

On appeal, appellant argues that her right carpal tunnel condition has not resolved, that she cannot perform her usual employment duties, and that her surgery did not help her condition.

FACTUAL HISTORY

On November 22, 2011 appellant, then a 40-year-old student trainee (composite/plastic fabricator), filed an occupational disease claim alleging that on November 15, 2010 she first became aware of her carpal tunnel condition. However, she did not realize that the condition was related to her employment until November 19, 2011. On December 13, 2012 OWCP accepted the claim for right carpal tunnel syndrome and authorized right carpal tunnel release surgery, which was performed on June 5, 2013. By letter dated June 13, 2013, it placed appellant on the periodic rolls for temporary total disability.

In an October 3, 2013 report, Dr. Kenneth R. Koskella, a Board-certified orthopedic surgeon, who performed the June 5, 2013 surgery, opined that appellant could return to work with no restrictions for the right hand. He noted that she should avoid constant use of vibratory tools as that could increase the possibility of a recurrence. A physical examination revealed minimal incisional tenderness, good grip strength, and no atrophy.

The record reflects that by October 7, 2013 appellant had returned to her date-of-injury duty job full time with restrictions against constant use of vibratory tools. The employing establishment noted that it was awaiting more specific information on the restrictions on the use of vibratory tools.

On October 30, 2013 OWCP received an October 3, 2013 work capacity evaluation (Form OWCP-5c) from Dr. Koskella who released appellant to her usual job with permanent restrictions of avoiding constant exposure to vibratory tools. Dr. Koskella noted that frequent use of vibratory tools was allowed.

On December 3, 2013 OWCP issued a notice proposing to terminate her wage-loss compensation benefits. It based its finding on Dr. Koskella's opinion, which released her to full-duty work and found that she was no longer totally disabled due to her accepted employment injury.

On December 5, 2013 OWCP received a November 27, 2013 report from Dr. Marc I. Suffis, a treating Board-certified emergency room physician, who related seeing appellant for a follow-up visit on her carpal tunnel condition. A physical examination revealed positive Phalen's and Tinel's signs on the right and decreased median nerve distribution sensation. Dr. Suffis indicated that appellant "should avoid vibratory tools.... Her only limitation at the worksite is seldom use of vibratory tools."

On December 16, 2013 Dr. Suffis reported that appellant had increased symptomatology since returning to work. A physical examination revealed decreased bilateral median nerve distribution sensation, right positive Phalen's sign, and a negative bilateral Tinel's sign. Diagnosis included status post carpal tunnel release with persistent symptomatology. Dr. Suffis noted that appellant had been given some restrictions involving "wrist motion limited to an occasional basis and seldom vibratory tools."

On January 17, 2014 OWCP referred appellant for a second opinion evaluation with Dr. Aleksandar Curcin, a Board-certified orthopedic surgeon, for an evaluation of her accepted right carpal tunnel syndrome condition.

OWCP received a January 24, 2014 report from Dr. Suffis on February 6, 2014. Dr. Suffis related that appellant had carpal tunnel release surgery on June 15, 2013 and that, following her return to work, even without using vibratory tools, her symptomatology significantly increased. An examination revealed a positive Phalen's sign with decreased median nerve distribution sensation. Dr. Suffis recommended a nerve conduction velocity study be performed to determine whether there was any evidence of an incomplete release. He reiterated that appellant was able to work, but that she should have seldom exposure to vibratory tools.

In a February 11, 2014 health record, Dr. Richard B. Spinak, an examining physician, provided a history of appellant's injury and that she was referred to him by Dr. Suffis for her complaints of chronic right hand numbness. Diagnoses included carpal tunnel syndrome and postsurgical state. Dr. Spinak indicated that appellant was released to work duty with restrictions and that he concurred with the assessment and plan provided by Dr. Suffis.

