U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELEANOR M. PAYTON and DEPARTMENT OF THE TREASURY, U.S. MINT, San Francisco, CA

Docket No. 02-1469; Submitted on the Record;
Issued January 31, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated compensation benefits on the basis that she no longer had any residual disability due to her accepted injuries of March 19 and December 15, 1992.

On March 26, 1992 appellant, then a 52-year-old coin checker, filed an occupational disease claim (Form CA-2) alleging that on March 19, 1992 she first realized the pain in her right hand, fingers and arm were employment related.[1] The Office accepted the claim for right thumb tendinitis and right wrist tenosynovitis.

On December 22, 1992 appellant filed an occupational disease claim (Form CA-2) alleging that on December 15, 1992 she first realized that her carpal tunnel syndrome and left tennis elbow were employment related.[2] The Office accepted the claim for carpal tunnel syndrome and left tennis elbow. Appellant was subsequently placed on the automatic rolls for temporary total disability.[3]

On October 15, 1998 the Office referred appellant to Dr. Sheldon C. Brown, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. David Wren, Jr., an attending physician and Dr. H. Relton McCarroll, Jr., a second opinion Board-certified orthopedic surgeon, regarding whether appellant continued to have any residual disability due to her accepted employment injury of carpal tunnel syndrome and whether her ulnar nerve entrapment was employment related.

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[1] This was assigned claim number A13-978348.

[2] This was assigned claim number A1002690. The Office combined the two claims under master claim number A13-978348.

[3] Appellant was separated from the employing establishment effective June 4, 1993.

In a November 20, 1998 report, Dr. Brown concluded that appellant had recovered from her bilateral carpal tunnel syndrome and did not have ulnar nerve entrapment. A physical examination revealed negative Phalen's test and Tinel's sign at the wrist, "no tenderness over the ulnar nerve and paresthesias were not elicited over ulnar nerve distribution," and "a positive Tinel's sign was also not elicited on percussion over the ulnar nerves at the elbows," no muscle atrophy or wasting was evident and "sensory testing revealed equivalent sensibility to pinprick over median and ulnar nerve distribution in both hands, with no evidence of a sensory deficit." In concluding, Dr. Brown opined:

> "I find no evidence of ongoing tenosynovitis in either the wrist or hands or of active carpal tunnel syndrome. I also find no evidence of tenderness or parathesia about the ulnar nerve at the elbows and no evidence to suggest ulnar neuropathy distally in the arms and hands.
>
> "I believe that [appellant] has recovered from her carpal tunnel surgery. I do not believe that additional medical or surgical treatment is required for the carpal tunnel syndrome. I find no clinical evidence of ongoing ulnar neuropathy at the elbow and I do not believe that anterior transposition of the ulnar nerve is required."

In a December 11, 1998 supplemental report, Dr. Brown noted that he had subsequently received additional medical records on appellant. After reviewing the additional medical records, Dr. Brown stated:

> "Review of these conduction studies does not cause me to alter any of my opinions expressed in my report of November 20, 1998. I believe [appellant] likely has some peripheral neuropathy affecting the nerves as well as other nerves in her upper extremities. This peripheral neuropathy likely is linked to her diabetes and I do not believe there is industrial causation in this regard."

Dr. Brown concluded that appellant had recovered from her carpal tunnel surgery and did not require any additional surgical or medical treatment for her carpal tunnel syndrome. He also concluded that there was "no clinical evidence of ongoing ulnar neuropathy at the elbows" and he did "not believe that anterior transposition of the ulnar nerve is indicated."

In a January 29, 1999 report, Dr. Wren noted:

> "[Appellant] remains significantly symptomatic with pain, numbness and tingling in the arms, hands and fingers. She has pain in the elbows over the ulnar nerves. [Appellant] has decreased grip strength. She has weakness in both arms…."

In concluding, Dr. Wren opined that appellant continued to be totally disabled due to her "significant impairment of both wrists and arms" and that she had never recovered from her accepted March 19, 1992 employment injury.

