

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 13, 1994 appellant, then a 49-year-old teleservice representative, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to factors of her federal employment including performing repetitive work duties seven hours per day. She noted that she first became aware of her condition in November 1993 and of its relationship to her federal employment on November 13, 1994. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on January 12, 1994.

On July 12, 1994 OWCP accepted appellant's claim for bilateral carpal tunnel syndrome and paid her wage-loss compensation benefits on the daily rolls, commencing that date and on the periodic rolls commencing August 7, 1996.

Following further development of the claim, OWCP subsequently received an August 11, 2018 medical report by Dr. Jay S. Aaron, an attending Board-certified internist. Dr. Aaron noted that appellant had chronic low back pain secondary to degenerative joint disease. He also noted that she ambulated poorly with a cane. Dr. Aaron included his August 8, 2018 report noting that diagnostic testing confirmed the presence of bilateral carpal tunnel syndrome. He concluded that appellant was unable to return to work.

On May 1, 2019 OWCP referred appellant to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion evaluation, to determine whether she continued to have residuals or disability related to her accepted employment injury.

In a June 24, 2019 report, Dr. Sultan noted that he had reviewed appellant's medical records and a statement of accepted facts. He noted her current complaints of being unable to move her fingers, experiencing numbness in both hands and feet, feeling pain traveling up her arms, and dropping objects. Dr. Sultan reported that his objective examination of both hands and wrists revealed no abnormal orthopedic or neurological findings. He noted that appellant's subjective complaints did not correspond with his objective examination findings. Dr. Sultan reviewed May 11, 2011 electrodiagnostic test results, which revealed bilateral carpal tunnel syndrome; however, he indicated that this condition was not reflected on his examination. He noted appellant's prior diagnosis of bilateral carpal tunnel syndrome and maintained that his examination did not confirm residual right or left carpal tunnel syndrome. Dr. Sultan advised that her bilateral wrist condition was now in remission. He noted that bilateral Tinel's and Phalen's testing failed to confirm any underlying neurological signs of carpal tunnel syndrome. Dr. Sultan indicated that appellant's work injury or employment factors temporarily precipitated her condition which was now in remission. He concluded that, based on clinical presentation, she was currently able to return to her date-of-injury job as a contact representative at the employing establishment. Dr. Sultan explained that his opinion was based on the unremarkable bilateral hand

² *S.P.*, Docket No. 98-1322 (issued September 14, 2000).

and wrist examination findings. He further concluded that no further medical treatment was indicated. In an accompanying work capacity evaluation (Form OWCP-5c), Dr. Sultan found that appellant could work full time without restrictions.

By notice dated July 25, 2019, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Sultan's opinion that the accepted condition had ceased without residuals. It afforded her 30 days to submit additional evidence or argument challenging the proposed action.

OWCP subsequently received a July 24, 2019 attending physician's report (Form CA-20) by Dr. Aaron, who noted a November 1, 1993 date of injury and diagnosed C4-5 herniated discs; bilateral carpal tunnel syndrome; degenerative joint disease of the spine; 1991 left knee tear; 2001 fibromyalgia; back, neck, and knee pain; and a leg fracture due to an October 2008 motor vehicle accident. Dr. Aaron indicated that appellant had not been advised to return to work.

OWCP also received an August 16, 2019 report by Dr. Michael Nissenbaum, a Board-certified neurologist, who indicated that he had performed an electromyogram and nerve conduction velocity (EMG/NCV) testing of appellant's bilateral wrists, which was consistent with a bilateral advanced sensorimotor carpal tunnel syndrome, right worse than left, and right ulnar sensory neuropathy.

In a letter dated September 4, 2019, OWCP requested that Dr. Sultan review Dr. Nissenbaum's August 16, 2019 EMG/NCV study and provide a well-rationalized opinion as to whether appellant had any employment-related residuals or disability.

In an addendum report dated September 9, 2019, Dr. Sultan responded to OWCP's September 4, 2019 letter. He noted that Dr. Nissenbaum's August 16, 2019 EMG/NCV study, which revealed clinical signs of bilateral carpal tunnel syndrome, was not confirmed by his June 24, 2019 examination. Dr. Sultan reiterated his prior opinion that appellant's work-related condition had clinically resolved and she could return to her date-of-injury position with no restrictions, and that no further medical treatment was indicated.

OWCP, in a September 17, 2019 letter, requested that Dr. Sultan provide an additional report which provided medical rationale explaining why the EMG/NCV study results were not causally related to the accepted employment injury and a rationalized opinion as to whether appellant's accepted condition had resolved in light of these objective findings.