Dr. Curcin, based on a review of the medical evidence, statement of accepted facts, and physical examination, diagnosed, in a February 14, 2014 report, right carpal tunnel syndrome with recurrent right hand symptoms. A physical examination revealed well healed right hand palm surgical scars, minimal discomfort over the carpal tunnel with percussion, ability to make full fist and open fingers completely, six millimeters right median two point discrimination, and greater than eight millimeters bilateral ulnar nerve distribution. Dr. Curcin reported appellant's wrist range of motion to be 50 degrees bilateral dorsiflexion, 45 degrees right palmar flexion, and 55 degrees left palmar flexion. Based on a review of the diagnostic testing, he concluded that the right carpal tunnel condition had "resolved/improved." Dr. Curcin related that appellant complained of recurrent symptoms following her return to light-duty work. However, based on electrodiagnostic findings in the record showing improvement following the surgery, he concluded that she had returned to baseline.² In a February 15, 2014 work capacity evaluation form, Dr. Curcin indicated that appellant was capable of returning to her date-of-injury job with no restrictions.

On March 27, 2014 OWCP issued a new notice proposing to terminate appellant's wage-loss compensation and medical benefits based upon Dr. Curcin's opinion.

On April 7, 2014 Dr. Suffis reviewed Dr. Curcin's February 14, 2014 report and concurred that appellant had reached maximum medical improvement, but based on the nerve

² Dr. Curcin, prior to completing his report, had referred appellant to Dr. Irfan A. Ansari, an examining Board-certified physiatrist and internist, for additional diagnostic testing. In his February 25, 2014 electromyography report, Dr. Ansari reported an abnormal study, evidence of mild wrist right median neuropathy, no evidence of right ulnar neuropathy at the elbow or wrist, no evidence of generalized peripheral neuropathy or right brachial plexopathy, and no evidence of acute or active right cervical radiculopathy. In a March 11, 2014 addendum report, Dr. Ansari related that a comparison of the February 25, 2014 test with an earlier April 1, 2013 test showed that the median nerve conductions across the wrist appeared to "have actually improved." Dr. Ansari stated that it was difficult to compare the February 25, 2015 test with one performed on February 1, 2012 as no combined sensory index calculation had been performed. Dr. Curcin's report was based on these diagnostic studies.

conduction studies obtained by Dr. Curcin which showed some mild residual evidence of median nerve neuropathy, he recommended that use of pneumatic and vibratory tools be limited to a seldom basis.

By decision dated May 6, 2014, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective that day. It found that the weight of the medical evidence rested with Dr. Curcin's opinion and supporting diagnostic evidence.

Following the May 6, 2014 OWCP decision, additional medical evidence was received as set forth below.

In a report electronically signed on April 30, 2014, Dr. Suffis noted that appellant was seen on April 23, 2014 at the request of OWCP to perform an impairment rating and diagnosed right carpal tunnel syndrome.³ He noted that her subjective symptoms were greater than the objective findings although she had persistent abnormal nerve velocity conduction studies. Dr. Suffis indicated that appellant had reached maximum medical improvement and determined that she had a five percent right upper extremity permanent impairment using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He reiterated his disagreement that she could return to her date-of-injury position with no restrictions. Dr. Suffis related that appellant continues to have evidence of carpal tunnel syndrome based on persistent symptomatology, examination findings, and electrodiagnostic studies. In concluding, he stated that his "opinions on work capacity are to facilitate job placement."

On May 15, 2014 an OWCP medical adviser reviewed and concurred with Dr. Suffis' April 23, 2014 impairment rating.

In an April 30, 2014 work capacity evaluation form (OWCP-5c), Dr. Suffis diagnosed right carpal tunnel syndrome and provided permanent work restrictions.

In a May 1, 2014 report, listing Dr. Mark A. Malakooti, an employing establishment physician Board-certified in public health and general preventive medicine, as the provider and Michael Dalzell, a certified physician assistant, as taking vitals, history, and physical examination, Mr. Dalzell reported a diagnosis of right carpal tunnel syndrome and Dr. Malakooti stated that he agreed with the work restrictions set by Dr. Suffis. He noted that appellant was seen for assignment of permanent versus temporary work limitations and noted that she continued to have complaints of pain and occasional paresthesia in her right hand.

In a May 1, 2014 dispensary permit signed by Mr. Dalzell updated appellant's work restrictions until June 3, 2014.

On May 1, 2014 appellant accepted a limited-duty job assignment for the period May 1 to June 3, 2014.

³ OWCP was concurrently developing appellant's claim for a schedule award. It awarded appellant five percent permanent impairment of the right upper extremity by decision dated May 27, 2014. That decision is not before the Board on appeal.

