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

| | | |
|---|---|---|
| **S.Y., Appellant** | ) | |
| **and** | ) | **Docket No. 16-1555** |
| | ) | **Issued: April 21, 2017** |
| **U.S. POSTAL SERVICE, POST OFFICE, San Francisco, CA, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

### ***JURISDICTION***

On July 26, 2016 appellant filed a timely appeal from a January 29, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 justify termination of appellant's wage-loss compensation and medical benefits, effective November 26, 2012, because her accepted conditions had resolved; and (2) whether appellant established any continuing residuals or employment-related disability after November 26, 2012.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

This case has previously been before the Board.[2] The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are set forth below.

On October 20, 2004 appellant, then a 50-year-old post office clerk, filed an occupational disease claim (Form CA-2) alleging that the repetitive motion of her daily work activity caused injury to her hands, wrists, forearms, and elbows. She continued to work light duty.[3] OWCP accepted appellant's claim for bilateral tenosynovitis of the hands and wrists and bilateral lateral epicondylitis.

On August 17, 2007 appellant accepted a full-time limited-duty assignment as a manual distribution clerk. She stopped work on August 27, 2009 and filed a claim for wage-loss compensation (Form CA-7). On the back of the Form CA-7, the employing establishment indicated that there was no work available. OWCP paid wage-loss compensation benefits. Appellant was placed on the periodic rolls beginning September 26, 2009.

Appellant was referred to Dr. Aubrey A. Swartz, a Board-certified orthopedic surgeon, on May 26, 2011 for a second opinion examination to determine whether she continued to suffer residuals and remained disabled due to her accepted conditions. OWCP referred appellant for a functional capacity evaluation (FCE) with Thomas Kowalski, an occupational therapist. In reports dated July 1 and August 5, 2011, Dr. Swartz reviewed appellant's history and provided findings on physical examination. He reviewed the findings from the FCE and noted discrepancies and inconsistences in the Jamar grip testing, Cozen's testing, provocative testing, and sensory testing. Dr. Swartz reported that upon examination he did not find objective evidence of residuals of appellant's accepted bilateral upper extremity conditions. He related that examination findings and appellant's complaints were symptoms of early degenerative arthritis, which was not an accepted condition. In a work capacity evaluation form, Dr. Swartz indicated that appellant was able to work her usual job full time, with restrictions of lifting up to 20 pounds.

In an August 30, 2011 report, Dr. Robert J. Harrison, Board-certified in internal and preventive medicine, he reviewed Dr. Swartz' report and disagreed that appellant's bilateral upper extremity conditions had resolved. He related that he had treated appellant since September 27, 2004 for bilateral tenosynovitis of the hand and wrist and lateral epicondylitis. Upon physical examination, Dr. Harrison observed swelling of appellant's third digit of the right

[2] Docket No. 15-1510 (issued November 16, 2015). By decision dated November 16, 2015, the Board set aside OWCP's decision dated March 18, 2015, which denied appellant's February 23, 2015 reconsideration request as untimely filed, and remanded the case for OWCP to review appellant's reconsideration request under the standard for a timely request.

[3] In an attached statement, appellant explained that on February 2, 1987 she filed a claim for a work-related injury to her hands and arms and was placed on modified duty as a manual clerk. In June 2004 she was assigned to work as a machine mail processor. Appellant asserted that the pain in her hands and arms worsened. She sought treatment from her physician who diagnosed bilateral epicondylitis, bilateral wrist, tendinitis, and bilateral carpal tunnel syndrome. Appellant was returned to her light-duty position as a manual clerk.

hand and pain over the dorsum of both hands with dorsiflexion. Tinel's and Phalen's sign were negative. Dr. Harrison reported that appellant continued to have objective residuals of her hand and wrist tenosynovitis. He explained that, although he acknowledged inconsistencies in the FCE, appellant had consistently reported bilateral wrist pain over many years of treatment. Dr. Harrison related that appellant could work with her usual restrictions.

