

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)
A.S., Appellant)
)
and) **Docket No. 07-1689**
) **Issued: December 11, 2007**
)
U.S. POSTAL SERVICE, KANSAS CITY)
POSTAL & DISTRIBUTION CENTER,)
Kansas City, MO, Employer)
_____)

Appearances:
Melford V. McCormick, 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 June 11, 2007 appellant filed a timely appeal from the November 2, 2006 and May 31, 2007 merit decisions of the Office of Workers' Compensation Programs that denied modification of previous decisions terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether the Office met its burden of proof in terminating appellant's compensation benefits effective March 14, 2003; and (2) whether appellant met her burden of proof in establishing continuing disability causally related to her employment after March 14, 2003.

FACTUAL HISTORY

On January 14, 2003 appellant, then a 40-year-old mail processing clerk, filed a traumatic injury claim alleging that she sustained bilateral shoulder injuries and right arm and wrist strains

on January 10, 2003 due to repetitive stress activities at work. She stopped work on January 10, 2003 and returned on January 14, 2003. The record reflects that appellant stopped work again on January 28, 2003 and worked intermittently thereafter until March 14, 2003, when she reported stopping work completely. The Office denied her claim on February 20, 2003. On March 13, 2003 appellant requested an oral hearing.

With her hearing request appellant submitted an April 24, 2003 note from Dr. S.R. Reddy Katta, a Board-certified physiatrist, who diagnosed cervical and lumbar sprain, and tendinitis of the right shoulder, elbow and wrist. Dr. Katta noted that appellant stopped work on January 28, 2003 and recommended that she return to work with restrictions on May 8, 2003. Appellant also provided a February 13, 2003 report from Dr. Nick Navato, an osteopath, who diagnosed musculoskeletal/myofascial shoulder pain, possible thoracic outlet impingement of the brachial plexus, left greater than right lateral epicondylitis, chronic intermittent musculoskeletal pain, right bicipital tendinitis and bilateral acromioclaviculitis. Dr. Navato noted that the employing establishment assigned appellant to work on the machine on which she was working at the time of her claimed injury, rather than to a light-duty position. In an April 24, 2003 report, Dr. Katta noted the repetitive requirements of appellant's job and diagnosed chronic cervical sprain with right cervical paraspinal and posterior shoulder girdle muscle strain, tendinitis of both shoulders, the right lateral humeral epicondylar area and right wrist, as well as chronic lumbosacral sprain with associated right trochanteric bursitis. On May 7, 2003 he opined that appellant's "upper extremity problems seem to be part and parcel of upper extremity repetitive trauma disorder and her lower back pain problem might also be work related."

By decision dated March 18, 2004, the hearing representative remanded the case for the Office to refer appellant for a second opinion examination.

On March 30, 2004 the Office referred appellant, along with a statement of accepted facts, to Dr. Dale Dalenberg, a Board-certified orthopedic surgeon, for a second opinion concerning the etiology and status of appellant's medical conditions.

Dr. Dalenberg examined appellant and provided a report on May 31, 2004. He noted that appellant reported having a gradual onset of symptoms beginning in December 2002, when she returned to work on a mail processing machine after having worked as a window clerk. Dr. Dalenberg explained that appellant's symptoms culminated on January 10, 2003. Appellant reported stopping work permanently on March 14, 2003 because the employing establishment could no longer accommodate her need for a limited-duty job assignment. Dr. Dalenberg indicated that appellant's current complaints included right shoulder discomfort, right and left lateral elbow pain, right wrist pain, numbness and tingling into the right index, ring and little fingers. He reviewed the medical evidence and noted diagnostic testing, namely x-ray reports, which revealed mild disc degeneration at C5-6, as well as slight focal loss of cervical lordosis at C5-6. Dr. Dalenberg diagnosed mild C5-6 disc degeneration, bilateral/lateral epicondylitis of the elbows and right shoulder rotator cuff tendinosis with bicipital tendinitis. He attributed appellant's cervical disc degeneration in part to a 1996 nonwork-related motor vehicle accident and also explained that appellant's shoulder and elbow tendinosis was "typically a degenerative problem that may be temporarily aggravated by work duties, but is not necessarily caused by work duties." Dr. Dalenberg concluded that appellant's upper extremity symptoms were caused by a preexisting degenerative condition and that, while she may have experienced a temporary

aggravation of her condition due to her work duties beginning in December 2002, she had not experienced a permanent, material change in her condition. He advised that appellant's employment did not cause a permanent aggravation of her preexisting conditions. Dr. Dalenberg also noted that appellant had psychological factors affecting her subjective complaints and that although she "has not worked since March 14, 2003 ... she has a similar constellation of symptoms now even in the absence of the workplace factors that allegedly only occurred over a three-week period to cause her alleged injury." He advised that appellant's work restrictions were due to "chronic nonwork-related conditions." Dr. Dalenberg provided a work capacity evaluation, also dated May 31, 2004, advising that appellant was capable of working eight hours per day with restrictions.

