



further disability or need for medical treatment causally related to her November 5, 1990 employment injury; and (2) whether appellant has established that she had continuing employment-related disability after January 20, 2015.

### **FACTUAL HISTORY**

OWCP accepted that in November 1990 appellant, then a 23-year-old clerk, sustained bilateral carpal tunnel syndrome causally related to factors of her federal employment. She underwent a right carpal tunnel release on February 18, 1992 and a left carpal tunnel release on November 16, 2010. OWCP paid appellant compensation for total disability beginning November 3, 2006.<sup>3</sup>

In a report dated January 18, 2012, Dr. Mark A.P. Filippone, a Board-certified psychiatrist, related that an electromyogram (EMG) and a nerve conduction velocity (NCV) study performed that date revealed findings consistent with bilateral carpal tunnel syndrome. He advised that appellant was totally disabled and enclosed a copy of the January 18, 2012 electrodiagnostic testing.

On February 3, 2012 OWCP referred appellant to Dr. Jeffrey F. Lakin, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated February 16, 2012, Dr. Lakin diagnosed bilateral carpal tunnel syndrome treated with surgical releases. On examination he found a negative Tinel's sign and Phalen's test and normal discrimination. Dr. Lakin determined that appellant had no objective findings of carpal tunnel syndrome or tendinitis and could return to her usual employment.

OWCP advised appellant on March 23, 2012 that it proposed to terminate her wage-loss compensation and authorization for medical benefits as she had no residuals of her accepted work injury.

Dr. Filippone, in a report dated April 9, 2012, found a positive Tinel's sign bilaterally and a positive Phalen's test especially on the left side. He opined that electrodiagnostic testing performed January 18, 2012 showed slowing of the median nerve at the carpal canals bilaterally. Dr. Filippone disagreed with Dr. Lakin's finding that appellant could resume her usual employment.

By decision dated April 24, 2012, OWCP terminated appellant's compensation and entitlement to medical benefits effective that date. It found that Dr. Lakin's opinion represented the weight of the evidence and established that she had no further condition or disability.

Appellant, through counsel, requested an oral hearing before an OWCP hearing representative. She provided an April 23, 2012 report from Dr. Teofilo A. Dauhajre, a Board-

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<sup>3</sup> By decision dated January 4, 2008, OWCP terminated appellant's wage-loss compensation and authorization for medical treatment. In a decision dated July 25, 2008, an OWCP hearing representative vacated the January 4, 2008 decision after finding a conflict in medical opinion. OWCP again terminated appellant's compensation benefits in a decision dated September 8, 2009. On April 19, 2010 an OWCP hearing representative set aside the September 8, 2009 decision as the record contained an unresolved conflict in medical opinion regarding the cause of her left wrist condition. Following further development, OWCP accepted left carpal tunnel syndrome.

certified orthopedic surgeon, who related that a January 18, 2012 EMG/NCV test showed bilateral carpal tunnel syndrome. Dr. Dauhajre found a positive Phalen's sign on the left and diagnosed chronic left carpal tunnel syndrome. He opined that appellant was "restricted from returning back to her regular duties at work as a clerk...."

Following a preliminary review, on June 28, 2012 an OWCP hearing representative set aside the April 24, 2012 decision. He found that Dr. Lakin's opinion was not based on a proper background as he did not have Dr. Filippone's January 18, 2012 report and the results of electrodiagnostic testing. The hearing representative remanded the case for OWCP to provide this evidence to Dr. Lakin and obtain a supplemental report.

Dr. Dauhajre evaluated appellant on September 17, 2012. He diagnosed chronic carpal tunnel syndrome on the left side and found that she was disabled from her usual employment.

In an addendum dated September 18, 2012, Dr. Lakin reviewed the additional evidence and opined that appellant had no objective findings of carpal tunnel syndrome on examination. He advised that she could return to her work without limitations.

OWCP determined that a conflict arose between its referral physician, Dr. Lakin and appellant's physicians, Dr. Filippone and Dr. Dauhajre. It referred her to Dr. Joseph Estwanik, a Board-certified orthopedic surgeon, for an impartial medical examination.<sup>4</sup>

In a report dated June 3, 2014, Dr. Estwanik reviewed appellant's history of injury and the medical evidence of record. On examination he found normal range of motion of the neck, hands, and elbows. Dr. Estwanik found that appellant had "very unusual and extreme symptom magnification with falsified testing." He related:

"[Appellant] had manual strength testing of the biceps and had repetitive giving away, uncooperative testing and nonphysiological falsified weakness of the biceps. When again performing manual testing for triceps strength she produced nonphysiological symptom magnification and when simply testing her triceps and gripping only the radius and ulna, she had falsified giving away and actually had symptoms 'going into her hands.'"