OWCP determined that a conflict in the medical evidence existed between Dr. Harrison, appellant's treating physician, and Dr. Swartz, OWCP's referral physician, with respect to her employment-related conditions and her disability. It referred appellant, along with a statement of accepted facts (SOAF) and the record, to Dr. Lin Ho, a Board-certified orthopedic surgeon, to resolve the conflict.

In an April 30, 2012 report, Dr. Ho reviewed appellant's history, including the SOAF, and related that appellant had work-related diagnoses of bilateral wrist tendinitis and bilateral lateral epicondylitis. He noted that appellant had not worked since August 28, 2009 because there was no limited duty available. Dr. Ho related appellant's complaints of pain that was "moving around" and numbness over the entire left or right arm and weakness some of the time. He discussed appellant's medical records and conducted an examination. Dr. Ho reported no crepitus or tenderness at either the flexor or extensor tendons of the forearms and no decrease in touch or temperature perception over the right and left hands. He also observed mild swelling of the right third proximal interphalangeal (PIP) joint but not crepitus in the fingers. Dr. Ho provided normal range of motion findings of the wrists and elbows. Tinel's, Phalen's, and Finklestein's tests were negative bilaterally. He diagnosed resolved bilateral forearm pain.

Dr. Ho opined that examination of appellant's upper extremities revealed no objective findings except for swelling at the right third PIP. He related that a review of Dr. Harrison's reports also showed no positive objective findings and explained that findings of tenderness were a subjective complaint. Dr. Ho also noted inconsistencies in the FCE with grip and cogwheel nonfunctional response to strength testing. He opined that appellant may have endogenous osteoarthritis of her right hand, which was nonindustrial. Dr. Ho concluded that appellant had no residuals of her accepted work-related conditions and was able to return to her original position as a mail clerk with no physical limitations due to her work-related disability. He provided a work capacity evaluation form, which indicated that appellant was capable of working eight hours per day with pushing, pulling, kneeling, squatting, climbing, and lifting up to 20 pounds.

OWCP proposed to terminate appellant's wage-loss and medical benefits in a decision dated October 24, 2012. It found that the weight of evidence rested with the opinion of the impartial medical examiner, Dr. Ho, who determined in an April 30, 2012 report that there were no objective findings to demonstrate continued residuals of her accepted bilateral tenosynovitis of the hands and bilateral lateral epicondylitis conditions. Appellant was advised that she had 30 days to submit additional evidence or argument if she disagreed with the decision.

On November 14, 2012 OWCP received appellant's letter dated November 9, 2012. Appellant explained that she had been out of the country when OWCP's October 24, 2012 Notice of Proposed Termination was mailed and delivered. She noted that she had since scheduled another appointment with Dr. Harrison, but his earliest availability was on

November 19, 2012. Appellant requested an extension to submit additional evidence or argument.

In a decision dated November 26, 2012, OWCP finalized the termination of appellant's wage-loss and medical benefits, effective that date. It determined that as appellant had not submitted any additional medical evidence or argument within 30 days of the proposed termination notice, the evidence of record was insufficient to alter the recommendation to terminate her medical and wage-loss compensation benefits.

On December 4, 2012 OWCP received appellant's November 30, 2012 request for hearing before an OWCP hearing representative.

Dr. Harrison continued to treat appellant. In a December 2, 2012 report, he noted reviewing OWCP's October 24, 2012 Notice of Proposed Termination and Dr. Ho's April 30, 2012 referee medical report. Dr. Harrison indicated that upon examination he observed tenderness over the flexor and extensor wrist compartments bilaterally, with positive Tinel's sign on both the right and left side. He pointed out that Dr. Ho had not examined appellant's wrist but merely reported pain over the forearm. Dr. Harrison reported that appellant clearly had objective findings with tenderness over the flexor and extensor wrist compartments on both sides and evidence of median nerve irritation based on the positive Tinel's sign.

