

U.S. DEPARTMENT OF LABOR  
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S. Code 8101 et. seq. of ~~██████████~~ Claimant; Employed by the United States Department of Health and Human Services (HHS), Indian Health Service, Anchorage, Alaska; Case number 142018983. Hearing was held by telephone conference on July 28, 2008.

The issue for determination is whether the claimant has a continuing, injury related disability.

The claimant, born February 27, 1950, was employed as a heavy mobile equipment mechanic with the HHS in Alaska. The claimant filed a separate claim, file number 142015983, for a traumatic injury to both wrists resulting from a fall on ice on January 9, 2002. On April 22, 2003 the Office issued a decision denying such claim.

On March 31, 2003 the claimant filed a notice of recurrence under file number 142015983, claiming that as of March 22, 2003 he developed hand, wrist, forearm and elbow conditions due to repetitive work tasks (computer use, stocking parts, light repairs). The Office deemed the recurrence claim as a new claim for an occupational disease, and assigned the present claim number.

The claimant stopped work on March 31, 2003. He returned to work in a light duty capacity and stopped all work August 10, 2003. The claimant was paid appropriate compensation and placed on the periodic roll effective November 30, 2003.

~~Michael G. McNamara, MD, in a report of May 27, 2003, noted a history of a workplace injury on January 9, 2002. Dr. McNamara also noted a history of cranial surgery in 1976 and back surgery in 1977. Dr. McNamara recommended wrist MRI and bone scans.~~

A report of x-ray of the wrists dated May 28, 2003 stated an impression of no abnormalities. A report of bone scan of the right wrist dated May 28, 2003 stated an impression of tracer activity in the scaphoid and lunate bones as well as the first MCP joint. A report of right wrist MRI of the same date stated a similar impression.

In a report of June 3, 2003 Dr. McNamara stated an assessment of wrist arthritis. In a report of June 14, 2003 Dr. McNamara noted bilateral tenderness at the cubital tunnels. Dr. McNamara diagnosed bilateral cubital tunnel syndrome and also bilateral post-traumatic wrist arthritis. On a FMLA form dated July 23, 2003 Dr. McNamara indicated that such diagnosed conditions were referable to a fall on ice in January 2002.

On July 10, 2003 the Office accepted the claim for mild bilateral carpal tunnel syndrome and mild right cubital tunnel syndrome.

In a report of September 4, 2003 Cynthia H. Kahn, MD, a pain management specialist, stated an assessment of bilateral wrist pain referable to a January 2002 injury. Timothy Baldwin, MD, an associate of Dr. Kahn, also treated the claimant for pain management.

Marcus Melvin, MD, a board certified plastic surgeon, conducted a second opinion medical examination and submitted a report dated February 26, 2004. Dr. Melvin noted a history of a fall at work. Dr. Melvin diagnosed possible TFCC (triangular fibrocartilage compartment) tear. The doctor found no evidence of carpal tunnel syndrome. In a supplemental report of March 30, 2004 Dr. Melvin recommended referral to a hand surgeon.

A report of right wrist arthrogram dated March 19, 2004 stated an impression of no evidence of a TFCC tear, and probable lunotriquetral ligament tear.

In a report of December 29, 2005 Gary L. Child, DO, stated that he examined the claimant on referral from Dr. McNamara. Dr. Child stated an assessment of bilateral wrist pain as well as STT (scaphoid trapezoid trapezium separation of joint syndrome), sleep disturbance, depression and anxiety. In a report of April 22, 2006 Dr. Child diagnosed degenerative joint disease of the wrists bilaterally. Dr. Child noted on examination mild swelling and tenderness of the wrists bilaterally. In a report of June 14, 2006 Dr. Child noted that the claimant was unemployed but desired vocational rehabilitation. In a report of July 12, 2006 Dr. Child noted some tenderness in the joints of the wrist bilaterally. In a report of October 18, 2006 Dr. Child noted on examination tenderness at the wrists. In reports of February 22, 2007 and March 22, 2007 Dr. Child noted that the claimant reported high levels of pain. Dr. Child diagnosed degenerative joint disease of the wrists.