On a May 1, 2014 report of work limitations form, the employing establishment authorized temporary work restrictions based on Dr. Suffis' March 13, 2014 request for work limitations, which were to continue until June 3, 2014.

On May 22, 2014 appellant requested reconsideration of the May 6, 2014 decision. In support of her request, she submitted an undated statement relating that she continued to have residuals and problems as a result of her carpal tunnel syndrome. Appellant noted that, as a result of her carpal tunnel syndrome, she has permanent work restrictions and that she is disabled from performing light-duty work. Lastly, she alleged that she is unable to return to her date-of-injury job as it would cause further damage to her hand.

On May 28, 2014 appellant was seen by David M. Trottman, a registered nurse (RN), for issuance of permanent work restrictions based on her right hand carpal tunnel syndrome. Mr. Trottman noted that appellant's treating physician, Dr. Suffis, did not consider that she had reached maximum medical improvement. Appellant related that she still has pain and parathesia following her June 2013 carpal tunnel release surgery.

On June 3, 2014 OWCP received a report of work limitations for temporary and permanent work restrictions requested by Dr. Suffis on March 13, 2014. Dr. Malakooti issued an authorization for the temporary work restrictions on March 12, 2014 and Larry B. Smick, an employing establishment health clinic provider, authorized the permanent work restrictions on May 28, 2014.

Also submitted on June 3, 2014 was a May 28, 2014 dispensary permit, wherein Mr. Trottman noted appellant had permanent restrictions.

On May 29, 2014 appellant accepted a modified job offer based on her permanent work restrictions.

By decision dated August 7, 2014, OWCP denied appellant's request for reconsideration of the May 6, 2014 decision as the evidence submitted was insufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.⁴ After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

⁴ *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁵ *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁶ *See I.R.*, Docket No. 09-1229 (issued February 24, 2010); *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁸

ANALYSIS -- ISSUE 1

OWCP accepted appellant's claim for right carpal tunnel syndrome. By decision dated May 6, 2014, it terminated her wage-loss compensation and medical benefits effective that day based on Dr. Curcin's second opinion report. The Board finds that OWCP properly terminated these benefits.

In his February 14, 2013 report, Dr. Curcin noted minimal discomfort over the carpal tunnel, ability to make full fist and open fingers completely, six millimeters right median two-point discrimination, and greater than eight millimeters bilateral ulnar nerve distribution. Based on the objective evidence, he opined that her condition had "resolved/improved." Dr. Curcin explained that the electrodiagnostic testing performed by Dr. Ansari on February 25, 2014 found no evidence of right ulnar neuropathy, and mild wrist right median neuropathy. In addition, Dr. Ansari stated that a comparison of the February 25, 2014 test and an April 1, 2013 test showed that appellant's condition had actually improved. He noted that she complained of recurrent symptoms following her return to work. Dr. Curcin opined that objectively appellant's work-related condition had resolved/improved as she had returned to baseline, and that she was capable of returning to work with no restrictions.

The Board finds that Dr. Curcin's opinion is well rationalized and represents the weight of the medical evidence regarding appellant's accepted bilateral carpal tunnel syndrome.

The Board notes that appellant's surgeon, Dr. Koskella, also advised that appellant could return to work with no restrictions. On October 3, 2013 Dr. Koskella, who performed her June 5, 2013 surgery, released appellant to work with no work restrictions involving her right hand.

Dr. Suffis diagnosed status post carpal tunnel release with persistent symptomatology and provided work restrictions limiting appellant to seldom use of vibratory and pneumatic tools. Similarly, Dr. Spinak diagnosed carpal tunnel syndrome and postsurgical state and indicated that she was released to work with restrictions and that he concurred with the assessment and plan provided by Dr. Suffis. Neither Dr. Suffis nor Dr. Spinak provided an opinion as to whether appellant continued to have residuals of her accepted condition. Both physicians opined that she was capable of working with a limited restriction on vibratory and pneumatic tools, but provided no supporting rationale for this restriction. As neither Dr. Suffis nor Dr. Spinak provided any

⁷ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁸ *B.K.*, Docket No. 08-2002 (issued June 16, 2009); *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

rationale in support of their conclusion that appellant continued to have residuals from her accepted right carpal tunnel syndrome, their reports are of diminished probative value.⁹

The Board finds that OWCP properly terminated entitlement to wage-loss compensation and medical benefits effective May 6, 2014 as appellant no longer suffered from any residuals related to her accepted employment condition. Accordingly, its decision to terminate appellant's compensation benefits is affirmed.