A hearing was held on March 27, 2013. Appellant's representative at the time argued that Dr. Ho's April 30, 2012 referee medical report was very confusing because he found appellant capable of working full duty, but noted work restrictions of 20 pounds. He noted that appellant had a preexisting claim and returned to work with limitations, which carried over into the 2004 injury. Dr. Ho asserted that because the employing establishment was unable to accommodate these work restrictions, OWCP erred in terminating her wage-loss compensation benefits. On direct examination, appellant described in detail her work duties as a mail clerk. She related that she first sustained an injury in 1987 and was placed on limited duty. Appellant explained that in 2004 her condition worsened and she was in terrible pain at the end of each workday. She reported that she continued to work limited duty until 2009 when her supervisor informed her that there was no work available for her.

Appellant also expressed her disagreement with OWCP's referral physician's examinations and findings. She clarified that she described to Dr. Ho how the repetitive movement of sorting mail caused her injury. Appellant's representative further explained that appellant would submit medical documentation from her psychiatrist, which supported expansion of appellant's claim to include a psychiatric condition. He asserted that both Dr. Swartz's and Dr. Ho's reports lacked medical rationale to support their conclusion that appellant did not suffer residuals of her accepted work conditions and was able to work. The representative noted that Dr. Harrison had treated appellant since her 1987 injury and he continued to opine that appellant still had residuals of her bilateral upper extremity condition and could work with limitations. He requested that appellant's claim be expanded to include a

psychiatric condition, that her claim be remanded for further development of the medical evidence, and that her medical and wage-loss compensation benefits be reinstated.[4]

Appellant was also treated by Dr. George Demetrius Karalis, a psychiatrist. In an April 20, 2013 report, he requested that appellant's claim be expanded to include major depression. Dr. Karalis reviewed appellant's employment history and the injuries she sustained at work. He provided findings on physical examination and psychological testing. Dr. Karalis diagnosed major depression and explained that her depression and anxiety was caused by appellant's constant orthopedic pain and limited upper extremity range of motion.

In a May 3, 2013 report, Dr. Vatche Cabayan, a Board-certified orthopedic hand surgeon, noted that appellant worked as a mail clerk and had an accepted claim for bilateral wrist tendinitis and epicondylitis laterally. He related that appellant also had a previous claim from 1987 and had been working limited duty. Dr. Cabayan reported that appellant's condition worsened in 2004, which caused her to seek medical treatment from Dr. Harrison again. He discussed the medical reports of Drs. Swartz, Ho, and Katalis and their findings.

Dr. Cabayan further related in a May 6, 2013 report that he reviewed appellant's medical records. He asserted that Dr. Swartz and Dr. Ho overlooked the issue of appellant's limited capacity since 1987. Dr. Cabayan provided a detailed description of the history of her bilateral upper extremity condition and opined that in 2004 appellant experienced a worsening of her initial injury with no permanent improvement. He explained that Drs. Swartz and Ho determined that appellant had recovered from the injury in 2004, but they overlooked her first injury from which she never recovered with limitation of function. Upon examination, Dr. Cabayan observed tenderness along the carpal tunnel area on the left and tenderness along the medial and lateral epicondylar surfaces bilaterally. He also noted tenderness along the base of the thumb bilaterally and swelling along the PIP joint with no instability. Sensory function was normal throughout. Dr. Cabayan diagnosed discogenic cervical condition with radiculitis, rotator cuff involvement and bicipital tendinitis bilaterally, epicondylitis medially and laterally on the right and left, carpometacarpal (CMC) joint inflammation of the thumb bilaterally, and mild stenosis tenosynovitis along the A1 pulley of the thumb bilaterally and the index finger on the left.

