



## **ISSUE**

The issue is whether the Office properly terminated appellant's compensation and medical benefits relative to the accepted conditions of temporary aggravation of bilateral CMC arthritis and temporary aggravation of left metacarpal arthritis.

## **FACTUAL HISTORY**

This is the second time this case has been before the Board on appeal. By decision dated August 4, 2006, the Board affirmed the Office's September 4, 2005 decision denying appellant's request to expand her claim to include the condition of depression. It affirmed the Office's September 4, 2005 and February 2, 2006 decisions denying her entitlement to wage-loss compensation from April 2 to August 19, 2005.<sup>2</sup> The findings of fact and conclusions of law are incorporated herein by reference.

On May 19, 2003 appellant, a 43-year-old window clerk, filed an occupational injury claim (Form CA-2), alleging that she developed bilateral soreness in both thumbs, as well as swelling and numbness of both hands, as a result of duties relating to her federal employment. On August 26, 2003 her claim was accepted for bilateral carpal tunnel syndrome and tendinitis of the right thumb. The Office subsequently approved right thumb ligament reconstruction, which was performed on May 24, 2004. Appellant returned to work full time on or about September 1, 2004. On October 6, 2004 Dr. Patrick D. Devanny, an attending Board-certified orthopedic surgeon, found that appellant's reconstructive surgery had failed. He observed that appellant had tenderness at the CMC joint; positive Tinel's and Phalen's at both wrist levels; and positive grind and shift tests. He recommended work restrictions, including no use of the right upper extremity; no repetitive use of the left upper extremity; and no lifting greater than one pound. On October 20, 2004 appellant accepted a limited-duty position as a modified clerk, which encompassed Dr. Devanny's restrictions. Appellant stopped working on January 1, 2005.

Appellant submitted an October 19, 2004 report from Dr. Timothy V. Sandell, a Board-certified physiatrist, who stated that an electromyogram (EMG) examination of appellant's bilateral upper extremities suggested mild to moderate nerve entrapment at both wrists, consistent with mild to moderate carpal tunnel syndrome. On January 4, 2005 Dr. Devanny diagnosed left thumb CMC arthritis, stating that appellant's left thumb was demonstrating symptoms similar to those experienced prior to her right thumb surgery.

Appellant submitted a March 16, 2005 report from Dr. Jack L. Rook, a Board-certified physiatrist, who provided diagnoses, including: chronic right hand/thumb pain; status post arthroplasty of the right thumb; left thumb pain; arthritis of the left carpal metacarpal joint; and bilateral carpal tunnel syndrome. Dr. Rook's examination of appellant revealed positive Tinel's sign at both transverse carpal ligaments. Grip strength was weak on the right and functional on the left. Dr. Rook stated that appellant had left arm pain and crepitations of the base of the thumb with range of motion of the joints, noting that her symptoms on the left were similar to those experienced on the right side in January 2003. He opined that appellant had not reached

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<sup>2</sup> Docket No. 06-770 (issued August 4, 2006).

maximum medical improvement and that, because of compensatory overuse to accommodate her painful right upper extremity, she had developed problems with her left hand, including tendinitis and arthritis at the base of the left thumb. In a July 1, 2005 duty status report, Dr. Rook opined that appellant was unable to work, and was experiencing bilateral hand and thumb pain.

In a letter dated May 2, 2005, Dr. Devanny opined that appellant's repetitive work throughout the day for many years caused worsening of her bilateral thumb arthritis. He stated his belief that she had "an underlying condition that was aggravated by work."

On August 18, 2005 appellant, by her representative, asked the Office to accept the condition of CMC joint arthritis and to approve a surgical consultation.

In an August 29, 2005 report, Dr. Rook opined that appellant was not capable of working at that time. He stated that appellant had limited use of her right upper extremity; decreased sensation in her right thumb; limited range of motion and crepitations with range of motion of the right thumb. Dr. Rook noted positive Tinel's sign and bilateral transverse carpal ligaments; significant deformity at the base of the right thumb, and involving the metacarpophalangeal and the carpal metacarpal joints. Grip strength was markedly decreased on the right, and sensation was decreased in the right thumb.