On February 5, 1999 the Office issued a notice of proposed termination of benefits which was finalized by decision dated March 9, 1999.

Appellant requested an oral hearing in a letter dated April 5, 1999 and a hearing was held on August 24, 1999.

In a decision dated November 17, 1999, the hearing representative set aside the March 9, 1999 decision terminating appellant's compensation and remanded for further development. The hearing representative instructed the Office to authorize electromyogram (EMG)/nerve conduction study (NCS) testing "as part of the case development for this claim, the Office was directed to refer the claimant for a new EMG/NCS in consideration of work-related and disabling arthritic changes affecting the fingers of the hands." On remand, the Office was instructed to return appellant back to Dr. Brown for a follow-up report after the Office authorized appellant "to undergo an EMG/NCS as previously directed."

In a March 3, 2000 report, Dr. Brown reviewed a February 1, 2000 nerve conduction study and noted:

> "This study was interpreted as showing mild slowing across the elbow segment of left ulnar motor nerve. These findings were felt to be compatible with a mild neuropraxia of the left ulnar nerve at or near the elbow. There was no electrical evidence for a diabetic polyneuropathy, recurrent bilateral carpal tunnel syndrome or right cubital tunnel syndrome, as noted by Dr. Richardson in his postoperative study of March 7, 1994. There was also no electrical evidence for a bilateral cervical radiculopathy."

Dr. Brown concluded that the nerve conduction study suggested a "mild ulnar nerve entrapment at the left elbow," but this condition required no surgical treatment. Moreover, "as there was no evidence of peripheral neuropathy related to diabetes, it is possible the left ulnar nerve entrapment is work related." Lastly, he opined that appellant's left ulnar nerve entrapment symptoms would not prevent her from performing her date-of-injury job. Dr. Brown also opined "that residual disability regarding ulnar neuropathy would be subjective complaints" which he "would classify as slight and intermittent."

In a March 14, 2000 report, the Office requested Dr. Brown to provide work restrictions as she had residuals of a left elbow condition and attached a work capacity evaluation (Form OWCP-5c) to complete.

In a March 14, 2000 work capacity evaluation (Form OWCP-5c), Dr. Brown concluded that appellant was capable of working eight hours with restrictions of no lifting over five pounds.

By letter dated March 28, 2000, the Office provided additional information for Dr. Brown to review including a new statement of accepted facts and requested him to provide a supplemental report.

In a report dated April 18, 2000, Dr. Brown concluded that appellant was capable of returning to her former job. He noted that the February 1, 2000 nerve conduction study revealed no carpal tunnel evidence and "showed mild slowing across the elbow segment of the left ulnar

motor nerve, compatible with mild neuropraxia near the nerve." As to physical findings, Dr. Brown reported:

> "[N]o evidence of persistent carpal tunnel syndrome in either hand. There is some mild tenderness over the flexor pollicis longus tendon of the right thumb, consistent with mild stenosing tenosynovitis of the thumb flexor tendon. There is also some diminished sensibility to pinprick over the left fifth finger which is likely consistent with a mild ulnar entrapment at the left elbow, which appears to be documented with the recent nerve conduction study. Although Dr. McCarroll reported that the x-rays revealed some arthritis of the index and long fingers … joints in both hands, the fingers seem to flex and extend well and I do not feel there is a significant functional problem of these fingers related to the arthritic condition. The left ulnar entrapment, I believe, is more likely than not related to some degenerative change at the left elbow. I do not feel that this likely is the result of a work injury."

In concluding, Dr. Brown opined that appellant's bilateral carpal tunnel syndrome had resolved without any significant residuals, her right thumb flexor tendon problem was unrelated to her employment as it was a recent problem and that appellant was capable of working her former position.

By letter dated June 29, 2000, the Office requested Dr. Brown to clarify whether the left ulnar condition was employment related as he reported it was in his March 3, 2000 report and then said it was not in the April 18, 2000 report.

