

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

_____)	
L.S., Appellant)	
)	
and)	Docket No. 23-0730
)	Issued: October 4, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Newark, NJ, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
Michael D. Overman, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 26, 2023 appellant, through counsel, filed a timely appeal from a November 2, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish continuing disability or residuals on or after August 6, 2019, causally related to her accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On February 6, 2000 appellant, then a 39-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she sustained tendinitis causally related to factors of her federal employment. OWCP accepted her claim for bilateral arm tendinitis and bilateral carpal tunnel syndrome. Appellant underwent an OWCP-authorized left carpal tunnel release on March 22, 2012 and an OWCP-authorized right carpal tunnel release on September 12, 2012. OWCP paid her wage-loss compensation for partial disability based on her wage-earning capacity from April 20, 2003 through May 1, 2013. It further paid appellant wage-loss compensation for total disability.

In a progress report dated May 5, 2017, Dr. Teofilo A. Dauhajre, a Board-certified orthopedic surgeon, found a negative Tinel's sign and Phalen's test of the wrists. He diagnosed status post right and left carpal tunnel releases and advised that appellant should return as needed.

OWCP referred appellant to Dr. Wayne J. Altman, an orthopedic surgeon, for a second opinion examination.

In a report dated July 21, 2018, Dr. Altman indicated that appellant had undergone brain surgery the previous September and was a poor historian. On examination he observed a negative Phalen's test and Tinel's sign bilaterally with normal reflexes. Dr. Altman determined that appellant had no evidence of carpal tunnel syndrome or radiculopathy and advised that electrodiagnostic studies from 2015 were normal. He noted that she had complaints of pain in the upper extremities but no findings of bilateral arm tendinitis. Dr. Altman opined that appellant could work eight hours per day without restrictions considering her carpal tunnel syndrome. He noted that there were "no medical records concerning bilateral arm tendinitis." Dr. Altman, in an addendum dated October 30, 2018, advised that a functional capacity evaluation (FCE) indicated that appellant could perform sedentary employment full time.

In a December 13, 2018 response to OWCP's request for clarification, Dr. Altman advised that appellant could return to work performing modified employment.

In February 2019, OWCP requested further clarification from Dr. Altman; however, he had retired.

³ Docket No. 08-1232 (issued December 18, 2008); Docket No. 10-1818 (issued May 12, 2011); Docket No. 12-263 (issued May 23, 2012); Docket No. 20-1204 (issued October 4, 2021).

On May 2, 2019 OWCP referred appellant to Dr. Robert DeFalco, Jr., an osteopath, for a second opinion examination.

In a report dated May 2, 2019, Dr. DeFalco discussed appellant's complaints of continued pain in the wrists, shoulders, and elbows and numbness of the hands bilaterally. On examination he found no instability of the shoulders, full strength with no swelling, tenderness, or instability of the elbows bilaterally, and a negative Tinel's sign and Phalen's test of the bilateral wrists with no swelling, effusion, instability, or atrophy. Dr. DeFalco measured reduced motion of the wrists bilaterally. He diagnosed resolved bilateral rotator cuff tendinitis, resolved bilateral elbow tendinitis, and resolved bilateral carpal tunnel syndrome post decompression. Dr. DeFalco opined that appellant required no further treatment and could resume her usual employment without restriction. In a work capacity evaluation (Form OWCP-5c) of even date, he indicated that appellant could perform her usual job.

On May 29, 2019 OWCP notified appellant of its proposed termination of her wage-loss compensation and medical benefits as the weight of the evidence established that she no longer had any employment-related disability or residuals due to her accepted employment injury. It afforded her 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

In response, counsel argued that a conflict in medical opinion existed between Dr. DeFalco and Dr. Dauhajre.

In a supplemental report dated June 12, 2019, Dr. DeFalco reviewed the position of mail handler and opined that appellant could perform the duties of the position without restrictions. On July 16, 2019 he indicated that she had subjective findings of reduced range of motion of her wrists bilaterally. Dr. DeFalco determined that no objective evidence supported that appellant had continued residuals of her orthopedic condition.

By decision dated August 5, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective August 6, 2019. It found that Dr. DeFalco's opinion represented the weight of the evidence and established that she had no further disability or residuals of her accepted employment injury.

On August 13, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an August 7, 2019 report, Dr. Dauhajre noted that appellant had developed bilateral wrist pain with paresthesia and numbness. He diagnosed bilateral carpal tunnel syndrome due to her employment duties with a recurrence of symptoms around October 2014. Dr. Dauhajre recommended an electromyogram (EMG) and nerve conduction velocity (NCV) study.