The record contains an undated statement of accepted facts of a carpal tunnel syndrome, which reflected that appellant's claim was accepted for bilateral carpal tunnel syndrome and tendinitis of the right thumb. The statement also indicated that she underwent a right thumb ligament reconstruction with tendon interposition and excision of trapezium on May 24, 2004.

On September 13, 2005 the Office referred appellant, together with the statement of accepted facts of a carpal tunnel syndrome and the medical record, to Dr. Hendrick J. Arnold, III, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated October 7, 2005, Dr. Arnold opined that appellant had no functional use of either hand. He provided diagnoses of bilateral carpal metacarpal and bilateral metacarpal arthritis; mild bilateral carpal tunnel syndrome; and subluxation of the right thumb. Dr. Arnold observed abnormal ranges of motion in the right hand: position of rest -- 20 degrees extension; IP flexion -- 40 degrees; MP extension -- 40 degrees, a subluxed position. He found nerve root irritation with positive Tinel's testing and tender scars. Motor strength could not be determined due to pain. Examination of the left hand revealed normal range of motion of the fingers and thumb. Measurements showed: IP flexion -- 80 degrees; MP flexion -- 80 degrees; extension -- 0 degrees; radial abduction -- 60 degrees; adduction to 0 centimeters; and opposition to 8 centimeters. Two-point discrimination was five millimeters or less. Dr. Arnold concluded that appellant's current arthritic symptoms were due to work-related aggravation of a preexisting arthritic condition, and that her carpal tunnel syndrome was causally related directly to employment. He stated that "arthroscopy [was] a consideration for the left hand, but considering her poor results on the right, she may be quite leery of undergoing the same procedure." Dr. Arnold further opined that appellant had sustained aggravation of a preexisting condition. He stated: "On the right hand, I think that it is permanent. On the left hand, I think that the aggravation will probably be temporary, supposing a satisfactory surgery outcome."

On November 2, 2005 appellant, through her representative, requested that her claim be accepted for bilateral thumb carpal middle carpal arthritis. By letter dated November 8, 2005, the Office asked Dr. Arnold to clarify his report. It asked whether the aggravation of appellant's bilateral metacarpal arthritis and bilateral carpal metacarpal arthritis was permanent or temporary and, if temporary, when the aggravation ceased.

In a supplemental report dated November 21, 2005, Dr. Arnold opined that appellant's right thumb condition was permanent, in that the carpal metacarpal joint was subluxed and would never return to a normal position. Noting that appellant had been off work since January 2005, he opined that the aggravation of appellant's preexisting condition in the left thumb would have ceased within six months of termination of employment.

By decision dated July 7, 2006, the Office expanded appellant's claim to include the following accepted conditions: permanent aggravation of right bilateral transient arthropathy; temporary aggravation of left bilateral transient arthropathy; permanent aggravation of traumatic right hand arthroscopy; and temporary aggravation of left hand arthropathy.

By decision dated July 10, 2006, the Office modified its July 7, 2006 decision to reflect that the temporary aggravation of left transient arthropathy resolved by January 2005, and the left thumb aggravation ceased as of July 1, 2005. On August 9, 2006 appellant, through her representative, requested an oral hearing, which was later modified to a request for review of the written record.<sup>3</sup>

By decision dated April 12, 2007, the Office hearing representative affirmed the Office's July 10, 2006 decision, finding that the temporary aggravation of both left CMC arthritis and left metacarpal arthritis had resolved no later than July 1, 2005. The representative found that the weight of the medical evidence was represented by Dr. Arnold's October 7 and November 21, 2005 reports. The representative remanded the case for a determination as to whether additional work activities after appellant's return to work on December 17, 2005 caused a further aggravation of her preexisting condition.

