U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORIS TIDWELL and U.S. POSTAL SERVICE,
POST OFFICE, Seattle, WA

Docket No. 03-1519; Submitted on the Record;
Issued September 30, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective October 15, 2001.

On October 7, 1975 appellant, then a 27-year-old postal clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she injured her right wrist while keying a letter on a sorter machine. The Office accepted the claim for chronic tenosynovitis of the right wrist and right carpal tunnel syndrome. Appellant was terminated from her employment on November 7, 1975 and has not worked since. The Office placed appellant in vocational rehabilitation services from January 1985 until March 21, 1990 and from September 15, 1993 through March 21, 1994, when services were terminated due to lack of cooperation. Appellant underwent authorized carpal tunnel syndrome surgical release in 1986 and again in 1999. Appellant's relevant medical history also includes three nonindustrial motor vehicle accidents, high blood pressure and diabetes.

In a November 4, 1999 report, Dr. Lawrence Holland, an orthopedic surgeon, noted that he had treated appellant since the late 1980s, that appellant developed carpal tunnel syndrome symptoms recently but that he was unable to say for certain, but assumed, that her symptoms were an aggravation of the original employment injury.

In an August 29, 2000 letter, the Office referred appellant for a second opinion to Dr. Harry Reese, a Board-certified orthopedist. In a September 14, 2000 report, Dr. Reese stated that appellant presented with numbness and tingling in her right ring and fifth finger with pain in her long finger, tingling over her dorsum of her hand just below the metacarpophalangeal joint. Appellant also indicated pain going all the way up to the lateral epicondyle region of the elbow, with swelling over the dorsum, just above the wrist. Dr. Reese wrote that appellant's right shoulder was bothersome when she laid on her right side a lot; when it was stiff she elevated the arm and rotated her forearm causing a sharp pain from her wrist to her forearm and above the elbow.

On examination Dr. Reese found appellant well nourished at 5 feet 6½ inches and 295 pounds. Phalen's and Finkelstein's tests were negative bilaterally. Percussion over the volar wrists and medial elbows produced no Tinel's signs but a little tenderness locally over the right volar wrist. Her thumb grinding test was negative bilaterally. Muscle testing was normal. Range of motion in her wrists was 70 degrees of flexion and extension bilaterally with 40 degrees of ulnar deviation bilaterally and 20 degrees of radial deviation bilaterally. He found her shoulder motion unrestricted, though appellant indicated to Dr. Reese that she was not having a bad day for her shoulder. A neurologic examination revealed symmetrically normal deep tendon reflexes at biceps, triceps and brachioradialis and no major sensory deficits. He found the surgical incision on her right hand well healed with no locking or triggering of her fingers, just pain around the thumb. Dr. Reese wrote that he could find no factors of disability, though subjectively appellant complained of numbness and tingling. He indicated that it was hard to relate appellant's complaints to the accepted injury of 1975 when appellant had not worked since that time. Dr. Reese indicated that the tenosynovitis and the precursor for trigger finger conditions in the right were likely related to the aging process and appellant's normal daily activities, finding that any tenosynovitis in the flexor tendons would have healed since 1975. He concluded that he could find no objective factors that could be clearly and specifically attributed to the accepted injury.

In a May 14, 2001 letter, the Office found a conflict in the medical evidence between Drs. Holland and Reese and referred appellant to Dr. Lance Brigham, a Board-certified orthopedic surgeon, for an impartial medical examination. In a May 31, 2001 report, Dr. Brigham noted that appellant presented in no apparent distress. He found no swelling in her hands. Phalen's, Tinel's and Finkelstein's tests were all negative. Though there was some pain indicated to pressure on her right thumb, there was full flexion and extension in her wrists and fingers. He indicated that her sensory test to light touch was normal as well. Dr. Brigham noted that there was no currently active or objective symptoms related to the industrial injury of 1975, including no symptoms of carpal tunnel syndrome or tenosynovitis. He further indicated that her subjective complaints did not fit conditions related to the industrial injury and that her complaints of hand pain were not consistent with the objective findings and at best, might be related to her diabetes. Dr. Brigham found her prognosis poor and would probably not improve, at least from her subjective complaints. Dr. Brigham concluded that appellant was capable of returning to her job without restrictions though he doubted that she would be able to return to work. He assumed that appellant would be under limited use restrictions of her hands and no repetitive-type activities, which he indicated was due solely to her subjective complaints and not objective findings.

In a July 22, 2001 letter, the Office proposed terminating appellant's compensation finding that the weight of the medical evidence rested with Dr. Brigham as the impartial medical examiner. Appellant was provided her procedural rights but did not submit any further evidence. In an October 15, 2001 decision, the Office terminated appellant's compensation.