In September 2007 the claimant relocated from Alaska to New Mexico.

The Office prepared a Statement of Accepted Facts (SOAF) dated December 17, 2007. The SOAF stated that history of the accepted injury and claimed January 2002 injury. The SOAF noted that Dr. Child was the attending physician of record.

The Office referred the claimant to James Hood, MD, a board certified orthopedic surgeon. Dr. Hood in turn referred the claimant to a functional capacity evaluation (FCE) which was conducted January 14, 2008. The FCE report stated that the claimant could work at a medium level. In a report of January 20, 2008 Dr. Hood noted a history of lumbar surgery. Dr. Hood reviewed a lumbar MRI which showed a slipped disc at L5-S1 as well as severe disc degeneration. Dr. Hood noted that a report of EMG/NCV dated November 2, 2007 stated findings of right ulnar sensory delay. Dr. Hood noted on examination of the right wrist no abnormalities and mild tenderness to palpation. Dr. Hood found no evidence of bilateral carpal tunnel syndrome, however, the doctor

recommended a repeat EMG/NCV test. Dr. Hood opined that based on his findings and the FCE test results the claimant could work full time with restrictions.

In a report of January 17, 2008 Brian P. Delahoussaye, MD, noted pain on wrist palpation and motion. Dr. Delahoussaye diagnosed wrist arthritis and sprain.

The Office determined that a conflict existed between the opinions of Drs. Child and Hood as to whether the accepted 2003 injury remained active or disabling. In order to resolve such conflict the Office referred the claimant to Randy J. Pollet, MD, a board certified orthopedic surgeon, for a referee medical examination.

The claimant was hospitalized February 19, 2008 for chronic musculoskeletal pain.

In reports of February 14 and 27, 2008 Dr. Delahoussaye noted findings of wrist pain both on motion and palpation.

Dr. Pollet conducted a physical examination, reviewed the SOAF and the entire case file, and submitted a report dated February 28, 2008. Dr. Pollet noted on examination adequate range of motion of the wrists and fingers, negative Tinel's signs at the wrists, no signs of carpal tunnel syndrome, no discoloration, and no evidence of ulnar tunnel syndrome. Dr. Pollet noted that the claimant had been treated with methadone, oxycodone, and trazadone. Dr. Pollet reviewed reports by Drs. McNamara, Kahn, Melvin, Child, and Hood, as well as reports of diagnostic tests of record. Dr. Pollet opined that there was no objective evidence of carpal tunnel or ulnar (cubital) tunnel syndromes. Dr. Pollet opined that the claimant could return to full duty, however, the claimant needed to be gradually weaned off of addictive medicines.

On March 12, 2008 the Office issued a Notice of Proposed Termination of compensation (wage loss) benefits, advising the claimant that the weight of medical evidence showed that the claimant had no disability referable to the accepted 2003 injury. The Office noted that the weight of medical evidence was accorded to Dr. Pollet's opinion. The claimant was advised that he could submit additional evidence or argument within thirty (30) days.

In a report of March 27, 2008 Dr. Delahoussaye stated that the claimant was totally disabled due to a work-related injury to his hands and wrists.

On April 16, 2008 the Office notified the claimant that the proposed termination of compensation benefits would be made final effective May 11, 2008. The Office stated that medical benefits would continue. The claimant disagreed and requested a telephone hearing.

Accordingly, said hearing was scheduled and held by telephone conference on July 28, 2008. Gordon Reiselt, Esq., represented the claimant. Based upon the hearing testimony, together with the written evidence of record, I find that the Office's decision of April 16, 2008 should be set aside.