Dr. Estwanik found no atrophy or reflex sympathetic dystrophy. He advised that when performing a Phalen's test appellant pulled her hands away after 10 seconds of wrist flexion and related, "The fact that both arms simultaneously responded this way is nonphysiologic to any specific pathology in the right versus left. The Tinel's test was performed and she stated that this started burning into both hands after [three to four] taps." Dr. Estwanik opined that based on the objective evidence she could perform her work duties. He recommended a functional capacity evaluation (FCE) using a cross reference testing system (XRTS) hand strength assessment to accurately measure her effort and capacity.

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<sup>4</sup> OWCP initially referred appellant to Dr. Michael Wujciak, a Board-certified orthopedic surgeon. However, it subsequently scheduled her with another physician upon determining that Dr. Wujciak had previously seen her as a referral physician.

OWCP referred appellant, on September 23, 2014, for an XRTS FCE. On October 27, 2014 a physical therapist found that the evaluation was not valid as she did not perform consistently and exhibited “[e]xtreme overt pain behavior.” Appellant also used no force on the XRTS hand strength assessment which was “most likely indicative of blatant noncompliance.”

In a November 25, 2014 addendum, Dr. Estwanik reviewed the results of the XRTS testing and the evaluator’s finding that appellant had not provided consistent effort. He discussed his prior finding that she had no physiologic basis preventing a return to work. Dr. Estwanik determined that appellant could return to her usual employment and opined that she had reached maximum medical improvement (MMI) at least by July 23, 2009. In a work restriction evaluation dated November 25, 2014, he found that she had no limitations.

OWCP advised appellant on December 16, 2014 of its proposed termination of her compensation and entitlement to medical benefits.

In a December 15, 2014 attending physician’s report (Form CA-20), Dr. Filippone diagnosed bilateral carpal tunnel syndrome and a right ulnar nerve lesion. He checked a box marked “yes” that the condition was caused or aggravated by employment and found that appellant was totally disabled.

Counsel, on December 30, 2014, contended that Dr. Estwanik did not provide the results of neurological testing and therefore he was not qualified to find a psychological reason for appellant’s disability.

By decision dated January 20, 2015, OWCP terminated appellant’s wage-loss compensation and authorization for medical benefits effective that date. It found that the opinion of Dr. Estwanik as the impartial medical examiner represented the special weight of the evidence and established that she had no further employment-related disability or need for medical treatment.

On January 27, 2015 appellant, through counsel, requested an oral hearing.

In a report dated March 27, 2015, Dr. Filippone discussed appellant’s complaints of pain and numbness at the thenar eminence of the left wrist and pain bilaterally at the ulnar aspect, greater on the right side. On examination he found a positive Tinel’s sign bilaterally and atrophy especially on the right thenar eminence. Dr. Filippone diagnosed bilateral carpal tunnel syndrome and an ulnar nerve lesion due to her accepted employment injury. He opined that appellant was totally disabled.

At the hearing, held on August 27, 2015, counsel contended that Dr. Estwanik did not address the January 18, 2012 positive electrodiagnostic testing or perform sensory testing.

By decision dated November 13, 2015, OWCP’s hearing representative affirmed the January 20, 2015 decision. She found that appellant had not submitted evidence sufficient to overcome the special weight afforded to Dr. Estwanik as the impartial medical examiner.

On appeal counsel contends that Dr. Estwanik’s opinion was not based on an accurate factual background as he did not consider the January 18, 2012 EMG and relied upon reports of

other physicians. He also maintains that he failed to perform sensory tests and based his opinion on an invalid FCE.

### **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. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>5</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>6</sup> Additionally, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>7</sup> To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>8</sup>

Section 8123(a) provides that, if there is 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>9</sup> The implementing regulations provide 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 an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a impartial examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>10</sup>

When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>11</sup>

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

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome due to factors of her federal employment. It paid her compensation for total disability beginning November 3, 2006. OWCP properly determined that a conflict arose between Dr. Lakin, the second opinion physician who found that appellant had no residuals of her work injury and could

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<sup>5</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>6</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>7</sup> *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

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

<sup>9</sup> 5 U.S.C. § 8123(a).

<sup>10</sup> 20 C.F.R. § 10.321.

<sup>11</sup> *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

resume her usual employment, and Dr. Filippone and Dr. Dauhajre, attending physicians who found that she had continued disability due to carpal tunnel syndrome. It consequently referred her to Dr. Estwanik, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict pursuant to 5 U.S.C. § 8123(a).