Dr. Cabayan reported: "it is clear that the patient never recovered from her condition and has had residuals from her condition and limitation with forceful activities precluded from her usual job." He noted that even though appellant continued working limited duty, her efficiency was not as good. Dr. Cabayan related that appellant's restrictions might have improved over the years, but because of overuse, appellant's treating physician never released her to greater than 5 pounds of lifting. He pointed out that even OWCP's referral physicians, Dr. Swartz and Dr. Ho, gave appellant restrictions although they claimed she had fully recovered. Dr. Cabayan concluded that appellant continued to have permanent restrictions and could not work her usual job position.

[4] During the hearing, appellant's representative submitted as evidence the job position for a distribution/window clerk and a sales, services, and distribution associate, a letter dated April 12, 2011 which requested that appellant submit medical documentation that she was physically capable of performing the duties of a sales, service, and distribution associate, an August 27, 2009 Employee Leave Information letter, appellant's statement dated October 21, 2004, and Dr. Harrison's August 31, 1987 medical report.

In a May 13, 2013 statement, appellant's representative provided excerpts from Dr. Cabayan's May 6, 2013 report and Dr. Karalis' April 20, 2013 report as evidence that appellant's disabling condition had not ceased and that she still required medical restrictions in order to work. He asserted that because appellant had medical restrictions and the employing establishment had no work available, OWCP erred in terminating appellant's compensation. Appellant's representative also noted that appellant was not evaluated by a specialist for mental disability due to pain. He requested that OWCP reinstate appellant's compensation benefits and pay her retroactively.

By decision dated June 12, 2013, an OWCP hearing representative affirmed the November 26, 2012 decision terminating appellant's wage-loss compensation and medical benefits. She found that OWCP properly relied on the medical opinion of Dr. Ho, the referee medical examiner, who determined that appellant's accepted medical conditions had ceased. The hearing representative also noted that the medical evidence appellant submitted after Dr. Ho's April 30, 2012 referee medical report did not provide a complete and accurate background or adequate explanation of how the medical findings suddenly changed and were related to her accepted condition.

On October 24, 2013 OWCP received appellant's request, through her representative, for reconsideration. The representative indicated that he was enclosing additional reports by Dr. Karalis and Dr. Cabayan, which substantiated that appellant suffered from a condition that was caused while in the performance of duty and continued until the present. He requested that OWCP reconsider its decision, reinstate appellant's compensation, and grant compensation retroactively.

In a supplemental report dated September 8, 2013, Dr. Karalis expressed disagreement with OWCP's June 12, 2013 decision. He pointed out that in his report he repetitively referred to different parts of the March 27, 2013 transcript, which indicated that he reviewed them. Dr. Karalis reiterated that appellant suffered a job-caused major depression condition.

Dr. Cabayan also noted his disagreement with OWCP's June 12, 2013 decision. In an October 10, 2013 report, he clarified that he had extensively reviewed appellant's records as outlined in his reports. Dr. Cabayan also asserted that OWCP failed to mention that appellant worked extensive overtime over the years. He pointed out that a proper medical diagnosis for appellant's condition could only be provided by a Board-certified orthopedic surgeon and hand specialist. Dr. Cabayan noted that it was unclear whether OWCP's referral physicians had a hand specialty. He further reported that Dr. Swartz and Dr. Ho's opinions were contradictory because they opined that appellant had fully recovered, but provided work restrictions. Dr. Cabayan reported that the fact that appellant had not worked since 2009 did not mean that her hand condition had not progressed. He explained that cumulative trauma could present itself after a patient is off work and progress, particularly if the patient is not involved in any other activities to cause or worsen the cumulative trauma. Dr. Cabayan opined that the fact that a patient was not aware of a hand condition at the time she stopped work did not negate the fact that her hand condition could not result from the 30 years of work preceding her work stoppage.