Additional medical records were received prior to the hearing. A report of EMG/NCV dated April 22, 2008 stated an impression of bilateral carpal tunnel syndrome. In a report of April 24, 2008 Dr. Delahoussaye reported no evidence of carpal instability. In a report of April 29, 2008 Dr. Delahoussaye noted a history of hyperextension injury to the wrist caused by a backwards fall.

In a report of April 29, 2008 Dwayne M. Marrott, Ph.D., a psychologist, stated a history of injury of falling on ice at work. Dr. Marrott diagnosed adjustment disorder and chronic pain syndrome referable to such injury.

At the hearing the claimant testified that he told Dr. Pollet about an EMG test performed by Dr. Delahoussaye one day prior to the referee medical examination. The claimant also testified that he underwent an EMG test on April 22, 2008 requested by Dr. Monsivais, a hand surgeon.<sup>1</sup> The claimant testified that he was still being treated by Dr. Marrott. The claimant testified that he took daily medications for sleep and pain management.<sup>2</sup> The claimant testified that of April 16, 2008 and following there had been no effort made to wean him off of his medications.<sup>3</sup>

Mr. Reiselt argued that Dr. Pollet did not base his opinion on objective evidence because the doctor did not review the April 22, 2008 EMG report.<sup>4</sup>

A copy of the hearing transcript was provided to the employing agency and 20 days allowed for the submission of written comments. No comments were received.

Post hearing the record was held open for 30 days to allow for the submission of additional evidence. The claimant submitted additional medical reports. Robert R. Bell, MD, in a report of April 29, 2008 noted a history of a hyperextension injury to the wrist caused by a fall backwards in March 2003 [sic]. Dr. Bell diagnosed carpal tunnel syndrome and joint effusion.

In a report of May 16, 2008 Jose J. Monsivais, MD, a hand surgeon, stated a history of carpal tunnel syndrome diagnosed in March 2003. Dr. Monsivais noted that the claimant reported high levels of pain. The doctor opined that the claimant could work limited duty. In a report of June 12, 2008 Dr. Monsivais noted reports of high levels of pain by the claimant, but also that the claimant had a pain personality and a psychological dysfunction. In a report of July 31, 2008 Dr. Monsivais stated a diagnosis of carpal tunnel syndrome. Dr. Monsivais noted two-point discrimination bilaterally and diminished touch sensation for both hands. Dr. Monsivais noted positive Tinels sign at the left wrist and right ulnar nerve. Dr. Monsivais opined that the claimant could work limited duty pursuant to the FCE.

<sup>1</sup> Transcript, p. 10

<sup>2</sup> Transcript, pp. 11-12

<sup>3</sup> Transcript, pp. 13-14

<sup>4</sup> Transcript, pp. 7-8

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment. If the Office, however, meets its burden of proof and properly terminates compensation, the burden for reinstating compensation benefits shifts to the claimant.<sup>5</sup>

The Federal Employees' Compensation Act (FECA) provides for the appointment of a referee (also called impartial) physician to examine the claimant and resolve a conflict of medical opinion in a case.<sup>6</sup> A referee examination is needed when the Office determines that a conflict exists between medical opinions of approximately equal value. A conflict exists when there is a disagreement between the opinions of an attending physician and a physician designated by the United States (e.g. a second opinion specialist). To establish whether a conflict exists, the medical evidence must be weighed. The specific factors considered are: whether a physician is a specialist in the appropriate field; whether the physician's opinion is based upon a complete and accurate medical and factual history; the nature and extent of findings on examination; whether the physician's opinion is rationalized; and whether the physician's opinion is stated unequivocally and without speculation.<sup>7</sup> When there are opposing reports of virtually equal weight and rationale, the case must be referred to a referee medical specialist, pursuant to section 8123(a) of the FECA, to resolve the conflict in the medical evidence.<sup>8</sup>

Drs. Child and Hood provided opinions which contained findings on examination, history of injury, references to test results, and supporting medical rationale. Consequently I find that the Office properly determined that a conflict existed between the opinions of Drs. Child and Hood Frank and Roach and, in turn, that the Office properly referred the claimant to Dr. Pollet in order to resolve such conflict.

