

¹ Docket No. 04-667 (issued June 22, 2004).

employment. Reports from appellant's attending physician, Dr. Luis A. Loimil, a Board-certified orthopedic surgeon, were sufficiently supportive of her claim to require further development of the medical evidence.²

On December 2, 2004 Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon and Office referral physician, examined appellant and reported that her trigger fingers from the thumb through the fourth finger bilaterally were due to cumulative trauma in her normal job duties over a number of years. He believed that she suffered a permanent aggravation of her tendon sheaths, causing intermittent triggering: "Permanent change that has occurred to alter the course of the underlying disease is that she had normal flexor tendons and the repetitive trauma to her digits caused thickening of the A2 pulleys through which the flexor tendons pass which has caused intermittent triggering of those digits." Dr. Sheridan reported that appellant needed trigger finger releases on the right and would reach maximum medical improvement three months after surgery.

The Office accepted appellant's claim for trigger finger of the thumb through fourth fingers bilaterally and approved surgery. Appellant claimed a schedule award.³

The Office referred appellant to Dr. Barry A. Levin, a Board-certified orthopedic surgeon, for evaluation. On July 17, 2006 Dr. Levin examined appellant and diagnosed tenosynovitis of the right middle and ring finger. He saw no connection to work:

"I do not feel that the current condition of tenosynovitis can be attributed to a work injury. I agree that the patient has some sort of developmental rheumatological problem, possibly rheumatoid arthritis, which is causing the above diagnosis. I do not believe this is attributed to work and is caused by a work injury. Please note that this is in direct contradiction to previous reports that have been given on this patient."

Dr. Levin explained that he could not provide an impairment rating because he did not believe appellant had reached maximum medical improvement. Appellant still had difficulty and triggering with her fingers, he stated, but the condition would only resolve once the rheumatological problem resolved or appellant had a release of the A1 pulley to her right ring and middle finger:

"In summary, [appellant] has a condition known as tenosynovitis to her hands. In contradiction to previous reports, I do n[o]t feel that this condition was acquired due to work[-]related injury. I believe it was caused by, most likely, rheumatoid

² On August 18, 2001 appellant, then a 48-year-old retired address management systems specialist, filed an occupational disease claim alleging that she sustained bilateral trigger fingers due to factors of her federal employment. She retired on February 24, 2001 and realized on August 10, 2001 that her trigger finger condition was caused by employment. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

³ Appellant previously received schedule awards for a seven percent impairment of the right upper extremity and a three percent impairment of the left upper extremity due to bilateral carpal tunnel syndrome in a separate claim, OWCP File No. xxxxxx123.

arthritis. When reviewing the chart, I notice that the patient had a positive rheumatoid factor and she does give a history of a patient that has mild rheumatoid arthritis. This condition should be treated and I believe that the patient did mention to me that she will be seeing somebody [who] treats rheumatoid arthritis. Also, I feel that the patient would benefit from release of the A1 pulley to her middle and ring finger on the right hand and that would improve her function to her hand. Finally, I notice in the chart that the doctor that she is current[ly] seeing, Dr. Loimil, has diagnosed her as having Dupuytren's contracture. This once again is not work related and is extremely mild and I do n[ot] feel any treatment would benefit the patient."

The Office found a conflict in the medical evidence. It referred appellant, together with the case record and a statement of accepted facts, to Dr. Robert W. Lowe, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

On January 19, 2007 Dr. Lowe acknowledged the conflict: both Dr. Loimil and Dr. Sheridan stated that appellant's trigger finger condition was related to work, a different examiner, Dr. Levin, stated it was not. He related appellant's history and reviewed her medical records. Dr. Lowe described his findings on physical examination and diagnosed trigger fingers not requiring surgery.⁴ He reported that he generally did not think that trigger fingers were due to the work that a person does. Dr. Lowe then explained why he believed appellant had no work-related trigger finger condition:

"This lady has been retired for a number of years yet still has the nodules on the flexor tendons of her hand. Usually one would consider a callous or any specific causation would change if you were n[ot] doing the work. Could this have been aggravated by her work, I think possibly so for that she has been operated by Dr. Loimil."

* * *

"I think that this lady has a condition in her hands that has occurred in her body and is not related specifically to her work except at the time in past when she required an operation. Her treating doctor thought her work had aggravated the trigger finger. Of course this could be debated but the persistence of pathology or suggestion of pathology in both hands and on multiple tendons weighs heavily in my impression that her condition is a human condition not specially related to work."

Dr. Lowe reported ranges of motion and observed that appellant had use of both hands with normal functions of the joints that would be limited by trigger fingers, namely, the proximal interphalangeal and metacarpophalangeal joints. Therefore, he stated, no impairment rating was given for trigger fingers or a residual of the aggravation of trigger fingers. Dr. Lowe noted that appellant had greater strength in her left hand, on which she had a ring finger release, "so neither mobility, strength, [n]or sensation would lead to a diagnosis of work-related trigger fingers or

⁴ Dr. Lowe stated that he agreed with the diagnosis of trigger fingers or tenosynovitis.

work-related chronicity not previously addressed.” He further commented on the issue of causal relationship:

“I did look in an epistle, *i.e.*, Campbell’s Operative Orthopedics Volume IV, 10th edition, page 3774 discusses trigger finger and thumb and as I read it they describe triggering to be associated with a collagen disease and several fingers can be involved, the middle and ring finger most often. For those who state that this is a conservative publication and would not acknowledge work if they saw it I ask you to turn back to page 3773, *i.e.*, the other side of the piece of paper, where they describe [d]e Quervain’s tenosynovitis ‘this being almost always related to overuse either at home or at work or is associated rheumatoid arthritis.’ Thus there are types of tenosynovitis associated with one’s occupation but a trigger thumb or trigger fingers in my years of practice now numbering greater than 35, this has not been associated with work except in rare conditions and quite frankly I cannot recall that rare condition.”

