United States Department of Labor
Employees' Compensation Appeals Board

K.T., Appellant	)	
and	)	**Docket No. 07-1238**
	)	**Issued: October 3, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Royal Oak, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 4, 2007 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated July 11, 2006 and January 12, 2007, terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective July 11, 2006; and (2) whether appellant has met her burden of proof in establishing entitlement to continuing compensation benefits on or after July 11, 2006.

FACTUAL HISTORY

On November 21, 1997 appellant, then a 41-year-old mail carrier, filed an occupational disease claim alleging that she developed acute left brachioradialis tenosynovitis due to her employment duties of carrying mail. The Office accepted her claim for left epicondylitis and

tenosynovitis on December 23, 1997. Appellant accepted a light-duty position working eight hours a day on May 13, 1998.

Appellant filed a second claim for occupational disease on April 27, 1999 alleging that she had developed bilateral carpal tunnel syndrome due to her repetitious work duties of casing mail. The Office accepted her claim for bilateral carpal tunnel syndrome on May 7, 1999.

Dr. Jerry A. Taylor, an attending osteopath, supported appellant's work restrictions through June 7, 2005. He noted that appellant had tenderness of the left lateral humeral epicondyle, negative Phalen's test bilaterally, positive Tinel's test on the right at the carpal tunnel and negative Finklestein's test bilaterally. Dr. Taylor diagnosed lateral humeral epicondylitis left elbow and probable mild carpal tunnel syndrome bilaterally which was worse on the right. He stated that appellant required light-duty restrictions.

The Office referred appellant for a second opinion evaluation with Dr. Norman L. Pollak, a Board-certified orthopedic surgeon, on June 16, 2005. In a July 12, 2005 report, Dr. Pollak reported the finding of tenderness over the left lateral elbow above the epicondyle and tenderness over the right lateral elbow below the epicondyle. He noted that appellant demonstrated negative Phalen's test bilaterally and tingling on Tinel's test above or proximal to the carpal tunnel. Dr. Pollak stated that appellant's grip strength was decreased on both sides to the extent that it appeared that she was not giving full effort and that sensory testing was variable, but apparently intact. He stated: "There are no objective findings to indicate any residual of the work-related illnesses. Subjective findings are not compatible with the accepted diagnosis as well." Dr. Pollak concluded: "Based on essentially normal examination, it is felt that this woman can perform her regular job duties as a letter carrier and can work a full eight-hour shift without restriction." He further noted that appellant did not require any medical treatment.

Dr. Taylor reviewed Dr. Pollak's report at the Office's request on September 6, 2005. He noted that appellant's complaints had been static over the past several years but that she demonstrated findings consistent with his diagnoses of lateral humeral epicondylitis left elbow and probable mild bilateral carpal tunnel syndrome which was worse on the right. Dr. Taylor continued to recommend light-duty job restrictions in both upper extremities. He stated that appellant's current conditions were due to employment activities and that a return to full-duty work would in a short period of time result in "a significant worsening of the underlying pathology involving both of the elbows and of the carpal tunnel syndrome bilaterally." Dr. Taylor recommended continued restrictions on appellant's grasping, lifting, pushing and pulling for an indefinite period.

In a letter dated February 7, 2006, the Office informed appellant that an unresolved conflict of medical opinion evidence existed between Dr. Taylor and Dr. Pollak regarding the nature and extent of her continuing work-related conditions and resulting disability. The Office referred appellant to Dr. Terry L. Weingarden, an osteopath and Board-certified orthopedic surgeon, to resolve these issues.

Dr. Weingarden completed his report on February 27, 2006, including a history of the employment injury and medical treatment. His examination found mild pain on palpation of the proximal extensor muscles in the left forearm and negative Tinel's sign in both elbows.

Dr. Weingarden stated that appellant demonstrated decreased sensation on the volar and dorsal aspects of her fingers which did not follow a dermatome pattern. He concluded that his examination did not reveal any signs of epicondylitis or ulna neuropathy in either elbow. Dr. Weingarden noted that appellant had decreased sensation to pinprick in both hands and recommended an electromyelogram (EMG) due to these subjective complaints. He opined that appellant could perform her regular job duties.