By decision dated February 21, 2014, OWCP denied modification of the June 12, 2013 decision. It determined that the medical evidence submitted was of insufficient probative value

to create a conflict in medical opinion as they were based on an inaccurate history and lacked sufficient medical rationale. OWCP further found that the evidence of record was insufficient to modify the decision dated June 12, 2013 because it did not establish that appellant continued to suffer residuals or have ongoing disability as a result of her accepted employment conditions.

On February 23, 2015 OWCP received appellant's appeal request form, which indicated that she was requesting reconsideration. In an attached statement, she explained that OWCP had earlier found that Dr. Cabayan had relied upon her recitation of history, but not upon OWCP's statement of accepted facts. Appellant noted that she was attaching new evidence.

Appellant resubmitted Dr. Harrison's October 14, 2013 progress reports, along with a new progress report dated August 21, 2014. He indicated that he examined appellant for follow-up of bilateral hand tenosynovitis, chronic hand pain, and occasional numbness and tingling. Dr. Harrison reported that examination of appellant's wrists and hands demonstrated no palpable masses, temperature abnormalities, tenderness, clicking or snapping, or joint effusion. Neurological examination revealed negative Tinel's and Phalen's sign. Dr. Harrison diagnosed other tenosynovitis of the finger and hand and lateral epicondylitis beginning from December 15, 2011 to the present and carpal tunnel syndrome on both sides from August 21, 2014 to the present.

Along with Dr. Harrison's progress notes, appellant also submitted April 15, 2013 hospital records, which indicated that appellant was treated in the emergency room by Dr. Michael Fredericson, Board-certified in physical medicine and rehabilitation, for right carpal tunnel syndrome. An electromyography (EMG) and nerve conduction velocity (NCV) lab result report by Dr. Yousik Eugene Roh, Board-certified in physical medicine and rehabilitation, demonstrated an abnormal electrodiagnostic examination with mild left median sensory mononeuropathy across the wrist (*i.e.*, carpal tunnel syndrome) but no electrodiagnostic evidence of right median neuropathy or bilateral ulnar neuropathy.

In a February 19, 2015 statement, appellant explained that she was submitting additional evidence of sufficient probative value to modify OWCP's February 21, 2014 decision. She noted that OWCP questioned the number of overtime hours that appellant worked and related that she was enclosing evidence about her number of worked overtime hours from 2004 to 2008. Appellant provided a table, which demonstrated the number of overtime hours she worked by pay period from 2004 to 2008.

Appellant submitted another statement dated March 19, 2015 and related that she was approved for disability retirement in 2014 for the same diagnosis made by Dr. Harrison. She provided a letter dated September 3, 2014 from the Office of Personnel Management (OPM), which approved her for disability retirement. Appellant resubmitted OWCP's October 28, 2004 decision accepting her claim and a September 27, 2004 medical report by Dr. Harrison, which noted diagnoses of bilateral epicondylitis, bilateral wrist tendinitis, and bilateral carpal tunnel syndrome.

In a decision dated March 18, 2015, OWCP denied appellant's reconsideration request as untimely filed and failing to establish clear evidence of error. Appellant appealed to the Board.

By decision dated November 16, 2015, the Board set aside OWCP's decision dated March 18, 2015, which denied appellant's February 23, 2015 request for reconsideration as untimely filed, and remanded the case for OWCP to review appellant's reconsideration request under the standard for a timely request because it was timely filed.[5]

Following the Board's decision, OWCP conducted a merit review of appellant's case. In a decision dated January 29, 2016, it denied modification of the February 21, 2014 decision. OWCP found that the medical evidence submitted did not provide any medical opinion substantiating that appellant continued to be disabled due to her accepted employment conditions. Accordingly, it determined that the special weight of medical evidence rested with Dr. Ho's November 26, 2012 referee medical report.