On appeal, appellant disagrees with OWCP's finding that she no longer had any residuals or disability due to her accepted right carpal tunnel syndrome and that she is unable perform her date-of-injury duties. As explained above, the Board finds that the medical evidence established that her accepted condition had resolved with no residuals. The record contains no physician's opinion, with supporting rationale based on the objective evidence, that appellant continued to have residuals of the accepted employment condition.

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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹⁰ OWCP's regulations provide that a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹¹ To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹² When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹³

⁹ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *T.F.*, 58 ECAB 128 (2006) (a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale); *see also S.D.*, 58 ECAB 713 (2007) (the Board has held that a medical opinion not fortified by medical rationale is of little probative value).

¹⁰ 5 U.S.C. §§ 8101-8193. Section 8128(a) of FECA provides that the Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

¹¹ 20 C.F.R. § 10.606(b)(3). *See J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

¹² 20 C.F.R. § 10.607(a). *See S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

¹³ 20 C.F.R. § 10.608(b). *See Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

ANALYSIS -- ISSUE 2

Appellant's May 22, 2014 request for reconsideration did not allege or demonstrate that OWCP erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by OWCP not previously considered by OWCP. Appellant merely reiterated that she continued to have residuals and disability as a result of her accepted right carpal tunnel syndrome. The underlying issue in the case, however, is whether she had further disability due to her accepted right carpal tunnel condition. Appellant's lay opinion is not relevant to the medical issue in this case, which can only be resolved through the submission of probative medical evidence from a physician.¹⁴

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any pertinent new and relevant medical evidence establishing continuing disability. Following the May 6, 2014 OWCP decision and in support of her request for reconsideration, she submitted medical and factual evidence including an April 20, 2015 work capacity evaluation form and an April 23, 2014 impairment report electronically signed on April 30, 2014 by Dr. Suffis. In the impairment rating, Dr. Suffis opined that appellant was unable to perform her date-of-injury job but opined that she could work with restrictions. The opinion and work restrictions expressed by Dr. Suffis are repetitive of the restrictions suggested in reports previously considered by OWCP. He offered no new explanation or rationale supporting his opinion regarding his conclusion as to appellant's work restrictions and diagnosis of right carpal tunnel condition and did not suggest that appellant was unable to work. Evidence which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.¹⁵

Appellant also submitted a May 15, 2014 impairment rating report by an OWCP medical adviser, a May 1, 2014 report listing Dr. Malakooti regarding work restrictions, a May 1, 2014 dispensary permit signed by a certified physician assistant, updating work restrictions, appellant's acceptance of a temporary limited-duty job assignment, report of work limitations forms, a May 28, 2014 report by Mr. Trotman regarding permanent work restrictions based on her right hand carpal tunnel and a May 28, 2014 dispensary permit by Mr. Trotman, and appellant's acceptance of a modified job due to her work restrictions. This evidence while new is not relevant to the underlying issue in the case. None of the evidence submitted addresses the issue of whether appellant continued to have disability due to her accepted right carpal tunnel condition. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁶

As appellant has not met any of the requirements for further merit consideration, the Board finds that she is not entitled to a review of the merits of her claim based on any of the

¹⁴ *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *Gloria J. McPherson*, 51 ECAB 441 (2000).

¹⁵ *L.H.*, 59 ECAB 253 (2007); *Denis M. Dupor*, 51 ECAB 482 (2000).

¹⁶ *R.M.*, 59 ECAB 690 (2008); *Betty A. Butler*, 56 ECAB 545 (2005)

three requirements under section 10.606(b)(3). Thus, OWCP properly denied appellant's May 22, 2014 request for reconsideration.¹⁷

CONCLUSION

The Board finds that OWCP met its burden to terminate her wage-loss compensation and medical benefits effective May 6, 2014. The Board further finds that OWCP properly refused to reopen appellant's case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 7 and May 6, 2014 are affirmed.

Issued: May 4, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁷ *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006); *Candace A. Karkoff*, 56 ECAB 622 (2005) (when an application for reconsideration does not meet at least one of the three requirements enumerated under then section 10.606(b)(2), OWCP will deny the application for reconsideration without reopening the case for a review on the merits).