United States Department of Labor
Employees' Compensation Appeals Board

H.V., Appellant	)	
and	)	**Docket No. 13-2037**
	)	**Issued: March 12, 2014**
U.S. POSTAL SERVICE, LOS ANGELES PROCESSING & DISTRIBUTION CENTER, Los Angeles, CA, Employer	)	

Appearances:
Zepuor Parsanian, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 4, 2013 appellant filed a timely appeal from an April 1, 2013 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's compensation benefits on October 1, 2012 on the grounds that she no longer had residuals of the accepted right upper extremity condition caused by a July 21, 2011 traumatic injury.

On appeal, appellant's representative asserts that appellant is entitled to compensation prior to the termination because she was sent home by the employing establishment on January 26, 2012 because no work was available within her medical limitation.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On July 28, 2011 appellant, then a 52-year-old mail processing clerk, filed a traumatic injury claim alleging that on July 21, 2011 her right shoulder, hand, finger and wrist became painful that day while she was working at the automation machine. She did not stop work. In a statement dated July 28, 2011, appellant indicated that the injury occurred when she lifted a full tray of mail.

Dr. Hosea R. Brown, III, a Board-certified internist, provided a first report of injury dated July 27, 2011. He indicated that appellant, who had been diagnosed with rheumatoid arthritis, had worked as a postal clerk for 23 years and was seen for complaints of right upper extremity pain which she attributed to her work duties. Dr. Brown described physical examination findings and diagnosed right shoulder tendinitis with impingement, right de Quervain tenosynovitis, permanent aggravation of rheumatoid arthritis and temporary aggravation of unipolar depression. He described how each diagnosis was caused by lifting and repetitive work duties and opined that all employment-related activities exacerbated and aggravated appellant's underlying rheumatological condition which was manifested as pain and swelling in both hands. Dr. Brown advised that she should not perform repetitive heavy lifting or overhead reaching with her right shoulder. On a duty status report dated July 27, 2011, he additionally recommended that appellant work the day shift.

An August 4, 2011 magnetic resonance imaging (MRI) scan study of the right wrist demonstrated mild degenerative arthropathy of the wrist joint and a probable small ganglion. An MRI scan study of the right shoulder that day demonstrated advanced degenerative arthropathy of the acromioclavicular (AC) joint which could contribute to clinical impingement syndrome, sequalae of chronic tendinosis or tendinopathy involving the supraspinatus tendon of the rotator cuff with no evidence of rotator cuff tear and degenerative fibrillation of the superior labrum or type 1 superior labral tear from anterior to posterior (SLAP) lesion. Dr. Stephen R. Greene, a general practitioner, provided an August 19, 2011 report in which he indicated that he first saw appellant on July 28, 2011. He reported that she had a seven-day history of right shoulder pain that began when she was attempting to lift a 70-pound tray of mail. Dr. Greene provided physical examination findings and diagnosed shoulder strain, AC joint. He advised that appellant should restrict her use of the right upper extremity, not climb ladders, avoid above-shoulder work and not push, pull or lift over five pounds.

In a September 1, 2011 report, Dr. Edward Mittleman, an attending general practitioner, noted a history that appellant injured her right arm in 2006 due to repeated work activities and was diagnosed with a cervical spine condition and that in 2009 she had small disc protrusions. He indicated that pain in the right hand, arm and shoulder was constant, sharp and knife-like and that she was working four hours of light duty daily. Dr. Mittleman noted his review of medical records and the August 4, 2011 MRI scan studies. He described findings and diagnosed right shoulder supraspinatus tendinosis, right shoulder impingement, aggravation of right shoulder AC arthropathy, right shoulder SLAP lesion, aggravation of right wrist degenerative joint disease, right wrist ganglion and right wrist de Quervain's tenosynovitis. Dr. Mittleman noted that appellant was very small at four feet 10 inches tall and that her job required her to lift things to about 5 feet which caused her right shoulder conditions and that the repetitive activities of her

hands and wrists led to the right wrist condition. He provided work restrictions and recommended a therapy regimen and that she worhjgk the day shift.