When a referee medical specialist is asked to resolve a conflict in medical evidence, his opinion, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>9</sup> I find that such special weight was properly accorded to Dr. Pollet's medical opinion. Dr. Pollet conducted a physical examination and reviewed the case file, including all medical evidence of record as well as the Statement of Accepted Facts. Dr. Pollet's report encompassed the complete factual and medical background to the subject claim, as well as the claimant's medical and injury history, including reports by treating and second opinion physicians. Dr. Pollet provided medical rationale for his opinion. Therefore, Dr. Pollet's opinion was properly accorded special weight.

<sup>5</sup> James B. Christenson, 47 ECAB 775 (1996)

<sup>6</sup> 5 U.S.C. 8123(a)

<sup>7</sup> Office Procedure Manual, Ch. 3-500-4(a)

<sup>8</sup> Cathy B. Millin, 51 ECAB 331 (2000)

<sup>9</sup> James R. Driscoll, 50 ECAB 146 (1998)

Reports by Drs. Delahoussaye and Bell do not overcome the weight accorded to Dr. Pollet's opinion. A medical opinion based upon an inaccurate history may not be accorded weight.<sup>10</sup> Drs. Delahoussaye and Bell based their assessments on inaccurate histories - the doctors diagnosed wrist conditions referable to the claimed January 2002 fall on ice. The Office did not accept such an injury as employment related. As a result medical conditions diagnosed in connection with such injury are not compensable.<sup>11</sup> Similarly, Dr. Marrot's opinion is not probative as medical evidence. The doctor diagnosed an adjustment disorder and chronic pain syndrome referable to the claimed 2002 injury.

The record thus establishes that the Office met its burden to terminate compensation benefits based on Dr. Pollet's opinion. However, the claimant submitted post hearing evidence that accepted carpal tunnel or cubital tunnel conditions may remain active or disabling. The April 22, 2008 EMG/NCV report stated an impression of carpal tunnel syndrome bilaterally. Dr. Monsivais noted positive Tinels sign at the left wrist and right elbow. Dr. Monsivais' findings conflict with those of Dr. Pollet. In turn, while Dr. Pollet opined that the claimant had no injury related disability, Dr. Monsivais opined that the claimant was partially disabled. Consequently a new conflict exists between the opinions of Drs. Monsivais and Pollet and, in turn, a new referee examination is needed to resolve such conflict.

Upon return of the case file, the Office should prepare an updated Statement of Accepted Facts and refer the claimant to a board-certified medical specialist for a referee medical examination. The referee medical examiner should be asked for a report which contains findings on examination, as well as a rationalized medical opinion as to (1) whether accepted carpal tunnel or cubital tunnel conditions remain active and, if so (2) the nature and extent of any injury related disability. Upon receipt of the referee medical specialist's report, and any additional development deemed necessary, the Office should issue an appropriate decision as to compensation benefits.

~~As the Office met its burden of proof to terminate compensation, the burden for reinstating benefits shifts to the claimant to establish continuing employment-related disability. As a result, compensation benefits are not to be reinstated pending the report of the referee medical examiner.<sup>12</sup> By way of this decision the claimant is provided with appeal rights referable to the termination of entitlement to compensation.~~

<sup>10</sup> *M.W.*, 57 ECAB 710 (2006)

<sup>11</sup> Thus diagnoses of wrist ligament injury and post-traumatic wrist arthritis, referable to traumatic injury resulting from the claimed January 2002 fall, are not compensable.

<sup>12</sup> *Gary R. Sieber*, 46 ECAB \_\_\_, Dkt. No. 93-1180, issued November 10, 1994.

Dated: SEP - 9 2008  
Washington, D.C.



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ALAN STEIN  
Hearing Representative  
for  
Director, Office of Workers'  
Compensation Programs