By decision dated June 15, 2004, the Office accepted temporary aggravation of right shoulder rotator cuff tendinitis, temporary aggravation of right arm bicipital tendinitis and temporary aggravation of bilateral lateral epicondylitis of the elbows, which ceased by January 13, 2003. On the same day, the Office denied appellant's claim for compensation after January 13, 2003, finding that the medical evidence did not show that her medical conditions were due to her employment after that date.

The Office subsequently requested that Dr. Dalenberg address whether appellant's temporary aggravations had ceased and, if so, when. The Office inquired whether appellant's work restrictions were due to her accepted work-related conditions.

In a July 14, 2004 report, Dr. Dalenberg explained that appellant had several underlying conditions "which can be temporarily aggravated on any given day by a variety of activities." He explained that appellant's work-related temporary aggravations were a "minute-by-minute, hour-by-hour, day-by-day phenomenon" but noted that her work-related aggravations could only occur, by definition, on a day when she was in fact working. Since appellant stopped work for the employing establishment on March 14, 2003, Dr. Dalenberg explained that any work-related temporary aggravations of her underlying condition necessarily ceased on that day as well.

Appellant requested an oral hearing that was held on April 21, 2005. Following the hearing, she submitted an April 28, 2003 report from Dr. Katta who explained that appellant had chronic upper extremity repetitive trauma disorders, including shoulder and elbow tendinitis and cervical paraspinal and posterior shoulder girdle muscle strain. Dr. Katta indicated that he first saw appellant in 1989 and that her most recent shoulder and arm problems occurred in January 2003. He noted appellant's course of treatment in 2003 and 2004 and explained that her upper extremity repetitive trauma disorder was a long-standing problem but noted that at the time he examined appellant in January 2004, he considered her neck, shoulder and upper extremity complaints work related. Dr. Katta advised that, if appellant continued to perform repetitive activities, she would risk permanent aggravation of her condition.

By decision dated August 15, 2005, the hearing representative affirmed the Office's decision, modifying it to find that the temporary aggravation of her medical conditions ceased on March 14, 2003.

On July 19, 2006 appellant requested reconsideration. She provided a March 15, 2005 report from Dr. Katta, who diagnosed chronic and continuing repetitive trauma disorder in the

form of right shoulder tendinitis and cervical paraspinal and posterior shoulder girdle muscle strain and right thoracic paraspinal muscle strain. Dr. Katta also noted evidence of bilateral carpal tunnel syndrome. On October 28, 2005 Dr. Robert M. Murphy¹ noted that appellant first began her symptoms in 1992 and was diagnosed with bilateral carpal tunnel syndrome in 1998. He related both her shoulder pain and the numbness, tingling and aching sensations in her hand to her preexisting carpal tunnel syndrome.

By decision dated November 2, 2006, the Office denied modification of the hearing representative's August 15, 2005 decision.²

Thereafter, appellant submitted an October 20, 2006 report from Dr. Terence Pratt, a Board-certified physiatrist, who noted her complaints of cervical and shoulder pain and tightness, lateral right elbow pain with radicular components and numbness and tingling of the hands and fingers. Dr. Pratt indicated that appellant denied having any of her present symptoms before beginning work at the employing establishment. He noted that a July 2, 2003 magnetic resonance imaging (MRI) scan revealed small disc herniations at C5-6 and C6-7 with mild stenosis but no evidence of cord impingement. Dr. Pratt diagnosed cervicothoracic syndrome with soft tissue involvement, including myofascial pain, small disc herniations at C5-6 and C6-7 without significant stenosis, bilateral upper extremity discomfort with bilateral shoulder syndrome and bilateral/lateral epicondylitis. He explained that appellant's symptoms originated in the early 1990s and that she had a temporary aggravation of her condition beginning in December 2002 "and continuing until significant aggravation occurring on January 10, 2003, while performing job tasks and continuing to aggravate the condition until her last day of work on February 28, 2003." Dr. Pratt advised that appellant had permanent work restrictions caused by her work activities and that it was "unlikely" that her symptoms would dissipate "just because she has stopped performing the aggravating activities." He indicated that appellant experienced temporary aggravations when her job responsibilities changed, with the most recent temporary aggravation beginning in December 2002 and lasting until February 28, 2003. However, Dr. Pratt concluded that appellant's temporary aggravation resolved when she ceased her "vocationally-related activities."

By decision dated May 31, 2007, the Office denied modification of its November 2, 2006 decision.³

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without

¹ The Board was unable to ascertain Dr. Murphy's specialty based on the record.

² The Board notes that the Office inadvertently indicated that it had terminated appellant's compensation after January 13, 2003, rather than March 14, 2003, as found by the hearing representative.

