

to the accepted employment injury; and (2) whether appellant has met his burden of proof to establish continuing residuals or disability on or after March 29, 2022 causally related to the accepted employment injury.

FACTUAL HISTORY

On October 23, 2000 appellant, then a 39-year-old special agent/criminal investigator, filed an occupational disease claim (Form CA-2) alleging that he sustained carpal tunnel syndrome of the left hand and pre-carpal tunnel syndrome of the right hand due to factors of his federal employment, including the use of firearms. He noted that he first became aware of his condition on August 15, 2000 and realized its relation to his federal employment on September 15, 2000. OWCP accepted the claim for left carpal tunnel syndrome. It subsequently expanded the acceptance of the claim to include right carpal tunnel syndrome. OWCP paid him wage-loss compensation on the supplemental rolls effective August 15, 2000, and on the periodic rolls, effective August 8, 2004.

In an August 31, 2020 report, Dr. James J. Choo, a Board-certified pain management specialist, discussed appellant's history of injury and noted appellant's complaints of bilateral pain and tingling from the wrists into the thumb, index, and middle fingers, worse in the left hand. He noted that appellant also stated that, both hands radiated this pain above each wrist, he often woke at night with numb wrists, and that his grip strength was diminished and he often dropped things due to the carpal tunnel syndrome. Dr. Choo's physical examination revealed positive Phalen's wrist-flexion test with paresthesias in the wrist, thumb, and index and middle fingers, positive Tinel's percussion sign test with tapping over the wrist resulting in the appearance of paresthesias, and wrist flexion resulting in positive paresthesias for carpal tunnel syndrome. He diagnosed bilateral carpal tunnel syndrome and recommended steroid injections, physical therapy, continued use of pain medications, and wrist splints. In an attending physician's report (Form CA-20) of even date, Dr. Choo advised that appellant was totally disabled from work from August 15, 2000 to present.

On November 5, 2020 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, for a second opinion examination and evaluation with Dr. Nicholas A. Grimaldi, an osteopath specializing in orthopedic surgery. It requested that Dr. Grimaldi evaluate whether appellant continued to have residuals or disability due to the accepted August 15, 2000 employment injury.

In a November 30, 2020 report, Dr. Grimaldi noted his review of the SOAF, discussed appellant's factual and medical history, and reported his findings on physical examination. He noted that appellant had undergone a lower extremity electromyogram and nerve conduction velocity (EMG/NCV) study on May 16, 2000, which demonstrated low amplitudes at the bottom of their normal range and an EMG/NCV study on August 8, 2000, which demonstrated mild delay in median motor distal latency. Examination revealed bilateral hand muscle strength of 4/5 with subjective decrease in sensation, discomfort with Tinel's to bilateral wrists, positive Phalen's bilaterally, and decreased 2-point sensation in bilateral hands. Dr. Grimaldi also observed that no signs of atrophy were appreciated, but an objectively weak examination was possibly self-limiting. He opined that appellant continued to have bilateral carpal tunnel syndrome to the point that appellant was ready to undergo surgery on his left hand. Dr. Grimaldi stated that appellant had

failed injections and bracing and had deferred any further treatment for 20 years. He further opined that “fortunately this claimant has done well with previous treatment, and if [appellant] does not undergo surgery for his continued pain, there should not be any restrictions” based on carpal tunnel syndrome. Dr. Grimaldi noted that appellant still went shooting twice per month, using a .45 caliber handgun, shooting at least 100 rounds. He explained that appellant had residuals from unrelated medical conditions such as chronic back pain and depression, but that, with regard to the accepted work condition, there was no medical restriction for carpal tunnel syndrome. In a work capacity evaluation for musculoskeletal conditions (Form OWCP-5c) dated December 2, 2020, Dr. Grimaldi indicated that appellant was capable of performing his usual job without restrictions, noting that this was based on appellant’s carpal tunnel syndrome and did not account for his nonwork-related conditions.

In a note dated September 8, 2021, Dr. Choo indicated that his practice had seen appellant for treatment of chronic pain associated with carpal tunnel syndrome and back injuries since 2014. He reported that appellant continued to have pain in his hands consistent with carpal tunnel syndrome, opined that appellant remained totally disabled from work, and stated that he did not anticipate significant improvement of appellant’s ability to return to work. In a Form CA-20 of even date, Dr. Choo indicated that appellant remained totally disabled from work.

On February 16, 2022 OWCP notified appellant of its proposed termination of his wage-loss compensation based on Dr. Grimaldi’s opinion that appellant no longer had disability and could return to work. It afforded him 30 days to submit additional evidence or argument challenging the proposed termination. No further evidence or argument was received.

By decision dated March 29, 2022, OWCP terminated appellant’s wage-loss compensation, effective on that date, based on Dr. Grimaldi’s second-opinion report.

On April 14, 2022 appellant requested reconsideration. With his request, he submitted an undated statement from his sister, T.A., describing several falls he had on January 25 and 26, 2022 which he attributed to his wrist giving way.

Appellant also submitted an April 7, 2022 narrative report from Dr. Daniel G. Branham, a Board-certified orthopedic hand surgeon, noting appellant’s continuing complaints of bilateral pain and tingling from the wrists into the thumb, index, and middle fingers. Dr. Branham discussed examination findings, including positive Phalen’s and Tinel’s tests, and diagnosed bilateral carpal tunnel syndrome. He provided an assessment that appellant’s bilateral carpal tunnel syndrome had never abated and continued to the present. In a Form OWCP-5c of even date, Dr. Branham indicated that appellant was not capable of performing his usual job without restrictions.

By decision dated April 19, 2022, OWCP denied modification of the March 29, 2022 decision.

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

ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective March 29, 2022.

In his November 30, 2020 second opinion report, Dr. Grimaldi noted his review of appellant's factual and medical history. He indicated that appellant's physical examination revealed objective findings of continuing bilateral carpal tunnel syndrome, including positive Tinel's and Phalen's tests, to the point of needing surgery on the left hand. Dr. Grimaldi therefore opined that appellant continued to have bilateral carpal tunnel syndrome to the point that appellant was ready to undergo surgery on his left hand. Dr. Grimaldi opined, however, that, "if [appellant] does not undergo surgery for his continued pain, there should not be any restrictions" based on carpal tunnel syndrome. He further asserted that, although appellant had residuals from unrelated medical conditions such as chronic back pain and depression, there was no medical restriction with regard to the accepted bilateral carpal tunnel syndrome.

The Board finds that Dr. Grimaldi's opinion is contradictory in nature and does not contain sufficient medical reasoning to establish that appellant no longer had disability due to his accepted employment injury.⁶ The factors that determine probative medical evidence include the opportunity for and thoroughness of examination performed by the physician, the accuracy or completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested, and the medical rationale expressed by the physician on the issue addressed to him by

³ See *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁴ See *R.P.*, *id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁵ *K.W.*, Docket No. 19-1224 (issued November 15, 2019); see *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁶ *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *A.G.*, Docket No. 20-0187 (issued December 31, 2020); see *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *S.W.*, Docket No. 18-0005 (issued May 24, 2018).

OWCP.⁷ Therefore, Dr. Grimaldi's second-opinion report is of diminished probative value. The Board thus finds that OWCP failed to meet its burden of proof.⁸

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation, effective March 29, 2022.

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2022 decision of the Office of Workers' Compensation Programs is reversed. The April 19, 2022 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: December 29, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁷ *A.G., supra* note 7; *James T. Johnson*, 39 ECAB 1252 (1988).

⁸ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.