In a decision dated August 7, 2007, the Office denied appellant’s claim for a schedule award. It further found that her work-related injury had ceased and that the additional conditions reported by Dr. Loimil were not work related and not compensable.

Appellant requested an oral hearing before an Office hearing representative, which was held on December 6, 2007. At the hearing, appellant, through her attorney, submitted a December 3, 2007 report from Dr. Loimil, who explained that appellant did not have rheumatoid arthritis. Appellant underwent a work-up for rheumatoid arthritis and both the anti-nuclear and antibody was negative; her rheumatoid factor was negative with a sediment rate of 10. Further, a rheumatologist reported on August 4, 2004 that there was no evidence of rheumatoid arthritis. Dr. Loimil reported that appellant did not have any inflammatory arthritis or rheumatoid arthritis.

On February 15, 2008 the Office received a January 28, 2008 impairment evaluation from Dr. Bruce A. Guberman, a Board-certified internist specializing in cardiovascular disease. Dr. Guberman diagnosed tenosynovitis, including constrictive tenosynovitis, of the finger of both hands. He calculated a 14 percent impairment of the right hand, or a 13 percent impairment of the right upper extremity, due to constrictive tenosynovitis causing triggering and range of motion abnormalities. Dr. Guberman also calculated an eight percent impairment of the left hand, or an eight percent impairment of the left upper extremity.

In a decision dated February 21, 2008, the Office hearing representative affirmed the denial of a schedule award. He found that the opinion of the impartial medical specialist, Dr. Lowe, was entitled to special weight and clearly constituted the weight of the medical evidence.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁵ After it has determined that an employee has disability

⁵ *Harold S. McGough*, 36 ECAB 332 (1984).

causally related to her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁶

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.⁷ When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

ANALYSIS

The Office denied appellant's claim for a schedule award because the weight of the medical evidence, represented by the opinion of Dr. Lowe, the impartial medical specialist, established that her trigger finger condition was not related to federal employment. It found that the work-related injury had ceased. Having accepted appellant's claim for a bilateral trigger finger condition, the Office bears the burden of proof to establish that the condition has ceased or is no longer related to the employment.

Dr. Lowe's January 19, 2007 opinion lends some support to the Office's finding. He noted that appellant was retired for a number of years and still had nodules on the flexor tendons of her hand. Usually, Dr. Lowe explained, a condition would change if one were no longer doing the work. Also, appellant had nodules on all her fingers on both hands. So persistence of the pathology, together with its presence on so many tendons, weighed heavily on his impression that her current condition was not specifically related to work.

Dr. Lowe made clear that he believes trigger fingers are not caused by one's occupation. He cited a medical text to support that triggering is associated with a collagen disease. Dr. Lowe stated that, while there are types of tenosynovitis that are associated with one's occupation, no trigger thumb or finger in his many years of practice was associated with work, except in a rare condition he could not recall. So his opinion on whether appellant ever suffered a work-related aggravation is equivocal. Dr. Lowe allowed that it was possible, but he also considered it debatable, as he generally believes no such association exists.

Dr. Lowe's opinion is also not fully rationalized. If the work-related injury ceased, as the Office found in its August 7, 2007 decision, the impartial medical specialist did not explain when the causal relationship ended or why. Dr. Lowe did not address or attempt to dispute the explanation given by Dr. Sheridan, a Board-certified orthopedic surgeon, of how repetitive trauma at work caused appellant's trigger finger condition. It was Dr. Sheridan's explanation that led the Office to accept appellant's claim.

⁶ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁷ 5 U.S.C. § 8123(a).

⁸ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

Because the opinion of the impartial medical specialist is equivocal and not fully rationalized, the Board finds that it is of diminished probative value on the issue of causal relationship. The Office did not request clarification from Dr. Lowe, so his opinion, as it stands, is not entitled to special weight and does not resolve the conflict between Dr. Loimil and Dr. Levin. It, therefore, has not met its burden of proof to establish that appellant's accepted employment injury has ceased. The Board will set aside the Office's August 7, 2007 and February 21, 2008 decisions denying a schedule award on those grounds.

Appellant's claim for a schedule award remains outstanding. Upon return of the case record, the Office should review the range of motion findings and strength testing Dr. Lowe recorded, as well as the clinical findings reported by Dr. Guberman, and determine whether appellant is entitled to a schedule award for her accepted bilateral trigger finger condition. After such further development of the evidence as may be necessary, the Office shall issue an appropriate final decision.

CONCLUSION

The Board finds that the Office has not met its burden of proof to establish that appellant no longer suffers from a trigger finger condition causally related to her federal employment. The opinion of the impartial medical specialist is of diminished probative value. The Office must therefore take further action on appellant's claim for a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2008 and August 7, 2007 decisions of the Office of Workers' Compensation Programs are reversed in part and set aside in part. The case is remanded for further action consistent with this opinion.

Issued: January 5, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board