On September 29, 2011 OWCP accepted that on July 21, 2011 appellant sustained a sprain of the shoulder and upper arm, AC joint. Appellant subsequently submitted an August 22, 2011 duty status report in which Dr. Brown provided work restrictions and recommended that she work the day shift due to sleep disturbance. An August 30, 2011 upper extremity electrodiagnostic study was abnormal with regards to the right median motor and sensory nerves, suggestive of compression neuropathy at or near the wrist consistent with mild-to-moderate carpal tunnel syndrome. Cervical radiculopathy and peripheral neuropathy were not demonstrated.

In a September 2, 2011 report, Dr. Charles Herring, a Board-certified orthopedic surgeon, noted the history of injury, appellant's report of job duties and complaints of pain. He maintained that the additional diagnoses of right shoulder impingement syndrome with subacromial bursitis, right shoulder acromioclavicular joint arthrosis, right shoulder rotator cuff tendinopathy, right wrist degenerative arthropathy, right wrist subchondral cyst, right wrist ganglion cysts and clinical carpal tunnel syndrome also be accepted as work related and described how her specific job duties caused the physical problems. In reports dated October 21 to November 17, 2011, Dr. Glenn Ford,[2] an associate of Dr. Brown, provided examination findings and additionally diagnosed permanent aggravation of rheumatoid arthritis and temporary aggravation of unipolar depression. He advised that appellant could work modified duty and recommended the day shift. In a November 11, 2011 report, Dr. Herring reiterated Dr. Ford's findings and conclusions. By report dated December 7, 2011, Dr. Mittleman again described appellant's job duties and their effect on her right arm. He also maintained that additional conditions should be accepted as employment related. On December 15, 2011 a psychologist advised that appellant was suffering from a severe sleep disturbance, clinical depression and anxiety. The psychologist recommended that she work the day shift from 12:00 p.m. to 8:00 p.m. or that she work part time from 4:00 p.m. to 8:00 p.m.[3]

Dr. Ford, Dr. Brown and Dr. Herring continued to submit progress reports in which they described physical examination findings, appellant's diagnoses and work restrictions and advised that she work the day shift.

In February 2012 appellant filed a number of Form CA-7, claims for compensation, for intermittent periods beginning August 11, 2011. On February 16, 2012 the employing establishment noted that she was sent home with no work available on January 26, 2012 and that prior to that she only worked four hours a day because a physician recommended daytime hours. Appellant continued to submit compensation claims.

In March 2012 OWCP referred appellant to Dr. Steven M. Ma, a Board-certified orthopedic surgeon, for a second-opinion evaluation. In a March 29, 2012 report, Dr. Ma noted his review of the statement of accepted facts, medical record and appellant's complaints of right

[2] Dr. Ford's credentials could not be ascertained.

[3] The signature on the report is illegible.

arm pain and numbness. He reported a history that in 2006 and 2009 she missed several months of work due to right shoulder pain and that she did not claim work injuries. Dr. Ma indicated that appellant had been working modified duty in a seated position but had not worked since January 26, 2012 because light duty was no longer available. Neck examination demonstrated no spasm and no tenderness to palpation. Examination of both shoulders and arms revealed no obvious atrophy and impingement and apprehension signs were negative. Elbow examination revealed no specific abnormalities with a negative Tinel's test at the elbows. Examination of both hands and wrists revealed no obvious deformities, no swelling and no tenderness to palpation. Tinel's, Phalen's, Finkelstein's and Allen's tests were negative. Motor examination of both upper extremities was rated 5/5 at all locations and sensory examination was intact to light touch and pinprick. Dr. Ma diagnosed rheumatoid arthritis, not work related; AC right shoulder sprain; and tenosynovitis of the right wrist. In answer to specific OWCP questions, he advised that appellant had significant preexisting conditions that were not employment related including rheumatoid arthritis and that she had prior right shoulder injuries in 2006 and 2009 for which she received continuous treatment. Dr. Ma related that it was difficult to differentiate between her right shoulder symptoms regarding the claimed July 21, 2011 injury and her preexisting conditions, noting that there were no objective findings regarding the July 21, 2011 injury and that while the July 2011 injury may have temporarily aggravated the preexisting conditions, the aggravation had resolved with no residuals. He opined that any current disability was due to the 2006 and 2009 injuries and the underlying rheumatoid arthritis and that appellant had no physical limitations due to any work-related condition. Dr. Ma advised that there was no reason she could not work eight hours a day with restrictions due to her preexisting conditions, such that that she limit reaching above the shoulder to four hours daily and not lift more than 10 pounds.

