. In a December 1, 2009 treatment note, Dr. Eidman described appellant's back condition and advised that she could not work. In a January 4, 2010 report, Dr. Eric R. George, Board-certified in plastic and hand surgery, noted appellant's employment and medical history. He described complaints of recurrent numbness, tingling, and swelling in her hands and provided examination findings. Dr. George recommended electrodiagnostic testing. A January 18, 2010 upper extremity electrodiagnostic study demonstrated moderate recurrent bilateral carpal tunnel syndrome. On January 28, 2010 Dr. George noted the study findings and recommended repeat decompressive surgery. On February 23, 2010 he performed right wrist surgery.

By decision dated February 24, 2010, an OWCP hearing representative reversed the July 16, 2009 OWCP decision. She noted that appellant had additional accepted conditions, and OWCP should have determined whether appellant's additional conditions impacted her ability to work. The hearing representative also noted that OWCP had authorized surgery recommended by Dr. George. OWCP reinstated appellant's wage-loss compensation, effective August 2, 2009.

In reports dated March 31 to June 24, 2010, Dr. George described appellant's postoperative care. On January 27, 2011 he reported that she was symptom free on the right. Dr. George performed left wrist surgery on April 19, 2011. In a June 8, 2011 report, he noted that appellant had completed physical therapy and reported and she was recently in a motor vehicle accident and had contused her palm. Dr. George indicated that she was at maximum medical recovery and released her to full, unrestricted activity. On September 28, 2011 he reported appellant's complaint of thumb pain and reiterated that she could perform full work.<sup>3</sup> Appellant also submitted unsigned treatment notes dated December 12, 2011 and January 12, 2012.

By decision dated February 14, 2013, OWCP terminated appellant's wage-loss compensation, based on the June 8 and September 28, 2011 reports of Dr. George who opined that she had no restrictions with regard to the accepted upper extremity conditions. Appellant timely requested a hearing, and submitted evidence previously of record. A January 22, 2013 magnetic resonance imaging (MRI) scan study of the lumbar spine demonstrated protrusions at the L3-4 and L4-5 levels, minimal L4-5 stenosis, and mild multiple level lumbar facet arthrosis. A cervical spine MRI scan study that day demonstrated protrusions at C2 through C7 levels and multiple level facet arthrosis and spondylosis. In a March 15, 2013 report, Dr. George indicated that he had reevaluated appellant. He stated that when he indicated that she was at maximum medical recovery on June 8, 2011, it was only with regard to her hands and not to other conditions including her neck and back, for which he did not treat her. Dr. George indicated that, at present, appellant was a maximum medical recovery with regard to her hands and released her to full duty. In an April 7, 2013 report, Dr. Bick indicated that he continued to see

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<sup>3</sup> Appellant's compensation was suspended effective February 12, 2012 for failure to submit a completed OWCP EN1032 form. She submitted the requested forms, and her compensation was reinstated.

appellant for psychiatric medication management and that she continued weekly psychotherapy with a social worker and had been making gradual progress. An April 11, 2013 electrodiagnostic study demonstrated mild recurrent bilateral carpal tunnel syndrome, right greater than left. On April 27, 2013 Dr. George indicated that he saw appellant that day and that the studies showed, at most, a mild slowing of the carpal tunnel. He noted appellant's complaints of problems in her arms, hands, neck, and back. Dr. George indicated that she refused a cortisone injection and that he gave her bilateral braces to wear at night.

In a June 21, 2013 decision, an OWCP hearing representative reversed the February 14, 2013 decision because OWCP did not provide a pretermination notice. Her wage-loss compensation was reinstated, effective February 14, 2013. On July 8, 2013 OWCP proposed to terminate appellant's wage-loss compensation, based on Dr. George's March 15, 2013 report. Appellant's counsel disagreed with the proposed termination, arguing that appellant's neck and back injury, and her mental health problems, had not been considered.<sup>4</sup> By decision dated October 1, 2013, OWCP finalized the termination of monetary compensation, effective October 20, 2013.