### **LEGAL PRECEDENT**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>4</sup> Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> The right to medical benefits for an accepted condition is not limited to the period

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<sup>3</sup> The record contains medical reports for the period April 28, 2006 to March 9, 2007 relating to appellant's claim for a schedule award for her accepted conditions of bilateral carpal tunnel syndrome and CMC arthritis of the right thumb. As these reports do not address the conditions of temporary aggravation of left CMC arthritis and left metacarpal arthritis, they are not relevant to the issue in this case.

<sup>4</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>5</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

of entitlement to compensation for disability.<sup>6</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>7</sup>

### ANALYSIS

In an April 12, 2007 decision, the Office accepted the temporary aggravation of both left CMC arthritis and left metacarpal arthritis. The Office found that the accepted conditions had resolved no later than July 1, 2005. The Office's acceptance of a claim for a specified period of disability does not shift the burden of proof to the claimant to demonstrate that she remains disabled or has residuals thereafter.<sup>8</sup> It is the Office's burden to demonstrate the absence of employment-related disability or residuals for the period following termination or modification of benefits.<sup>9</sup> The Board finds that the Office failed to meet its burden to establish that appellant no longer had residuals of her accepted left upper extremity conditions.

The Office based its decision to terminate compensation and medical benefits on Dr. Arnold's October 7 and November 21, 2005 reports. The Board finds that these reports are insufficient to meet the Office's burden of proof.

Dr. Arnold's October 7, 2005 report does not support the conclusion that appellant's temporary aggravation of left CMC arthritis and left metacarpal arthritis had resolved. Stating that appellant had no functional use of either hand, he concluded that appellant's current bilateral carpal metacarpal and bilateral metacarpal arthritis conditions were due to work-related aggravation of a preexisting arthritic condition. Dr. Arnold noted that "arthroscopy [was] a consideration for the left hand, but considering her poor results on the right, she may be quite leery of undergoing the same procedure." He further indicated, "On the right hand, I think that it is permanent. On the left hand, I think that the aggravation will probably be temporary, supposing a satisfactory surgery outcome." Dr. Arnold's statements provide no indication that the aggravation of appellant's left CMC arthritis and left metacarpal arthritis had clearly resolved. Rather, his opinion as to the left hand is speculative suggesting that the aggravation would continue until appellant undergoes successful surgery.

In his supplemental report dated November 21, 2005, Dr. Arnold stated that the aggravation of appellant's preexisting condition in the left thumb "would have ceased within six months of termination of employment," which he noted was in January 2005. This report is of diminished probative value as the physician did not adequately address the basis for reaching this conclusion. This statement is in contrast to his October 7, 2005 report, which reflected a continuing aggravation of the left thumb condition. The Office did not attempt to reconcile Dr. Arnold's opinion regarding the aggravation accepted in this case.

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<sup>6</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>7</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

<sup>8</sup> *Elsie L. Price*, 54 ECAB 734, 739 (2003).

<sup>9</sup> *Id.*

The Board finds that the Office improperly terminated medical benefits for the accepted conditions of temporary aggravation of left CMC arthritis and left metacarpal arthritis. In order to terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.<sup>10</sup> As noted, Dr. Arnold's opinion is insufficient to show that appellant no longer has residuals of her accepted conditions. The record does not contain a rationalized medical opinion establishing that accepted conditions of temporary aggravation of left CMC arthritis and left metacarpal arthritis had resolved as of July 1, 2005. The Office thus improperly terminated authorization for medical treatment for these accepted conditions.

**CONCLUSION**

The Board finds that the Office improperly terminated compensation and medical benefits relative to the accepted conditions of temporary aggravation of bilateral CMC arthritis and temporary aggravation of left metacarpal arthritis.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated April 12, 2007 and July 10, 2006 are reversed.

Issued: February 21, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> *Pamela K. Guesford*, 53 ECAB 727 (2002).