On April 30, 2012 OWCP forwarded Dr. Ma's report to Dr. Ford for comment. Dr. Ford did not respond. However, on May 14, 2012 Dr. Brown reviewed and disagreed with Dr. Ma's March 29, 2012 report. He reiterated his diagnoses of permanent aggravation of rheumatoid arthritis, aggravation of right shoulder acromioclavicular arthropathy, right wrist de Quervain's tenosynovitis, right shoulder supraspinatus tendinosis, right shoulder impingement and temporary aggravation of severe depression. Dr. Brown maintained that appellant's condition was more of an occupational disease rather than a traumatic injury that occurred on July 21, 2011, stating that her employment activities over 23 years caused cumulative trauma which aggravated all her medical conditions. In reports dated May 14 and June 18, 2012, he reiterated his findings and conclusions.

In a letter dated August 31, 2012, OWCP proposed to terminate appellant's medical benefits and deny her claims for wage loss. It found that the weight of the medical evidence rested with the opinion of Dr. Ma, who advised that appellant had no residuals of her accepted conditions.

In a July 24, 2012 report, received by OWCP on September 18, 2012, Dr. Brown advised that appellant continued to have right upper extremity discomfort. Physical examination demonstrated decreased right shoulder range of motion with a positive impingement sign, which was unchanged from previous examinations. Dr. Brown reiterated his diagnoses and advised that physical restrictions were as per a duty status report completed that day. In a duty status

report dated August 22, 2012, he advised that appellant could work the day shift with physical restrictions.[4]

On October 1, 2012 OWCP finalized the termination of benefits effective that day. Appellant timely requested a hearing and submitted a claim for compensation for the period August 25 to October 5, 2012.

In progress reports dated August 22 and October 1, 2012, Dr. Brown described appellant's physical examination findings, reiterated his diagnoses and advised that her restrictions were those provided on an accompanying duty status report.[5] In reports dated November 30, 2012, he discussed physical examination findings, reiterated his diagnoses and provided work restrictions. On December 7, 2012 Dr. Brown indicated that appellant had experienced a significant increase of symptomatology in the right shoulder area and advised that her restrictions remained.

At the hearing, held on February 12, 2013, appellant's representative, a union official, argued that her 2006 and 2009 injuries were employment related and that the current claim should be an occupational disease claim. OWCP's hearing representative indicated that the instant claim would continue as a traumatic injury claim regarding the July 21, 2011 injury. Appellant testified that she was not working but would like to return to work. She indicated that because of her small size she had difficulty performing her job duties and that the 2006 and 2009 injuries occurred when she lifted mail trays. Appellant stated that she did not file workers' compensation claims because she did not understand the process and took leave. Her representative indicated that appellant was only claiming compensation from January 26, 2012 when the employing establishment sent her home because no light duty was available, and thus she was entitled to compensation after that time because her modified duty had been withdrawn.

Following the hearing, appellant submitted a January 21, 2013 report in which Dr. Mittleman indicated that she could return to modified work that day. In correspondence dated March 19, 2013, appellant's representative again asserted that she was entitled to monetary compensation beginning January 26, 2012.