Appellant underwent an EMG on March 3, 2006. Dr. Weingarden reviewed this report on March 17, 2006 and found that it was normal. He reaffirmed his February 27, 2006 conclusions.

The Office requested a supplemental report from Dr. Weingarden on April 27, 2006. The Office inquired as to whether appellant could return to her date-of-injury position without restrictions. Dr. Weingarden responded on May 3, 2006. He asserted that appellant was able to work her regular job delivering mail and casing mail with no restrictions. Dr. Weingarden stated: "Based on my clinical findings of February 27, 2006 I did not find any signs of lateral epicondylitis of her elbow or any signs of an ulnar neuropathy. There were no signs of any carpal tunnel syndrome, as these have resolved."

Dr. Taylor completed a report on May 2, 2006 and described appellant's current employment duties of sorting mail for four hours a day and carrying mail for three and a half hours a day. He noted that appellant wore elbow and wrist braces to work. Dr. Taylor found mild swelling of the flexor tendon in the right wrist and mild tenderness of the left lateral humeral epicondyle. He further found slightly positive Tinel's sign at the carpal tunnel on the right. Dr. Taylor diagnosed mild lateral humeral epicondylitis left elbow, probable mild carpal tunnel syndrome bilaterally which was worse on the right and added the diagnosis of soft tissue swelling of the flexor tendon right wrist. He opined that appellant required light-duty work limiting use of her upper extremities.

The Office notified appellant on May 30, 2006 that it proposed terminating her compensation benefits in reliance on Dr. Weingarden's reports. The Office allowed her 30 days for a response. In a June 14, 2001 report, Dr. Taylor stated that appellant's upper extremity status was "approximately the same as in the past." He repeated his diagnoses and continued to support work restrictions. Appellant requested additional time for a detailed response on June 13, 2006. The Office denied this request on June 27, 2006.

By decision dated July 11, 2006, the Office terminated appellant's compensation and medical benefits effective that date based on Dr. Weingarden's reports.

Appellant requested reconsideration on October 16, 2006. She submitted a report dated July 25, 2006 from Dr. Victor C. Gordon, an osteopath, who noted appellant's history of injury and reported his findings from electrical stimulation of the median and ulnar nerves. Dr. Gordon diagnosed bilateral mild median mononeuropathy at the wrist consistent with carpal tunnel syndrome and mild left lateral humeral epicondylitis, improved. He recommended that appellant continue light-duty work as "she had diminished symptomatology with the altered activity level vocationally." Dr. Gordon stated: "The current clinical findings are certainly historically related to the type of work activities that [appellant] had been engaged in."

By decision dated January 12, 2007, the Office reviewed appellant's claim on the merits and denied modification if its July 11, 2006 decision. The Office found that Dr. Gordon's report was not sufficiently detailed on the issue of causal relationship between appellant's current diagnosis and her employment duties to overcome the weight accorded Dr. Weingarden's opinion.[1]

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[2] The Office may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.[3] The Office's burden of proof in termination compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4] The right to medical benefits for an accepted condition is not limited to the period of entitlement of disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which require further medical treatment.[5]

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background must be given special weight.[6]

ANALYSIS -- ISSUE 1

Appellant's attending physician, Dr. Taylor, found that she had continuing work restrictions and required further medical care for her accepted conditions of bilateral carpal tunnel syndrome and left epicondylitis and tenosynovitis. The Office second opinion physician, Dr. Pollak, a Board-certified orthopedic surgeon, found that appellant could return to her date-of-injury position without restrictions and that she required no further medical treatment. To resolve this conflict of medical opinion evidence regarding appellant's need for light-duty work

[1] Following the Office's January 12, 2007 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

[2] *Jorge E. Stotmayor*, 52 ECAB 105, 106 (2000).

