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H.S., Appellant)	
)	
and)	Docket No. 13-1240
)	Issued: July 3, 2013
U.S. POSTAL SERVICE, HAMILTON)	
CARRIER ANNEX, Yardville, NJ, Employer)	
)	

Case Submitted on the Record

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

On April 24, 2013 appellant filed a timely appeal from the November 13, 2012 and March 20, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP), which terminated her compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether OWCP properly terminated appellant's compensation.

On January 6, 2003 appellant, then a 37-year-old letter carrier, sustained a traumatic injury in the performance of duty when she lifted a computer and felt a pop in her left wrist. OWCP accepted her claim for left wrist sprain and left lower arm sprain. It expanded its

¹ 5 U.S.C. § 8101 *et seq.*

acceptance to include other synovitis and tenosynovitis of the left hand. Appellant underwent left wrist arthroscopy on August 19, 2003. Her postoperative diagnosis was left wrist radiocarpal synovitis with triangle of fibrocartilage irregularity. Appellant received compensation for wage loss.

Appellant underwent a second left wrist surgery on January 29, 2008. Her postoperative diagnosis was left wrist pain with denuded cartilage and synovitis. Appellant received a schedule award for a 10 percent permanent impairment of her left upper extremity.

On October 13, 2008 Dr. Scott F. Garberman, the attending Board-certified orthopedic surgeon, noted that appellant was initially injured on January 6, 2003. During the past five and a half years appellant had two wrist arthroscopies with residual pain. He advised that the initial injury and subsequent treatment were directly related to her employment. Imaging studies confirmed the diagnoses of wrist sprain and triangular fibrocartilage complex. Dr. Garberman's physical examination revealed ulnar wrist pain and discomfort with occasional crepitus.

On December 22, 2011 OWCP referred appellant, together with the medical record, a statement of accepted facts and a position description of the date-of-injury job, to Dr. Stanley R. Askin, a Board-certified orthopedic surgeon, for a second opinion on whether the accepted medical conditions were still active and causing disability for work.

Dr. Askin examined appellant on January 6, 2012. He reviewed her history, treatment and current symptoms, which included persistent pain in the ulnar aspect, sometimes radiating as high as her left shoulder and made worse by cold. Dr. Askin reviewed appellant's medical record. He described his findings on physical examination. There were no objective findings. In fact, there was a suggestion of nonanatomic complaint.

Responding to questions posed by OWCP, Dr. Askin found that the accepted medical conditions had resolved. There was no current documentation of any synovitis. Dr. Askin explained that a sprain was a partial tear of a ligament and there was no reason to expect persisting partial tearing of any ligament at such a late date. There were no objective findings on physical examination to document that appellant's accepted conditions were currently active or explanatory of her complaints. Further, there were no current objective clinical findings or test results to suggest otherwise. Dr. Askin saw no injury-related reason appellant could not perform the duties of her date-of-injury position as a letter carrier. "Again, I do not dispute that there was original discomfort but I am seeing [appellant] so many years later, after treatment presumably intended to make her better and without any objective findings respecting the alleged injury. Resolution did occur at least insofar as objective parameters are concerned."

On September 19, 2012 OWCP issued a proposed notice of termination based on the findings and conclusions of Dr. Askin's report. It allotted appellant 30 days within which to submit any contrary evidence.

In a decision dated November 13, 2012, OWCP terminated appellant's compensation for wage loss and medical benefits. It found that the weight of the medical evidence rested with the medically rationalized opinion of Dr. Askin.

Appellant requested a review of the written record by an OWCP hearing representative. She explained why she disagreed with OWCP's decision and stated that she wanted to see another doctor, as Dr. Garberman no longer accepted OWCP insurance.

In a decision dated March 20, 2013, OWCP's hearing representative affirmed the termination of appellant's compensation benefits. Noting that the most recent report from Dr. Garberman was a work capacity evaluation from October 2008, the hearing representative found that Dr. Askin's opinion was the only rationalized medical report submitted in more than two years regarding the residual effects of the work injury.

On appeal, appellant submitted an updated report from Dr. Garberman and explaining that she does not agree with OWCP's decision. She adds that she would like to return to work, but the employing establishment will not allow her to return because she cannot carry a route due to her injury.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.³ OWCP may not terminate compensation without a positive demonstration by the weight of evidence that entitlement to benefits has ceased.⁴

ANALYSIS

OWCP accepted that appellant sustained a traumatic injury in the performance of duty on January 6, 2003 when she lifted a computer and felt a pop in her left wrist. It accepted her claim for left wrist sprain, left lower arm sprain, other synovitis and tenosynovitis of the left hand.

On November 13, 2012 OWCP terminated appellant's compensation benefits. It therefore has the burden to prove by the weight of the medical opinion evidence that her entitlement to benefits had ceased.

As OWCP's hearing representative noted, the most recent report from Dr. Garberman, the attending orthopedic surgeon, was in October 2008. When three years had passed without an updated report from Dr. Garberman, OWCP referred appellant to another orthopedic surgeon, Dr. Askin for a current assessment of her condition. OWCP provided Dr. Askin with appellant's medical record, including imaging studies and test results, as well as a statement of accepted facts so he could base his opinion on a proper medical and factual history.

² *Id.* at § 8102(a).

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.3 (July 1993).

Dr. Askin concluded that the accepted medical conditions had resolved. On physical examination appellant showed no objective evidence of those conditions. There was no current documentation of any synovitis and there was no reason to expect persisting partial tearing of any ligament at such a late date. Given the lack of objective findings to document that the accepted medical conditions were currently active or explanatory of appellant's complaints and given no current objective clinical findings or test results to suggest otherwise, Dr. Askin explained that resolution of the injury occurred insofar as objective parameters were concerned.

The Board finds that Dr. Askin's opinion represents the weight of the medical opinion evidence. Dr. Askin based his opinion on a proper medical and factual history. His conclusion is clear, unequivocal, consistent with his clinical findings and is supported by sound medical reasoning. There is no current medical opinion to the contrary. As the weight of the medical opinion evidence positively demonstrates that appellant's entitlement to benefits has ceased, the Board finds that OWCP has met its burden to justify the termination of appellant's compensation. Accordingly, the Board will affirm its November 13, 2012 and March 30, 2013 decisions.

On appeal, appellant submits a new medical report from Garberman. The Board's review of a case, however, 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.⁵ The Board therefore has no jurisdiction to review Dr. Garberman's April 1, 2003 report.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation. The weight of the medical opinion evidence establishes no objective evidence of the accepted medical conditions.

⁵ 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2013 and November 13, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 3, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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