

electromyography (EMG) study obtained by Dr. Rao S. Pasupuleti, a Board-certified neurologist, exhibited prolonged distal motor latencies of the right upper extremity and diagnosed mild carpal tunnel syndrome. Thereafter, OWCP accepted appellant's occupational disease claim for right carpal tunnel syndrome, placed her on the periodic rolls and paid compensation benefits accordingly.²

OWCP referred appellant to Dr. Kenneth P. Heist, an osteopath specializing in orthopedic surgery, for a second opinion examination regarding her accepted condition.

In a July 8, 2011 report, Dr. Heist related that appellant experienced bilateral wrist and neck pain. After he reviewed the history of injury and the medical file, he conducted a physical examination, during which he observed normal bilateral wrist and cervical range of motion (ROM), full grip strength and negative Phalen's test and Tinel's signs. Dr. Heist diagnosed right wrist sprain and concluded that the objective findings did not support a diagnosis of carpal tunnel syndrome or substantiate appellant's subjective complaints. He noted that she was capable of working full time with no restrictions. In a September 9, 2011 supplemental report, Dr. Heist reviewed the March 18, 2011 statement of accepted facts and reaffirmed his opinion. He advised that his examination was essentially normal, there were no signs of radiculopathy and Tinel's sign and Phalen's test were negative for carpal tunnel syndrome.

In a September 20, 2011 letter, OWCP determined that Dr. Heist's July 8 and September 20, 2011 reports constituted the weight of the evidence and notified appellant of its proposal to terminate her wage-loss compensation and medical benefits on the grounds that she no longer was disabled or had residuals due to her work injury. It gave appellant 30 days to submit additional argument or evidence.

Counsel argued in a September 30, 2011 letter that Dr. Heist's reports were based on an inaccurate factual and medical background.

By decision dated December 6, 2011, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits.

Counsel requested a video hearing, which was held on April 23, 2012. Appellant testified that Dr. Heist actually diagnosed her with carpal tunnel syndrome during the second opinion examination. Counsel added that the March 18, 2011 statement of accepted facts should have been expanded to include right rhomboid myofascitis and right trapezius myofascitis.

In a May 3, 2012 report, Dr. Daniel Oswari, a Board-certified family practitioner, related that appellant was diagnosed with carpal tunnel syndrome in 2007 and remained symptomatic. He advised her to avoid grasping or twisting activities involving her hands and wrists and lifting items weighing over five pounds.

On July 3, 2012 OWCP's hearing representative affirmed the December 6, 2011 decision.

² Information was incorporated into the March 18, 2011 statement of accepted facts.

LEGAL PRECEDENT

Once OWCP has accepted a claim, it has the burden of justifying termination or modification of compensation benefits,³ which includes furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability ceased or was no longer related to the employment.⁵ The right to medical benefits for an accepted condition, on the other hand, is not limited to the period of entitlement to disability compensation. To terminate authorization for medical treatment, OWCP must establish that an employee no longer has residuals of an employment-related condition, which would require further medical treatment.⁶

In assessing medical evidence, the number of physicians supporting one position or another is not controlling. Instead, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. Factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

OWCP accepted appellant's occupational disease claim for right carpal tunnel syndrome, placed her on the periodic rolls and paid compensation benefits accordingly. Appellant was later referred to Dr. Heist for a second opinion examination to assess her work-related condition. Dr. Heist concluded in July 8 and September 20, 2011 reports that her disability ceased and that she no longer had residuals of her industrial injury. In response, counsel submitted a May 3, 2012 report from Dr. Oswari stating that appellant was to refrain from grasping or twisting activities involving her hands and wrists and lifting items weighing over five pounds. OWCP subsequently terminated appellant's wage-loss compensation and medical benefits effective December 6, 2011.

The Board finds that Dr. Heist's July 8 and September 20, 2011 reports constitute the weight of the medical evidence. As noted, the weight of the medical evidence is determined by its reliability, its probative value and its convincing quality.⁸ In this case, Dr. Heist reviewed the March 18, 2011 statement of accepted facts and medical file. He conducted a physical examination and observed normal bilateral wrist and cervical ROM, full grip strength and negative Phalen's test and Tinel's signs. Based on this assessment, Dr. Heist concluded that

³ *I.J.*, 59 ECAB 408 (2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

⁴ *D.C.*, Docket No. 09-1070 (issued November 12, 2009); *Larry Warner*, 43 ECAB 1027 (1992).

⁵ *I.J.*, *supra* note 3.

⁶ *L.G.*, Docket No. 09-1692 (issued August 11, 2010); *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ *Anna M. Delaney*, 53 ECAB 384, 386 (2002).

⁸ *Id.*

appellant's employment-related disability and residuals ceased, explaining that the objective findings neither supported a current diagnosis of carpal tunnel syndrome nor substantiated her subjective complaints. On the other hand, Dr. Oswari's May 3, 2012 report failed to provide sufficient medical rationale explaining how residuals of appellant's accepted right carpal tunnel syndrome continued and were disabling.⁹ Consequently, the Board finds that OWCP properly relied on Dr. Heist's opinion in terminating appellant's wage-loss compensation and medical benefits.

Counsel contends on appeal that OWCP disregarded prior medical records that diagnosed right carpal tunnel syndrome, including Dr. Pasupleti's November 16, 2007 nerve conduction and intramuscular EMG study. In essence, he argues that appellant remains entitled to compensation benefits for an indefinite duration based on outdated evidence. OWCP is obligated under the provisions of its procedure manual to review cases on the periodic rolls annually to ensure that payments are correct and continuing entitlement is substantiated in the file.¹⁰ This responsibility includes obtaining pertinent medical evidence, namely a report from a physician addressing whether an employee's continued disability is causally related to his or her accepted injury or illness.¹¹ In this case, OWCP complied with its procedures and obtained new and rationalized medical evidence discharging its burden of justifying termination.¹²

Counsel also contends that Dr. Oswari's May 3, 2012 report either constituted the weight of the evidence or created a medical conflict necessitating a referral for a referee examination. The Board has already addressed the deficiencies of his report. Furthermore, given that the opinions of Dr. Heist and Dr. Oswari are not of equivalent probative value, a referee examination is unnecessary.¹³

Appellant submitted new evidence after issuance of the July 3, 2012 decision. However, the Board lacks jurisdiction to review evidence for the first time on appeal.¹⁴

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.

⁹ *Dean E. Pierce*, 40 ECAB 1249 (1989).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Claims*, Chapter 2.812.5 (May 2012).

¹¹ *Id.* at Chapter 2.812.5(b).

¹² *See also Conard Hightower*, 54 ECAB 796 (2003) (contemporaneous evidence is entitled to greater probative value).

¹³ *See John D. Jackson*, 55 ECAB 465 (2004) (a conflict in medical opinion only exists when there are opposing medical reports of virtually equal weight and rationale).

¹⁴ 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits effective December 6, 2011.

ORDER

IT IS HEREBY ORDERED THAT the July 3, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 15, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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