[3] *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

[4] *Gewin C. Hawkins*, 52 ECAB 242, 243 (2001).

[5] *Mary A. Lowe*, *supra*, note 3.

[6] *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

and continuing medical care, the Office properly referred appellant to Dr. Weingarden, an osteopath and a Board-certified orthopedic surgeon.[7]

Dr. Weingarden completed a report dated February 27, 2006, which noted appellant's history of injury and medical history. He provided findings on physical examination and recommended an additional EMG based on appellant's subjective complaints. On March 17, 2006 he reviewed the EMG and found it was normal. Dr. Weingarden found that appellant had no continuing employment-related condition or disability and opined that she could return to full-duty work. In response to the Office's request for clarification, on May 3, 2006 Dr. Weingarden opined that appellant had no objective physical signs or symptoms of her accepted employment-related conditions and that he believed these conditions had resolved. He further concluded that she no longer exhibited signs of these conditions and she could perform the full duties of her date-of-injury position.

Dr. Weingarden's opinion is entitled to special weight as he was properly selected as the impartial medical adviser, his reports are based on a proper factual background and he provided detailed physical findings in support of his conclusion that appellant had no continuing employment-related conditions or disability. His medical reasoning that appellant's conditions had resolved based on the lack of continuing signs or symptoms is sufficient to meet the Office's burden of proof to terminate appellant's compensation benefits.

The May 2, 2006 report of Dr. Taylor found that appellant continued to exhibit mild lateral humeral epicondylitis in the left elbow and "probable" carpal tunnel syndrome bilaterally. Dr. Taylor failed to explain the variation in appellant's physical examinations and failed to explain how her normal EMG results could support a diagnosis of carpal tunnel syndrome. Further, as he was on one side of the conflict that Dr. Weingarden resolved, the additional report from Dr. Taylor is insufficient to overcome the weight accorded Dr. Weingarden as the impartial medical examiner or to create a new conflict.[8]

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had disability causally related to her accepted employment injury.[9] To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship.

[7] The Federal Employees' Compensation Act provides that, if there is a 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. 5 U.S.C. §§ 8101-8193, § 8123. The implementing 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 of an Office medical adviser or consultant, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case. 20 C.F.R. § 10.321.

[8] *Jaja K Asaramo*, 55 ECAB 200, 205 (2004).

[9] *George Servetas*, 43 ECAB 424, 430 (1992).

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[10]

ANALYSIS -- ISSUE 2

In support of her claim for continuing disability on and after July 11, 2007, appellant submitted a report dated July 25, 2006 from Dr. Gordon, an osteopath, diagnosing improved left lateral humeral epicondylitis and mild bilateral median mononeuropathy at the wrist consistent with carpal tunnel syndrome. He recommended work restrictions and opined, "The current clinical findings are certainly historically related to the type of work activities that [appellant] had been engaged in."

This report is not sufficient to meet appellant's burden of proof in establishing continuing disability causally related to her accepted employment injuries of November 21, 1997 and April 27, 1999. Dr. Gordon noted that the duties of appellant's date-of-injury position did not provide any reasoning explaining how and why these duties would continue to result in the diagnosed conditions. He did not discuss appellant's light-duty job requirements which continued from 1998 and did not discuss Dr. Weingarden's test results of conclusions. Without detailed medical reasoning explaining how and why appellant's current conditions are related to her accepted employment injuries rather than her new employment duties and exposures, Dr. Gordon's report cannot establish appellant's continuing employment-related medical conditions and resulting disability.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective July 11, 2006 based on the well-reasoned report of Dr. Weingarden, a Board-certified orthopedic surgeon and the impartial medical examiner. The Board further finds that appellant has not submitted the necessary rationalized medical opinion evidence to establish that she has a continuing condition or disability on or after July 11, 2006 due to her accepted employment injuries.

[10] *James Mack*, 43 ECAB 321 (1991).

ORDER

IT IS HEREBY ORDERED THAT the July 11 and January 12, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 3, 2007
Washington, DC

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

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

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