In a second addendum report dated September 25, 2019, Dr. Sultan noted that when he examined appellant on June 24, 2019 she claimed that at times she experienced numbness in both hands. He indicated that this was 26 years after she stopped performing work activities on November 1, 1993. Dr. Sultan noted that appellant made no specific claim of numbness involving the right or left first, second, third, and one-half of the fourth digits, but claimed that at times both hands felt numb. He again indicated that his June 24, 2019 examination confirmed intact sensation of both hands without intrinsic muscle atrophy and noted that provocative testing in both hands revealed negative Tinel's and Phalen's bilaterally. Dr. Sultan advised that, despite positive electrodiagnostic readings, he was unable to confirm "triple correlation" in regard to the underlying bilateral carpal tunnel syndrome. He noted that "triple correlation" would indicate

positive electrical testing, positive symptoms, and positive examination findings. Dr. Sultan further noted that positive electrical findings may be present through the electrical test, but not depicted on clinical examination or on specific symptoms or claims. He maintained that these electrical test findings were not reflected in his examination or in a specific claim of carpal tunnel syndrome. Dr. Sultan explained that if appellant continued to have carpal tunnel syndrome for the past 26 years, one would expect to find positive examination findings, notably intrinsic muscle atrophy, impaired sensation, and positive provocative testing. He again opined that she no longer suffered from carpal tunnel syndrome and that the electrical tests were not reflected in her clinical examination.

OWCP, by decision dated October 22, 2019, terminated appellant's wage-loss compensation and medical benefits, effective October 23, 2019, finding that Dr. Sultan's opinion was entitled to the weight of the medical evidence.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.³ 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.⁴ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ 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.⁷

ANALYSIS

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 23, 2019.

The evidence of record establishes that, as of October 23, 2019, the date OWCP terminated appellant's wage-loss compensation and medical benefits, there was disagreement between Dr. Sultan, OWCP's second opinion physician, and Dr. Aaron, appellant's treating physician, as to whether appellant had residuals and disability from her accepted employment injury and the

³ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

⁷ *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

accepted condition of bilateral carpal tunnel syndrome. Further, the report of Dr. Sultan fails to give appropriate consideration to the diagnostic testing studies completed by Dr. Nissenbaum which demonstrated continuing bilateral advanced sensorimotor carpal tunnel syndrome, right worse than left, and right ulnar sensory neuropathy.

Dr. Aaron has consistently opined that appellant continues to exhibit findings of bilateral carpal tunnel syndrome and that she is unable to return to any employment position. He referred her to Dr. Nissenbaum for diagnostic testing. In his August 16, 2019 report, Dr. Nissenbaum indicated that he had performed EMG/NCV testing of appellant's bilateral wrists, which was consistent with a bilateral advanced sensorimotor carpal tunnel syndrome, right worse than left, and right ulnar sensory neuropathy. Dr. Aaron cited to the findings of Dr. Nissenbaum in opining that appellant was unable to return to work.

OWCP relied upon the second opinion findings of Dr. Sultan in finding that appellant had no continuing residuals or disability in terminating her wage-loss compensation and medical benefits. Dr. Sultan noted that his June 24, 2019 examination confirmed intact sensation of both of her hands without intrinsic muscle atrophy and noted that provocative testing in both hands revealed negative Tinel's and Phalen's bilaterally. He advised that, despite positive electrodiagnostic readings, he was unable to confirm "triple correlation" in regard to the underlying bilateral carpal tunnel syndrome. Dr. Sultan noted that "triple correlation" would indicate positive electrical testing, positive symptoms, and positive examination findings. He acknowledged Dr. Nissenbaum's testing, but indicated that positive electrical findings may be present through the electrical test, but not depicted on clinical examination or on specific symptoms or claims. Dr. Sultan maintained that these electrical test findings were "not reflected" in his examination. He explained that if appellant continued to have carpal tunnel syndrome for the past 26 years, one would expect to find positive examination findings, notably intrinsic muscle atrophy, impaired sensation, and positive provocative testing. Dr. Sultan concluded, therefore, that she no longer suffered from carpal tunnel syndrome and that the electrical tests were not reflected in her clinical examination. The Board finds that his report is insufficient for OWCP to meet its burden of proof to establish that appellant has no residuals of disability due to her accepted condition. First, Dr. Sultan's opinion is contradicted by the physical findings of Dr. Aaron and Dr. Nissenbaum and by the opinion of Dr. Aaron who finds her unable to return to any employment.⁸ Second, Dr. Sultan's opinion is based upon his requirement of a "triple correlation" standard which is not reflective of appellant's current physical examination findings and diagnostic testing results, but is instead a requirement of general application and are not determinative as they are not based directly upon her current presentation.⁹ The Board therefore finds that OWCP improperly relied upon the opinion of him as the basis for terminating her continuing compensation benefits.

⁸ 5 U.S.C. § 8123(a). *See also* *R.C.*, Docket No. 18-0463 (issued February 7, 2020); *G.B.*, Docket No. 16-0996 (issued September 14, 2016) (where the Board held that OWCP improperly terminated the claimant's wage-loss compensation and medical benefits as there was an unresolved conflict of medical opinion between her treating physician and a second opinion specialist).

⁹ *L.C.*, Docket No. 17-1811 (issued March 23, 2018); *N.B.*, Docket No. 14-1702 (issued December 29, 2014); *S.A.*, Docket No. 13-1551 (issued December 17, 2013); *Gloria J. McPherson*, 51 ECAB 441 (2000).

Thus, the Board finds that OWCP has not met its burden of proof to terminate appellant wage-loss compensation and medical benefits, effective October 23, 2019.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 23, 2019.

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: June 24, 2020
Washington, DC

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

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board