

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCES L. TROTTER and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Durham, NC

*Docket No. 00-413; Submitted on the Record;
Issued January 12, 2001*

DECISION and ORDER

Before DAVID S. GERSON, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective September 12, 1999.

The Office accepted that appellant sustained left wrist tendinitis causally related to an employment incident on June 4, 1997, while transferring a patient. The Office also accepted a right wrist strain on July 28, 1997 and subsequently accepted bilateral wrist tendinitis. Appellant returned to a light-duty position at four hours per day and by decision dated October 6, 1998, the Office determined that the position represented her wage-earning capacity.¹

In a letter dated July 14, 1999, the Office notified appellant that it proposed to terminate her compensation on the grounds that her employment-related condition had ceased. By decision dated August 26, 1999, the Office terminated compensation effective September 12, 1999.

The Board has reviewed the record and finds that the Office properly terminated compensation effective September 12, 1999.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.²

¹ The Board does not have jurisdiction over this decision, since it was issued more than one year prior to the filing of this appeal. 20 C.F.R. § 501.3(d). The Board also notes that there is an October 5, 1999 decision with respect to attorney fees; appellant did not indicate on appeal any disagreement with this decision and the Board will not review the decision on this appeal.

² *Patricia A. Keller*, 45 ECAB 278 (1993).

It is also noted that the record contains an October 6, 1998 wage-earning capacity determination. Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was, in fact, erroneous.³ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁴

The accepted conditions in this case are bilateral wrist tendinitis and a right wrist sprain. Since the record contains additional diagnoses, the Board will first address whether appellant has established any other employment-related conditions. It is appellant's burden of proof to establish that any specific condition for which compensation is claimed is causally related to the employment injury.⁵

In a report dated November 21, 1997, Dr. Joyce Copeland, a family practitioner, noted that appellant had juvenile rheumatoid arthritis and indicated that appellant may have an arthritic or other rheumatological problem. A second opinion referral physician, Dr. Theodore M. Pitts, stated in an April 7, 1998 report that appellant had a preexisting rheumatological problem and the employment injury of June 4, 1997 "has caused this condition to be painful and the pain has developed into a chronic state." The Board notes that Dr. Pitts does not give a definitive diagnosis, nor does he explain how the June 4, 1997 injury caused the condition to be painful or whether any chronic condition continued to be related to the employment injuries. The Office requested clarification and in a supplemental report dated September 17, 1998, Dr. Pitts stated that he suspected appellant had systemic lupus erythematosus or similar inflammatory arthritis, based on Dr. Copeland's November 21, 1997 report. He did not offer any additional discussion on causal relationship between a rheumatological condition and the employment injuries. Dr. Copeland indicated in a November 17, 1998 report that testing for lupus by a rheumatologist had been unremarkable; she indicated that appellant possibly had fibromyalgia or connective tissue disease. With respect to causal relationship, he stated that "the wrist injury seems to have been the trigger for all of this," without further explanation. In a January 27, 1999 report, Dr. Copeland opined that appellant had developed symptoms "that may or may not be related" to the June 1997 employment injury.

The record contains no reasoned medical opinion that explains the relationship between a diagnosed condition, such as fibromyalgia, connective tissue disease or other rheumatological condition⁶ and the June 4 or July 28, 1997 employment injuries. It is appellant's burden of proof to establish any additional employment-related conditions and she cannot meet her burden with

³ *Sue A. Sedgwick*, 45 ECAB 211 (1993).

⁴ *Id.*

⁵ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ A fitness-for-duty examination dated April 2, 1999, signed by Dr. Jeanette Stein, indicated that there was no clear diagnosis for appellant's rheumatological symptoms. The report also states that it is hard to believe that appellant's wrist injury was the cause of her current medical condition.

speculative medical opinions. Medical opinions that are speculative and not supported by medical rationale are generally entitled to little probative value and are insufficient to meet appellant's burden of proof.⁷

In a report dated May 28, 1999, Dr. Michael D. Gwinn, a specialist in physical medicine serving as a second opinion physician, reviewed appellant's history and medical records and provided results on examination. He indicated that appellant may have fibromyalgia or some type of connective tissue disease, but any symptoms were unrelated to the work injuries.

The Board accordingly finds that the evidence of record is not sufficient to establish a specific rheumatological condition as employment related. The accepted conditions are a bilateral wrist tendinitis and right wrist strain.

As noted above, it is the Office's burden of proof to terminate compensation for an accepted employment injury. With respect to the accepted wrist conditions, the weight of the evidence rests with Dr. Gwinn, the referral physician. His May 28, 1999 report contains a complete background and reports no objective abnormalities on examination of the wrists. Dr. Gwinn opined that appellant's work-related condition had resolved and any continuing symptoms were not employment related. The record does not contain a reasoned medical opinion from an attending physician that appellant continued to have a wrist condition causally related to the June 4 or July 28, 1997 employment injuries. Accordingly, the Board finds that the weight of the evidence rests with Dr. Gwinn. The Office therefore met its burden of proof in this case.

Appellant filed a notice of recurrence of disability commencing October 20, 1998. Based on information from the employing establishment, it appears that appellant continued to work four hours per day, but generally four days a week, instead of five. To the extent that appellant is claiming a recurrence of increased disability or a modification of the wage-earning capacity determination, the Office did not address these issues in the August 26, 1999 decision. On return of the case record, the Office should issue a decision on whether appellant is entitled to compensation from October 20, 1998 to September 12, 1999.

⁷ *Carolyn F. Allen*, 47 ECAB 240 (1995).

The decision of the Office of Workers' Compensation Programs dated August 26, 1999 is affirmed.

Dated, Washington, DC
January 12, 2001

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member