In a November 2, 2001 letter, appellant requested an oral hearing. In support of her request, appellant submitted an August 20, 2001 report from Dr. Holland, who stated that he saw no reason appellant could not return to work, though he felt she needed to avoid activities that necessitated flexing and extending her wrist. He added that appellant had been to vocational

rehabilitation twice, and that "in and of itself should be enough for her to maintain gainful employment."

The hearing was held on May 22, 2002. Appellant testified that she had not worked since 1975 and that she had swelling in her right wrist and trouble picking things up with it. Her attorney contended that Dr. Brigham's report should not be given the special status granted to impartial medical examiners because Dr. Reese and Dr. Brigham were "connected through an organization called MCN[1] thereby compromising the integrity of Dr. Brigham's report under the Federal Employees' Compensation Act. Subsequent to the hearing appellant submitted a June 3, 2002 report from Dr. Holland who noted that he had treated appellant since 1988 when she presented with symptoms of carpal tunnel syndrome and tendinitis; he performed the surgical release procedures in 1986 and 1999 yet she continues to have pain and discomfort associated with overuse. Dr. Holland diagnosed overuse tendinitis causally related to her accepted injury. He added that appellant needs to find a job that does not require flexion-extension of the wrist or her symptoms will continue.

In an August 19, 2002 decision, the hearing representative affirmed the termination finding the weight of the evidence remained with Dr. Brigham. The hearing representative also found appellant's argument, that Dr. Brigham's report should not be given special weight due to an alleged common association with MCN, to be without merit in that Dr. Brigham had a contract with MCN and not the Office and because Dr. Brigham was selected through the appropriate rotational procedures.

The Board finds that the Office properly terminated appellant's compensation effective October 15, 2001.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.[2] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[3] After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits 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 a employment-related disability which continued after termination of compensation benefits.[4]

The Board finds that appellant's argument that there was a procedural error in the case resulting in the improper selection of Dr. Brigham as the impartial medical examiner is without merit. The record contains no evidence to suggest that Dr. Reese and Dr. Brigham have any

[1] "MCN" is an acronym for Medical Consultants Network. MCN is a physician referral agency. The record contains a document from MCN, signed by appellant, that indicates that the network refers patients to physicians who are not affiliated with MCN's client (in this case the Office). The physicians also were not employees of MCN.

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

[3] *Id.*

[4] *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

business relationship, other than a referral through MCN, whose document specifically states that their referred doctors have no relationship with MCN. The two doctors do not have the same business address. Dr. Reese's report is on MCN stationery with an address of 901 Boren Avenue, Seattle, Washington, while Dr. Brigham's stationery indicates that he is affiliated with an organization, Seattle Orthopedic and Fracture Clinic, P.S., located at 801 Broadway, Seattle, Washington. The evidence does not establish that Dr. Brigham is associated in medical practice with Dr. Reese.

The Board finds that the Office properly determined that there was a conflict in the medical opinion between Dr. Holland, appellant's attending orthopedist, and Dr. Reese, a Board-certified orthopedic surgeon acting as an Office referral physician, on whether appellant had continuing disability causally related to her accepted work injury. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Brigham, a Board-certified orthopedist, for an impartial medical examination and an opinion on the matter.[5]

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[6]

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Brigham, the impartial medical specialist selected to resolve the conflict in the medical opinion. The May 31, 2001 report of Dr. Brigham establishes that appellant did not have any continuing disability causally related to her accepted injuries.

The Board has carefully reviewed the opinion of Dr. Brigham and notes that it has reliable, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Brigham's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, Dr. Brigham provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.[7] Dr. Brigham provided medical rationale for his opinion by explaining that he could find no objective evidence of continuing disability, that appellant's symptoms were not consistent with her accepted injury, He further added that since appellant has not worked since 1975 her tenosynovitis would likely be cured and that her symptoms were likely a result of her diabetes.

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

[6] *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

[7] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

After the Office's October 15, 2001 decision appellant submitted additional medical evidence from Dr. Holland. Given that the Board has found that the Office properly relied on the opinion of the impartial medical examiner, Dr. Brigham, in terminating appellant's compensation effective October 15, 2001, the burden shifts to appellant to establish that she is entitled to compensation after that date. The Board has reviewed the additional evidence from Dr. Holland and finds that it is not of sufficient probative value to establish that she had residuals of her October 7, 1975 employment injury after October 15, 2001. In both August 20, 2001 and June 3, 2002 reports, Dr. Holland indicated that appellant could return to work though she should avoid work that necessitates flexing and extending her wrist. These reports are insufficient to overcome the weight accorded to Dr. Brigham's report or to create a new conflict because Dr. Holland was on one side of the conflict that Dr. Brigham was selected to resolve. The Board has held that additional reports from a physician on one side of a conflict that has been resolved are generally insufficient to overcome the special weight of the referee medical examiner.[8]

The decision of the Office of Workers' Compensation Programs dated August 19, 2002 is affirmed.

Dated, Washington, DC
September 30, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[8] *See Harrison Combs, Jr.*, 45 ECAB 716, 728 (1994); *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).