When a case is referred to an impartial medical examiner 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>12</sup>

On June 3, 2014 Dr. Estwanik reviewed the medical evidence of record and the history of injury. On examination he found extreme symptom magnification including give way weakness with motor strength testing of the biceps and triceps. Dr. Estwanik advised that when performing the Phalen's test appellant pulled both hands away after 10 seconds, which showed that the problem was not physiologic. He found no atrophy or reflex sympathetic dystrophy. Dr. Estwanik opined that objectively appellant could perform the duties of her employment. He recommended an FCE with XRTS to accurately measure her strength and effort.

A physical therapist found that the FCE with XRTS performed on October 27, 2014 was invalid due to pain behavior and the lack of consistent effort. On November 25, 2014 Dr. Estwanik reviewed the XRTS test results and determined that appellant could return to her usual employment and that she had reached MMI from her injury. He completed a work restriction evaluation finding that she had no limitations.

The Board finds that Dr. Estwanik provided a comprehensive, well-rationalized opinion based on a proper factual background, and thorough examination. He concluded that appellant had no residuals of her carpal tunnel syndrome or need for any work limitations and provided rationale by explaining that the examination showed extreme symptom magnification, as confirmed by XRTS testing. Dr. Estwanik further opined that she had reached MMI from her injury. His report, which is detailed and reasoned, is entitled to special weight and establishes that appellant has no further disability or need for medical treatment due to her bilateral carpal tunnel syndrome.<sup>13</sup>

The remaining evidence is insufficient to overcome the special weight accorded to Dr. Estwanik as the impartial medical examiner. In a form report dated December 15, 2014, Dr. Filippone diagnosed bilateral carpal tunnel syndrome and a right ulnar nerve lesion. He checked a box marked "yes" that the condition was caused or aggravated by employment and found that appellant was totally disabled. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value.<sup>14</sup>

On appeal counsel argues that Dr. Estwanik's opinion was not based on an accurate factual background as he did not consider the January 18, 2012 EMG, failed to perform sensory

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<sup>12</sup> 5 U.S.C. § 8123(a); *see O.C.*, Docket No. 15-0404 (issued November 19, 2015).

<sup>13</sup> *See R.B.*, Docket No. 16-0010 (issued April 1, 2016); *Sharyn D. Bannick*, 54 ECAB 537 (2003).

<sup>14</sup> *See Deborah L. Beatty*, 54 ECAB 340 (2003).

tests, relied on an invalid FCE, and reviewed the reports of other physicians. As discussed, however, Dr. Estwanik properly based his opinion on a review of the medical evidence, his findings on physical examination, and the results of XRTS testing. He further provided rationale for his conclusion by explaining that the examination and objective testing revealed extreme symptom magnification. Dr. Estwanik's opinion thus represents the special weight of the evidence.<sup>15</sup>

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

As OWCP properly terminated appellant's compensation benefits, the burden shifts to appellant to establish that she has continuing disability after that date related to her accepted injury.<sup>16</sup> To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.<sup>17</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>18</sup>

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

Given the Board's finding that OWCP properly relied upon the opinion of Dr. Estwanik in terminating compensation, the burden of proof shifts to appellant to establish that she remains entitled to compensation after that date.<sup>19</sup>

On March 27, 2015 Dr. Filippone related that appellant experienced symptoms of pain and numbness at the thenar eminence of the left wrist and pain bilaterally at the ulnar aspect, greater on the right side. He found a positive Tinel's sign bilaterally and atrophy especially on the right thenar eminence. Dr. Filippone diagnosed employment-related carpal tunnel syndrome of both wrists and an ulnar nerve lesion. He opined that appellant was totally disabled. Dr. Filippone did not bolster his causation finding with medical rationale and thus his reports are of little probative value.<sup>20</sup> Additionally, he was on one side of the conflict in medical opinion previously resolved by Dr. Estwanik. Reports from a physician on one side of a medical conflict, resolved by an impartial medical examiner, are generally insufficient to overcome the special weight accorded the impartial medical examiner or to create a new conflict.<sup>21</sup>

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<sup>15</sup> See *supra* note 13.

<sup>16</sup> *Manual Gill*, 52 ECAB 282 (2001).

<sup>17</sup> *Id.*

<sup>18</sup> *Paul Foster*, 56 ECAB 208 (2004); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>19</sup> See *supra* note 16.

<sup>20</sup> See *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006) (medical evidence that states a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>21</sup> See *I.H.*, Docket No. 15-1798 (issued March 17, 2016); *Alice J. Tysinger*, 51 ECAB 638 (2000).

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 and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that OWCP properly terminated appellant's wage-loss compensation and authorization for medical benefits effective January 20, 2015 as she had no further disability due to her November 5, 1990 employment injury. The Board further finds that she has not established continuing employment-related disability after January 20, 2015.

**ORDER**

**IT IS HEREBY ORDERED THAT** November 13, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board