

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

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| M.F., Appellant  | ) |                                  |
|  | ) |                                  |
| and  | ) | <b>Docket No. 24-0932</b>        |
|  | ) | <b>Issued: December 19, 2024</b> |
|  | ) |                                  |
| U.S. POSTAL SERVICE, CAPITOL HEIGHTS<br>POST OFFICE, Capitol Heights, MD, Employer | ) |                                  |
|  | ) |                                  |

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 19, 2024 appellant filed a timely appeal from an August 27, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 27, 2024, as she no longer had disability or residuals causally related to her accepted employment injury.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the issuance of the August 27, 2024 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On August 13, 1999 appellant, then a 36-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome (CTS) of the left wrist due to factors of her federal employment, including repetitively pulling trays of mail.<sup>3</sup> By decision dated August 4, 2000, OWCP accepted appellant's claim for left CTS.

Appellant subsequently filed a notice of recurrence (Form CA-2a) claiming disability from work commencing November 2, 2010. By decision dated November 24, 2010, OWCP accepted that appellant sustained a recurrence of disability on November 2, 2010.

On February 7, 2012, appellant underwent OWCP-authorized decompression of right CTS with excision biopsy synovium flexor tendon of the right wrist and hand. The record reflects that OWCP accepted bilateral carpal tunnel syndrome. OWCP paid appellant wage-loss compensation on the supplemental rolls from October 4, 2010 through January 15, 2011, and on the periodic rolls from January 16, 2011 through August 26, 2024.

In an October 4, 2023 report, Dr. Darlene Jones, an attending osteopathic Board-certified physiatrist, noted that appellant presented for a follow-up evaluation. She also noted her complaints of continuing pain in her wrists that radiated to both elbows, arms, and shoulders, more on the left side, and tingling, numbness, and weakness in both wrists, more on left side. Dr. Jones advised that appellant's pain had not resolved since her last examination. She reported examination findings and reviewed diagnostic studies. Dr. Jones provided assessments of the accepted condition of CTS of the right and left upper limbs.

On May 22, 2024, OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Willie E. Thompson, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the status of her accepted conditions and work capacity.

In a June 25, 2024 report, Dr. Thompson noted a history of appellant's accepted employment injury and his review of the medical record. He also noted appellant's current complaints of numbness, pain, and swelling of both hands and wrists. Examination of the left hand revealed full range of motion at the left wrist and metacarpophalangeal (MCP) and interphalangeal (IP) joints to the hand. A Tinel's sign was negative with percussion over the median nerve. A Finkelstein's test was also negative. There was no atrophy of the thenar or hypothenar muscles. There was intact sensation to all fingers of the hand. Grip strength was graded at 5/5. Examination of the right hand and wrist revealed a well-healed scar at the base of the palm. There was normal motion at the right wrist and MP and IP joints. Grip strength was graded at 5/5. There was no atrophy of the thenar or hypothenar muscles. There was intact sensation to all fingers of the right hand. Dr. Thompson noted that, a magnetic resonance imaging (MRI) scan report dated March 26, 2020 of the left hand, revealed osteoarthritis at the

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<sup>3</sup> OWCP assigned the current claim OWCP File No. xxxxxx639. Appellant has a prior occupational disease claim, which OWCP accepted for bilateral wrist tendinitis and right carpal tunnel syndrome under OWCP File No. xxxxxx641. OWCP administratively combined the claims, with OWCP File No. xxxxxx639 serving as the master file.

thumb MCP joint. A March 10, 2022 MRI scan of the right hand revealed multifocal osteolysis and degenerative joint disease at the thumb MCP joint. X-ray reports dated March 10, 2022 of both wrists revealed osteoarthritis at the thumb MCP joint. Dr. Thompson opined that there was no evidence of any ongoing CTS. He noted that although appellant continued to complain about numbness and swelling of the hands and wrists, his objective examination findings were completely within normal limits. Dr. Thompson further opined that appellant was “fully capable of returning to her preinjury job immediately” with no restrictions, and that no further medical treatment was needed. In a June 25, 2024 work capacity evaluation (Form OWCP-5c), Dr. Thompson reiterated his opinion regarding appellant’s work capacity.

OWCP subsequently received additional medical evidence from Dr. Jones. In a May 22, 2024 attending physician’s report (Form CA-20), Dr. Jones noted a history of the accepted employment injury. She reiterated her prior diagnosis of the accepted condition of bilateral CTS. Dr. Jones responded “Yes” to a query indicating that the diagnosed condition was caused or aggravated by the described November 6, 1997 employment activity. She indicated that appellant injured both wrists while working as a mail processor at the employing establishment. Dr. Jones found that she was totally disabled from work commencing October 11, 2020 due to her guarded prognosis.

In a May 22, 2024 work capacity evaluation (Form OWCP-5c), Dr. Jones continued to diagnose bilateral CTS and opined that appellant was totally disabled from work due to her chronic painful condition. She advised that appellant had limited ability to use her hands and upper limbs with limited physical activity.

By notice dated July 24, 2024, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits based on Dr. Thompson’s opinion that the accepted conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

In an August 19, 2024 response, appellant disagreed with the proposed termination and submitted additional medical evidence.