A telephonic hearing was held on November 25, 2019.

On December 12, 2019 Dr. Dauhajre noted his review of Dr. DeFalco's reports. He advised that appellant had developed recurrent carpal tunnel syndrome subsequent to her carpal tunnel releases. Dr. Dauhajre again recommended additional electrodiagnostic testing.

By decision dated January 15, 2020, OWCP's hearing representative modified the August 5, 2019 decision to find that OWCP had met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, but that subsequent reports from Dr. Dauhajre were sufficient to create a conflict in medical opinion with Dr. DeFalco. The hearing representative instructed OWCP, on remand, to update its statement of accepted facts (SOAF) and refer appellant for an impartial medical examination.

Subsequently, OWCP received the results of an EMG and NCV study performed on March 10, 2015, which yielded normal findings.

On February 4, 2020 OWCP referred appellant to Dr. Howard M. Pecker, a Board-certified orthopedic surgeon, for an impartial medical examination. It provided him with a statement of accepted facts (SOAF) indicating that it had accepted the claim for bilateral arm tendinitis and bilateral carpal tunnel syndrome. In accompanying questions, OWCP requested that Dr. Pecker address whether she had any further disability or need for further treatment due to the accepted conditions. It advised that it had accepted appellant's claim for bilateral carpal tunnel syndrome of the upper limb, and other synovitis and tenosynovitis of the bilateral upper arms.

In a report dated March 17, 2020, Dr. Pecker obtained a history of appellant developing carpal tunnel syndrome at work in 2002, subsequently treated with surgery. He provided his review of the medical evidence. Dr. Pecker noted that appellant reported decreased sensation in the small finger of the left hand. On examination he found a negative Phalen's test and Tinel's sign bilaterally with no wasting or asymmetry and good interosseous strength. Dr. Pecker found no objective findings of carpal tunnel syndrome bilaterally and opined that appellant required no further treatment "for her employment[-]related condition." He further asserted that she had no evidence of disability due to her accepted employment injury or any subsequent injuries. Dr. Pecker opined that appellant could resume her usual employment without restrictions. He explained that objective findings demonstrated no carpal tunnel syndrome and that reliable EMG results were normal.

By decision dated March 23, 2020, OWCP found that appellant's wage-loss compensation and authorization for medical treatment should remain terminated. It determined that Dr. Pecker's opinion represented the special weight of the evidence and established that she had no further employment-related disability or residuals.

Appellant appealed to the Board. By decision dated October 4, 2021, the Board affirmed the January 15, 2020 termination decision but set aside the March 23, 2020 decision denying appellant's claim for continuing disability and residuals.⁴ The Board found that Dr. Pecker failed to address whether appellant had continuing disability or the need for further medical treatment due to her accepted condition of bilateral arm tendinitis, and thus his opinion was not entitled to the special weight as the IME. The Board remanded the case for OWCP to obtain a supplemental report from Dr. Pecker addressing whether appellant had further disability or residuals due to her accepted bilateral arm tendinitis.

⁴ *Supra* note 3.

In a supplemental report dated March 7, 2022, Dr. Pecker advised that he had reviewed his notes and found no “evidence of further disability or residuals secondary to the accepted condition of bilateral arm tendinitis.” He provided as rationale that the findings on physical examination showed no residuals of the accepted condition.

By decision dated April 20, 2022, OWCP found that appellant had no continuing disability and residuals due to the accepted employment injury.

On April 27, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

A telephonic hearing was held on August 17, 2022. Appellant described her symptoms from continuing carpal tunnel syndrome. She advised that she was currently not receiving treatment due to the termination of her medical benefits. Counsel asserted that Dr. Pecker had failed to reevaluate appellant or perform tests to determine if she had continuing tendinitis.

In a report dated August 22, 2022, Dr. Nazar H. Haidri, a Board-certified neurologist, discussed appellant’s history of bilateral carpal tunnel syndrome since 2001 treated with bilateral carpal tunnel releases. On examination, he found a positive Tinel’s sign over the median nerve of the wrists bilaterally. Dr. Haidri diagnosed bilateral carpal tunnel syndrome and referred appellant for EMG studies.

Electrodiagnostic testing performed on August 27, 2022 showed findings consistent with bilateral carpal tunnel syndrome and left ulnar neuropathy at the elbow. In a progress report of even date, Dr. Haidri again found a positive Tinel’s sign at the median nerve of both wrists. He advised appellant to return as needed.

By decision dated November 2, 2022, OWCP’s hearing representative affirmed the April 20, 2022 decision.