Appellant, through counsel, timely requested a hearing and resubmitted Dr. George's April 27, 2013 report.<sup>5</sup> At the hearing, held on March 20, 2014, he argued that all accepted conditions, including those in the file number xxxxxx554 claim, should have been considered before terminating appellant's wage-loss compensation. Appellant testified that she was on social security disability and not working and that she could not return to her prior employment due to back and neck conditions and that she continued to have psychotherapy with Ms. Nelson two times a week. She stated that her carpal tunnel syndrome had returned but no treatment had been recommended. The hearing representative noted that she had not filed a claim for compensation in the file number xxxxxx554 claim. The record was left open for 30 days.

In a June 6, 2014 decision, an OWCP hearing representative affirmed the October 1, 2013 decision, finding that OWCP properly terminated appellant's wage-loss compensation for the accepted bilateral carpal tunnel syndrome condition. She found that the weight of the medical evidence rested with Dr. George who opined that, as far as the diagnosed carpal tunnel syndrome was concerned, appellant could return to regular work. The hearing representative noted that appellant's entitlement to benefits for the additional accepted conditions should be addressed through file number xxxxxx554 claim.<sup>6</sup>

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation

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<sup>4</sup> There is no authorization for this attorney in the record before the Board. On September 3, 2013 appellant signed a representation form with her current attorney.

<sup>5</sup> The newly submitted April 27, 2013 report indicated that it was an "amended report." A comparison of that submitted on May 10, 2013 and that submitted on October 31, 2013 shows that they are identical.

<sup>6</sup> *Supra* note 2.

without establishing that the disability ceased or that it was no longer related to the employment.<sup>7</sup> OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>8</sup>

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>9</sup>

### ANALYSIS

The issue in this case, adjudicated under file number xxxxxx480, is whether OWCP properly terminated appellant's wage-loss compensation effective October 20, 2013, for the accepted bilateral carpal tunnel syndrome. Appellant was placed on the periodic compensation rolls under this case in 2007. She has additional conditions accepted under file number xxxxxx554.<sup>10</sup>

Dr. Henry, an attending hand surgeon, performed a right carpal tunnel release on December 4, 2007 and a left release on December 4, 2008. On February 23, 2010 Dr. George, also an attending hand surgeon, performed a second decompressive procedure on the right and a second procedure on the left on April 19, 2011. On June 8, 2011 he indicated that appellant had made a maximum recovery and released her to full unrestricted activity. Dr. George repeated that she could perform full work on September 28, 2011. In a March 15, 2013 report, he advised that appellant was at maximum medical recovery on June 8, 2011 with regard to her hands only and not to other conditions including her neck and back, noting that he did not treat her for these conditions. Dr. George again advised that she could return to full duty. On April 27, 2013 he noted seeing appellant that day. Dr. George indicated that April 11, 2013 electrodiagnostic studies showed, at most, a mild slowing of the carpal tunnel and that appellant reported complaints of problems in her arms, hands, neck, and back. He indicated that she refused a cortisone injection and that he gave her bilateral braces to wear at night.

The Board finds that the weight of the medical evidence, as characterized by Dr. George's opinion, established that appellant was no longer disabled from work due to the accept bilateral carpal tunnel syndrome. Although appellant submitted additional medical evidence regarding conditions accepted under file number xxxxxx554, that evidence is not relevant to the diagnosed carpal tunnel syndrome. There is no additional medical evidence probative on the issue of whether she was disabled due to the accepted bilateral carpal tunnel

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<sup>7</sup> *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>8</sup> *Id.*

<sup>9</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999); 20 C.F.R. § 10.5(f).

<sup>10</sup> *Supra* note 2.

syndrome on October 20, 2013. OWCP, therefore, met its burden of proof to terminate appellant's wage-loss compensation effective that day.<sup>11</sup>

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 OWCP met its burden of proof to terminate appellant's wage-loss compensation due to the accepted bilateral carpal tunnel syndrome effective October 20, 2013.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2015  
Washington, DC

Patricia Howard Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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

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<sup>11</sup> The Board notes that appellant can file a claim for compensation under file number xxxxxx554.