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

According to FECA, once OWCP accepts a claim and pays compensation, it has the burden of justifying termination or modification of an employee's benefits.[6] OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[7] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[8]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[9] 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.[10]

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

OWCP determined that a conflict in medical opinion existed between Dr. Harrison, appellant's treating physician, who continued to support appellant's need for continued medical treatment for her accepted conditions, and Dr. Swartz, OWCP's referral physician, who found that appellant no longer suffered residuals or disability as a result of her accepted work conditions. Appellant was referred to Dr. Ho for an impartial medical examination to resolve the conflict.

[5] Docket No. 15-1510 (issued November 16, 2015).

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

[7] *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

[8] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

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

[10] *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *A.P., id.*

In an April 30, 2012 report, Dr. Ho reviewed appellant's history, including the SOAF. Appellant's claim had been accepted for bilateral wrist tendinitis and bilateral lateral epicondylitis. He related appellant's complaints of pain, not confined to a specific area, numbness, and weakness in both arms. Upon physical examination, Dr. Ho reported no crepitus or tenderness at either the flexor or extensor tendons of the forearms, no decrease in touch and temperature perception over the hands, and normal range of motion of the wrists and elbows. Tinel's, Phalen's, and Finklestein's tests were negative bilaterally. Examination of appellant's hands revealed mild swelling of the right third PIP joint but not crepitus in the fingers. Dr. Ho opined that there were no objective findings of her upper extremities except for swelling at the right third PIP. He diagnosed resolved bilateral forearm pain and reported possible endogenous osteoarthritis of her right hand, which was nonindustrial. Dr. Ho concluded that appellant had no residuals of her accepted work-related conditions and was able to return to her position as a mail clerk with no physical limitations due to her work-related disability. He provided a work capacity evaluation form, which indicated that appellant was capable of working eight hours per day with pushing, pulling, kneeling, squatting, lifting, and climbing up to 20 pounds.

The Board finds that Dr. Ho's April 30, 2012 report was entitled to the special weight of the medical opinion evidence to establish that appellant no longer suffered residuals of her accepted bilateral upper extremity conditions and was able to work. Dr. Ho accurately described appellant's history and reviewed her medical records. He performed a thorough, clinical examination and provided findings on examination. Dr. Ho opined that there were no objective findings to support that appellant still suffered residuals of her accepted conditions. He further noted that appellant's subjective complaints were generalized and unspecific and the FCE revealed inconsistent findings. The Board finds that Dr. Ho's opinion was based on a proper factual and medical history and he had thoroughly reviewed the relevant factual and medical evidence.[11] Accordingly, the Board finds that Dr. Ho's opinion is entitled to special weight as the impartial medical examiner and was sufficient for OWCP to justify the termination of appellant's wage-loss and medical benefits effective November 20, 2012.[12]

On appeal, appellant continues to disagree with Dr. Ho's medical opinion. She contends that Dr. Ho's April 30, 2012 report was inconsistent as he authorized appellant to work her regular duty, but provided work restrictions of 20 pounds. The Board finds, however, that Dr. Ho explained in his report that appellant had no physical limitations due to her work-related conditions. He did not, however, disregard the fact that appellant may have work restrictions due to possible osteoarthritis of her right hand, which was not an accepted condition.[13]

Appellant has not submitted any objective rationalized medical evidence to establish that she continued to suffer from or required medical treatment for conditions causally related to her

[11] *See Melvina Jackson,* 38 ECAB 443 (1987).

[12] *Barry Neutuch,* 54 ECAB 313 (2003).

[13] *See N.P.*, Docket No. 15-1580 (issued September 1, 2016) (finding that an impartial medical examiner's report, which authorized the claimant to work with restrictions, was entitled to special weight and established that the claimant did not have any continuing disability causally related to her December 21, 2010 injury because the restrictions were due to a nonwork-related injury).

accepted employment conditions. OWCP, therefore, properly terminated her compensation benefits on November 26, 2012.[14]

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

As OWCP met its burden of proof to terminate appellant's compensation benefits on November 20, 2012, the burden shifted to her to establish that she had any continuing disability causally related to the accepted conditions.[15] Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[16]

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

The Board finds that the medical evidence submitted following the November 26, 2012 termination is insufficient to establish disability due to her accepted conditions.