In a May 31, 2019 nerve conduction velocity study, Dr. Daniel R. Ignacio, a physiatrist, provided impressions of chronic progressive left CTS with axonal loss and chronic right CTS. In a narrative report of even date, Dr. Ignacio provided examination findings and reiterated his prior diagnoses of chronic progressive left CTS with axonal loss. He also diagnosed chronic right CTS with chronic denervation, right hand; status post right wrist surgery with residual pain; chronic tenosynovitis of the wrists, bilateral; and complex regional pain syndrome. Dr. Ignacio opined that appellant was totally disabled from work due to the above-noted conditions with a guarded prognosis.

In an April 7, 2020 report, Dr. Jones noted appellant’s complaint of continuing bilateral wrist and hand pain, and numbness and weakness limiting the use of both upper extremities. She discussed her examination findings and reviewed diagnostic studies. Dr. Jones reiterated her prior diagnosis of the accepted condition of bilateral CTS.

In a June 28, 2024 report, Dr. Jones related that appellant had abnormal electromyogram (EMG) findings on May 13, 2019 and July 6, 2021 regarding the bilateral median nerves and that on physical examination appellant had bilateral positive Tinel's sign. She opined that appellant's accepted bilateral CTS had not resolved and she continued to have difficulty with daily tasks and had limited strength in the hands. Dr. Jones further restated her opinion that she was totally disabled from work with a guarded prognosis, even in a limited capacity. She concluded that appellant required continued conservative medical care.

A March 24, 2024 x-ray report of the hands by Dr. Samir Chheda, a Board-certified diagnostic radiologist, provided impressions of severe osteoarthritis of bilateral thumb CMC joints and mild degenerative changes involving other joints of both hands as described in the report.

By decision dated August 27, 2024, OWCP finalized the proposed notice of termination of appellant's wage-loss compensation and medical benefits, effective August 27, 2024. It accorded the weight of the medical evidence to Dr. Thompson's second opinion.

### **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.<sup>4</sup> 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.<sup>5</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>7</sup> 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.<sup>8</sup>

Section 8123(a) of FECA provides in pertinent part: "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 third physician who shall make an examination."<sup>9</sup> The implementing

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<sup>4</sup> See *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *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).

<sup>5</sup> 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).

<sup>6</sup> *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).

<sup>7</sup> *J.W.*, Docket No. 19-1014 (issued October 24, 2019); *L.W.*, Docket No. 18-1372 (issued February 27, 2019).

<sup>8</sup> *L.S.*, Docket No. 19-0959 (issued September 24, 2019); *R.P.*, Docket No. 18-0900 (issued February 5, 2019).

<sup>9</sup> 5 U.S.C. § 8123(a).

regulation states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>10</sup>

### ANALYSIS

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 27, 2024.

OWCP received reports dated April 7, 2020, October 4, 2023, and May 22 and June 28, 2024, wherein Dr. Jones continued to diagnose the accepted condition of bilateral CTS from the accepted November 6, 1997 employment injury, and to find that appellant was totally disabled from work due to her accepted condition. In her June 28, 2024 report, Dr. Jones explained that appellant's EMG studies on May 13, 2019 and July 6, 2021 indicated abnormal findings regarding the bilateral median nerves. She also related that, on physical examination, appellant had bilateral positive Tinel's sign. Dr. Jones opined that appellant's accepted bilateral CTS had not resolved, and that she continued to have difficulty with daily tasks and had limited strength in the hands. She concluded that appellant was totally disabled from work and required continued conservative medical care.

OWCP referred appellant to Dr. Thompson for a second opinion evaluation to determine the status of her accepted conditions and work capacity. In his June 25, 2024 report, Dr. Thompson indicated that appellant's physical examination revealed no objective findings of the accepted conditions. He opined that the accepted work-related conditions had resolved, that appellant could return to her preinjury position without restrictions, and that there was no need for further medical treatment.

It is well established that, when there are opposing medical reports of virtually equal weight and rationale, the case should be referred to an impartial medical examiner (IME) for the purpose of resolving the conflict.<sup>11</sup> The Board finds that the medical reports of Dr. Jones and Dr. Thompson were in conflict on the issue of whether appellant had disability or residuals of her accepted conditions, and thus, are in conflict. OWCP was therefore, required to refer appellant to an IME, pursuant to 5 U.S.C. § 8123(a), to resolve the conflict prior to its termination of her wage-loss compensation and medical benefits.<sup>12</sup>

The Board finds, therefore, that OWCP improperly terminated appellant's wage-loss compensation and medical benefits, effective August 27, 2024.

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<sup>10</sup> 20 C.F.R. § 10.321.

<sup>11</sup> *A.N.*, Docket No. 24-0531 (issued September 4, 2024); *S.S.*, Docket No. 24-0773 (issued September 16, 2024); *A.E.*, Docket No. 23-0756 (issued December 14, 2023); *D.P.*, Docket No. 21-0534 (issued December 2, 2021); *N.A.*, Docket No. 21-0542 (issued November 8, 2021); *G.B.*, Docket No. 16-0996 (issued September 14, 2016); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>12</sup> *Id.*

**CONCLUSION**

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 27, 2024.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 27, 2024 merit decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 19, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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