³ The Office denied modification of the termination of appellant's benefits after January 13, 2003, not March 14, 2003 as the hearing representative held on August 15, 2005.

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶ The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁷

ANALYSIS -- ISSUE 1

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective March 14, 2003. The Board notes that the hearing representative's August 15, 2005 decision, modified the Office's initial decision, finding that appellant's temporary aggravation and consequently her entitlement to compensation benefits ceased when she stopped work on March 14, 2003, as Dr. Dalenberg supported in his July 14, 2004 report.

In determining that appellant's work-related medical condition ceased on March 14, 2003, the Office relied upon Dr. Dalenberg's May 31 and July 14, 2004 reports. On May 31, 2004 Dr. Dalenberg concluded that appellant had a temporary aggravation of several preexisting conditions during the weeks from December 2002 through January 10, 2003. He also noted that appellant reported stopping work on March 14, 2003. Dr. Dalenberg opined that she had not experienced a permanent or material change in her condition, but merely a temporary exacerbation caused by her work duties. He explained that appellant's conditions were degenerative in nature and that, while her job responsibilities may have aggravated her condition in the short-term, they did not cause her underlying degenerative conditions or result in any permanent aggravation of the degenerative disease. The Office requested additional information from Dr. Dalenberg, inquiring when appellant's work-related temporary aggravation ceased. In a July 14, 2004 clarification report, Dr. Dalenberg explained that any work-related temporary aggravation would occur when appellant was actually performing work activities. Because she had stopped work by March 14, 2003, Dr. Dalenberg concluded that her work-related temporary aggravation necessarily stopped as of that date.

Appellant provided several medical reports from Dr. Katta, dated April 24 and 28, 2003 and from Dr. Navato, dated February 13, 2003. However, while both doctors supported causal relationship between appellant's employment and the aggravation of her medical conditions, neither adequately addressed her continuing employment-related disability on or after March 14, 2003. The Board finds that Dr. Katta's and Dr. Navato's reports are of limited probative value regarding appellant's status on and after March 14, 2003. The weight of the medical evidence rests with Dr. Dalenberg, who provided a thorough report of his examination

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ *Patrick P. Curran*, 47 ECAB 247 (1995); *Dawn Sweazey*, 44 ECAB 824 (1993).

and rationale for his conclusion that the aggravation of appellant's medical conditions was temporary and ceased by March 14, 2003.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability, which continued after termination of compensation benefits.⁸

The medical evidence required to establish causal relationship is rationalized medical opinion evidence. 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 appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.⁹

ANALYSIS -- ISSUE 2

The Board finds that appellant did not meet her burden of proof in establishing that she was entitled to compensation benefits. After her benefits were terminated effective March 14, 2003, appellant submitted several additional medical reports. Dr. Katta's March 15, 2005 report diagnosed several upper back and upper extremity conditions but did not provide an opinion on appellant's continuing employment-related disability after March 14, 2003. Dr. Murphy's October 28, 2005 report noted that appellant's conditions were long-standing and preexisting, having first arisen in 1992. He related both her shoulder pain and numbness, tingling and aching of the hands to preexisting carpal tunnel syndrome, which is not an accepted condition in the present claim.¹⁰ Dr. Murphy did not support that appellant had continuing employment-related disability after March 14, 2003. Rather, he attributed her back and upper extremity symptoms to a preexisting condition, her carpal tunnel syndrome, which was diagnosed in 1998.

Appellant also submitted an October 20, 2006 report from Dr. Pratt who noted appellant's complaints of cervical spine and upper extremity pain but opined that her work-related temporary aggravation ceased as of February 28, 2003. Dr. Pratt explained that appellant's symptoms first arose in the early 1990s and that she experienced a work-related temporary aggravation of her conditions in December 2002. He also indicated that appellant had

⁸ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ The burden of proving conditions not yet accepted rests with appellant. See *Jaja K. Asaramo*, 55 ECAB 200 (2004).

permanent work restrictions caused by her employment and that her symptoms would likely continue even though she stopped work. However, Dr. Pratt did not support continuing work-related disability after March 14, 2003 and he did not provide any medical rationale to support his conclusion that ongoing symptoms and work restrictions were attributable to appellant's employment, nor did he attempt to explain the apparent inconstancy in his report where he indicated both that appellant's work-related aggravation ceased on February 28, 2003 and that she had ongoing symptoms and permanent restrictions attributable to her employment activities. Therefore his October 20, 2006 report is insufficient to meet appellant's burden of proof in establishing continuing work-related conditions or disability after March 14, 2003.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective March 14, 2003 and that appellant did not meet her burden of proof in establishing that she had continuing work-related disability after that date.

ORDER

IT IS HEREBY ORDERED THAT the May 31, 2007 and November 2, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 11, 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