By decision dated April 1, 2013, OWCP's hearing representative found that the weight of the medical evidence rested with the opinion of Dr. Ma and affirmed the October 1, 2012 decision terminating appellant's compensation benefits. The hearing representative instructed appellant that she remained entitled to file an occupational disease claim and directed OWCP to take appropriate action regarding the Form CA-7 claims appellant had filed.

[4] The duty status report is somewhat unclear as it seems to indicate weight rather than hourly restrictions for all activities.

[5] The duty status reports referenced by Dr. Brown in his July 24 and October 1, 2012 reports are not found in the record before the Board.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[6] OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[7]

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's compensation benefits on October 1, 2012. OWCP accepted that appellant sustained a sprain of the right shoulder and arm, AC joint, due to a July 28, 2011 traumatic injury. Appellant filed claims for partial disability beginning August 11, 2011 and for total disability beginning January 26, 2012 when she was sent home because no light-duty work was available.

The medical evidence relevant to the October 1, 2012 termination includes the March 29, 2012 second-opinion evaluation by Dr. Ma, who noted his review of the statement of accepted facts and medical record, and appellant's complaints of right upper extremity pain and numbness. Dr. Ma reported a history of periods in 2006 and 2009 when appellant missed several months of work due to right shoulder pain but did not claim a work injury. He provided extensive examination findings and advised that she had significant preexisting conditions that were not work related including rheumatoid arthritis and prior right shoulder injuries in 2006 and 2009 for which she received continuous treatment. Dr. Ma related that the July 21, 2011 injury may have temporarily aggravated the preexisting conditions but that any aggravation had resolved with no residuals. He opined that any current disability was due to the 2006 and 2009 injuries and the underlying rheumatoid arthritis and that appellant had no physical limitations due to any work-related disability. Dr. Ma advised that there was no reason she could not work eight hours a day and that any restrictions were due to her preexisting conditions.

In numerous reports beginning July 27, 2011, Dr. Brown, an attending internist, diagnosed right shoulder tendinitis with impingement, right de Quervain tenosynovitis, permanent aggravation of rheumatoid arthritis and temporary aggravation of unipolar depression. He described how each diagnosis was caused by lifting and repetitive work duties and opined that all work-related activities exacerbated and aggravated appellant's underlying rheumatological condition which was manifested as pain and swelling in both hands. On May 14, 2012 Dr. Brown indicated that he had reviewed Dr. Ma's report and disagreed with his conclusions. He maintained that appellant had permanent aggravation of rheumatoid arthritis, aggravation of right shoulder AC arthropathy, right wrist de Quervain's tenosynovitis, right shoulder supraspinatus tendinosis, right shoulder impingement and temporary aggravation of severe depression. Dr. Brown advised that her condition was more of an occupational disease rather than a traumatic injury that occurred on July 21, 2011, stating that her employment activities over 23 years caused cumulative trauma which aggravated all her medical conditions.

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

[7] *Id.*

He continued to submit reports in which he reiterated his findings and conclusions. Dr. Brown's opinion therefore does not support that appellant had residuals of the traumatic injury that occurred on July 21, 2011 but rather that cumulative trauma over 23 years of job duties caused the diagnosed conditions. OWCP did not evaluate this claim as an occupational injury. As noted below, appellant has the right to file a timely occupational disease claim regarding these assertions.

In reports dated November 30 and December 7, 2012, Dr. Mittleman did not relate his findings and conclusions to the July 21, 2011 employment injury.

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report.[8] The Board finds that OWCP properly determined that the weight of the medical opinion evidence rested with the opinion of Dr. Ma who provided a comprehensive report in which he outlined examination findings and provided a rationalized explanation for his opinion that appellant had no residuals of the July 21, 2011 employment injury. OWCP therefore met its burden of proof to terminate appellant's compensation benefits on October 1, 2012.

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 met its burden of proof to terminate appellant's monetary compensation on October 1, 2012.

[8] *Michael S. Mina*, 57 ECAB 379 (2006).

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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