LEGAL PRECEDENT

When OWCP properly terminates compensation benefits, the burden shifts to appellant to establish continuing residuals or disability after that date, causally related to the accepted employment injury.⁵ To establish 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 causal relationship.⁶

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

⁵ See *V.D.*, Docket No. 22-0123 (issued April 20, 2023); *S.M.*, Docket No. 18-0673 (issued January 25, 2019); *Manuel Gill*, 52 ECAB 282 (2001).

⁶ *Id.*

third physician who shall make an examination.⁷ Where a case is referred to an IME 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.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish continuing disability or residuals on or after August 6, 2019, causally related to her accepted employment injury.

On prior appeal, the Board reviewed medical evidence submitted prior to OWCP's March 23, 2020 decision. The Board found that OWCP properly terminated appellant's wage-loss compensation and medical benefits as she no longer had disability or residuals due to her accepted employment injury. The Board notes that it is unnecessary to consider the evidence that was previously considered in its October 4, 2021 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA.⁹ It further determined, however, that the case was not in posture for decision regarding whether she had continuing disability or the need for medical treatment due to her accepted condition of bilateral arm tendinitis and remanded the case for OWCP to obtain a supplemental report from Dr. Pecker, the IME.

In his initial report dated March 17, 2020, Dr. Pecker reviewed appellant's history of injury and the medical evidence. On examination, he found a negative Phalen's test and Tinel's sign bilaterally on examination with no wasting, asymmetry, or loss of strength. Dr. Pecker found no objective findings of carpal tunnel syndrome or evidence of disability due to her accepted employment injury. He opined that appellant could resume her usual employment. In a supplemental report dated March 7, 2022, Dr. Pecker reviewed the findings from his prior report and opined that appellant had no disability or residuals of her accepted bilateral arm tendinitis. He explained that the examination findings demonstrated no residuals of the accepted condition.

The Board finds that Dr. Pecker's opinion is reasoned and based on a complete factual and medical history. Dr. Pecker accurately summarized the relevant evidence, provided findings on examination, and reached conclusions regarding appellant's condition which comported with his findings.¹⁰ Consequently, his opinion is entitled to the special weight of the evidence and

⁷ 5 U.S.C. § 8123(a); *B.T.*, Docket No. 21-0388 (issued October 14, 2021); *L.T.*, Docket No. 18-0797 (issued March 14, 2019); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁸ 20 C.F.R. § 10.321; *B.M.*, Docket No. 21-0101 (issued December 15, 2021); *T.D.*, Docket No. 17-1011 (issued January 17, 2018); *James P. Roberts*, 31 ECAB 1010 (1980).

⁹ *See V.D.*, Docket No. 22-0123 (issued April 20, 2023); *G.H.*, Docket No. 20-0892 (issued July 9, 2021); *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

¹⁰ *See P.H.*, Docket No. 21-1072 (issued May 18, 2022); *E.A.*, Docket No. 18-1798 (issued December 31, 2019); *A.M.*, Docket No. 18-1243 (issued October 7, 2019).

establishes that she had no continuing disability or residuals due to her accepted employment injury.¹¹

On August 22, 2022 Dr. Haidri reviewed appellant's history of bilateral carpal tunnel syndrome beginning in 2001 treated with surgical releases. He found a positive Tinel's sign over the median nerve of the wrists bilaterally. Dr. Haidri diagnosed bilateral carpal tunnel syndrome and referred appellant for EMG studies. EMG testing performed on August 27, 2022 showed bilateral carpal tunnel syndrome and left elbow ulnar neuropathy. In a progress report of even date, Dr. Haidri again found a positive Tinel's sign at the median nerve bilaterally. He recommended that appellant return as needed. Dr. Haidri, however, did not address the cause of the diagnosed bilateral carpal tunnel syndrome or whether it resulted in disability from employment. The Board has long held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹² Therefore, Dr. Haidri's reports are insufficient to overcome the special weight afforded the IME and meet appellant's burden of proof to establish continuing residuals or disability.

As the medical evidence is insufficient to establish continuing disability or residuals on or after August 6, 2019 due to the accepted employment injury, the Board finds that appellant has not met her burden of proof.

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 appellant has not met her burden of proof to establish continuing disability or residuals on or after August 6, 2019, causally related to her accepted employment injury.

¹¹ *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *Melvina Jackson*, 38 ECAB 443 (1987).

¹² *K.R.*, Docket No. 22-0019 (issued July 11, 2022); *A.M.*, Docket No. 18-0562 (issued January 23, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *see also Leslie C. Moore*, 52 ECAB 132 (2000).

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 2023
Washington, DC

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

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

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