Dr. Brown, in an August 18, 2000 supplemental report, responded to the Office's June 29, 2000 request for clarification. In clarifying the conflicting statements, he noted:

> "Dr. Bott's study suggests some mild ulnar entrapment at the left elbow and, although it is possible that this condition does exist, I do not believe that it is clinically significant and, furthermore, I do not believe that surgical treatment is indicated. It is also my opinion that any compressive neuropathy of the ulnar nerve at the elbow is more likely than not unrelated to [appellant]'s employment as a coin checker by the U.S. Mint from 1980 to 1982 and 1985 to 1992. [Appellant] has not worked at this occupation since December 1992 because of alleged medical problems involving her upper extremities and one would have to question causation very seriously."

In my report of March 3, 2000, I indicated that Dr. Bott's study suggested a mild ulnar nerve entrapment of the left elbow and I noted that it is possible that this condition does exist. It is my position that this condition is not related to her work activity and does not require any surgical treatment and is not disabling.

On May 3, 2001 the Office issued a notice of proposed termination of benefits which was finalized by decision dated June 8, 2001.

Appellant requested a hearing, which was held on December 5, 2001.

By decision dated February 5, 2002, the hearing representative affirmed the termination of compensation benefits based upon the opinion of Dr. Brown, the impartial medical specialist.[4]

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[5] The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.[6] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[7] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[8] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[9]

Where there exists a conflict of medical opinion, the case is referred to an impartial medical specialist for the purpose of resolving the conflict. If the opinion of the impartial medical specialist is sufficiently well rationalized and based upon a proper factual background, it must be given special weight.[10]

Pursuant to section 8123(a) of the Federal Employees' Compensation Act,[11] the Office referred appellant to a third physician for an impartial medical examination.[12] Dr. Brown provided an accurate and comprehensive review of appellant's medical history and performed a thorough examination. Based on this review and examination, he found that the nerve conduction study revealed no carpal tunnel evidence and "showed mild slowing across the elbow segment of the left ulnar motor nerve, compatible with mild neuropraxia near the nerve." Specifically, he found no objective evidence any continuing disability due to appellant's

[4] Appellant submitted a copy of the hearing representative's decision with her appeal as it is not contained in the record.

[5] *Gloria J. Godfrey*, 52 ECAB ___ (Docket No. 00-502, issued August 27, 2001).

[6] *Lynda J. Olson*, 52 ECAB ___ (Docket No. 00-2085, issued July 11, 2001).

[7] *Manuel Gill*, 52 ECAB ___ (Docket No. 99-915, issued March 2, 2001).

[8] *Furman G. Peake*, 41 ECAB 361 (1990).

[9] *Franklin D. Haislah*, 52 ECAB ___ (Docket No. 01-208, issued August 1, 2001).

[10] *Irene M. Williams*, 47 ECAB 619 (1996); *Roger Dingess*, 47 ECAB 123 (1995); *Carl Epstein*, 38 ECAB 539 (1987).

[11] 5 U.S.C. §§ 8101-8193

[12] Section 8123(a) of the Act provides: "[I]f there is disagreement between the physician making the examination for the United States and the physician for employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

accepted bilateral carpal tunnel syndrome. Moreover, he found that her mild ulnar nerve entrapment was unrelated to her employment.

The Board finds that Dr. Brown's opinion is well rationalized, based on a meticulous and thorough clinical examination and relies on a complete medical and factual background. Therefore, his opinion must be accorded special weight on the issue of whether appellant had any residuals or disability resulting from the accepted right thumb tendinitis and right wrist tenosynovitis, carpal tunnel syndrome and left tennis elbow as the result of her accepted employment injuries. As the weight of the medical opinion evidence on this issue, Dr. Brown's report justifies the Office's termination of appellant's compensation benefits effective July 14, 2001.

The February 5, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 31, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member