Appellant continued to submit reports dated December 2, 2012 to August 21, 2014 by Dr. Harrison, appellant's treating physician, who was on one side of the conflict resolved by Dr. Ho. The Board has held that reports from a physician who was on one side of a medical conflict are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner, or to create a new conflict.[17]

Dr. Cabayan also examined appellant. In a May 3, 2013 report, he related that appellant had a previous claim from 1987 and a current claim accepted for bilateral wrist tendinitis and epicondylitis laterally. Dr. Cabayan further noted that Drs. Swartz and Ho had determined that appellant had recovered from the 2004 injury, but overlooked the issue of appellant's continued limited capacity since the 1987 employment injury. He provided examination findings and diagnosed discogenic cervical condition with radiculitis, rotator cuff involvement and bicipital tendinitis bilaterally, epicondylitis medially and laterally on the right and left, CMC joint inflammation of the thumbs, and mild stenosis tenosynovitis along the A1 pulley of the thumbs and the index finger on the left. Dr. Cabayan reported that appellant was able to work with restrictions.

The Board finds that Dr. Cabayan's reports are of diminished probative value as they do not contain sound medical reasoning establishing that appellant was totally disabled after November 26, 2012 due to the accepted bilateral upper extremity conditions. On the contrary, Dr. Cabayan attributes appellant's current limited capacity to the previous 1987 injury. He did not specifically explain how appellant's inability to work her usual job was causally related to

[14] *Manuel Gill*, 52 ECAB 282 (2001).

[15] *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

[16] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[17] *I.J.*, 59 ECAB 408 (2008).

her accepted employment conditions of bilateral tenosynovitis of the hands and wrists and bilateral lateral epicondylitis.[18] The Board further notes that, in his May 6, 2013 report, Dr. Cabayan diagnosed several conditions, which have not been accepted by OWCP as employment related. As Dr. Cabayan failed to attribute appellant's continued disability to her accepted conditions, his reports are insufficient to establish work-related disability due to the accepted conditions.[19]

Likewise, Dr. Karalis, in his April 20 and September 8, 2013 reports, also diagnosed major depression and anxiety as a result of his job. These conditions, however, were not accepted as employment related. The additional reports dated April 15, 2013, including Dr. Fredericson's hospital records and Dr. Roh's EMG/NCV lab result report, also note diagnoses for right carpal tunnel syndrome, which is not an accepted condition.

On appeal, appellant alleges that the medical reports by Drs. Harrison, Cabayan, and Karalis provided sufficient evidence to establish that she continued to have residuals of her employment injury. As explained above, however, these are reports are of diminished probative value and fail to establish that appellant was unable to work due to her accepted bilateral upper extremity conditions.

Appellant further asserts on appeal that OWCP summarily dismissed the reports by her physicians and put an unreasonable "almost beyond-a-reasonable-doubt" burden of proof on her to produce medical reports establishing industrial causation. The Board notes that appellant bears the burden of proof to establish a causal relationship between her continued need for work restrictions and her accepted bilateral upper extremity conditions. As OWCP met its burden of proof to establish termination of appellant's compensation benefits dated November 26, 2012, the burden then shifted to appellant to establish continuing disability.[20] Appellant has not, however, submitted medical evidence sufficient to demonstrate continuing disability causally related to her accepted conditions.

[18] A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.

[19] *R.A.*, Docket No. 14-1327 (issued October 10, 2014).

[20] *Supra* note 14.

The Board finds that Dr. Ho provided a comprehensive, well-rationalized opinion in his April 30, 2012 impartial medical report, that appellant did not have any continuing disability causally related to her accepted employment conditions.

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 and medical benefits, effective November 26, 2012, and that she has failed to establish continuing employment-related disability after that date causally related to her accepted conditions.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the January 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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