United States Department of Labor
Employees' Compensation Appeals Board

K.O., Appellant	)	
and	)	**Docket No. 07-1739**
	)	**Issued: January 29, 2008**
DEPARTMENT OF THE ARMY, ARMY NATIONAL GUARD, Madison, WI, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 21, 2007 appellant filed a timely appeal from an April 18, 2007 merit decision of the Office of Workers' Compensation Programs affirming the termination of her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation benefits effective June 19, 2006; and (2) whether she established that she had any continuing disability after June 19, 2006.

FACTUAL HISTORY

On June 3, 2001 appellant, then a 47-year-old voucher examiner, filed an occupational disease claim alleging that she developed tendinitis of the elbows while performing repetitive duties. The Office accepted the claim for bilateral elbow tendinitis. Appellant was granted a disability retirement on May 25, 2002.

Appellant came under the care of Dr. Moiya Murphy, a Board-certified internist, who treated her from June 9, 2000 to October 10, 2001 for pain in her right arm and diagnosed tennis elbow and paresthesia and weakness of the arm. Dr. Murphy noted that appellant had underlying fibromyalgia which increased her risk for overuse injuries. She opined that appellant developed carpal tunnel syndrome and elbow tendinitis as a result of repetitious use of her hands at work. Dr. Murphy stated that appellant underwent bilateral carpal tunnel releases and her symptoms resolved. Appellant submitted an October 9, 2001 attending physician's report from Dr. Stewart F. Taylor, Jr., a Board-certified orthopedic surgeon, who noted appellant's symptoms of numbness and tingling in the hands, wrists and thumbs and diagnosed bilateral carpal tunnel syndrome. He indicated that appellant's condition was caused by repetitive duties at work.

On November 1, 2001 appellant filed a claim for an occupational disease for bilateral carpal tunnel syndrome. On December 10, 2001 the Office accepted appellant's claim for bilateral carpal tunnel syndrome. The Office authorized a right carpal tunnel release which was performed on September 11, 2001 and a left carpal tunnel release which was performed on January 25, 2002.[1]

Treatment notes from Bonnie J. Weigert, Board-certified in physical medicine and rehabilitation, dated February 18, 2001 to March 12, 2002, listed diagnoses of fibromyalgia, bilateral epicondylitis and bilateral carpal tunnel syndrome. She noted that appellant was status post right carpal tunnel release and developed finger flexor tendinitis due to working with a brace on her hand. On March 12, 2002 Dr. Weigert advised that appellant underwent a left carpal tunnel release on January 25, 2002 and was progressing well postoperatively. In a duty status report dated June 7, 2002, she noted that appellant could return to work four hours per day with restrictions. On August 29, 2003 Dr. Taylor diagnosed triggering of the right middle finger and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity.[2] In a report December 9, 2003, he noted treating appellant since October 2001 for triggering of the right middle finger caused by splinting of the arm for right and left carpal tunnel syndrome subsequent to carpal tunnel releases.

On May 25, 2002 appellant applied for a disability retirement on August 7, 2002, the employing establishment indicated that it was unable to accommodate her work restrictions. She initially elected to receive retirement benefits but on March 7, 2003 elected compensation benefits under the Federal Employees' Compensation Act. On February 25, 2004 the Office expanded appellant's claim to include right middle trigger finger and authorized release surgery.

Appellant submitted a work capacity evaluation from Dr. Taylor dated June 30, 2004. He advised that appellant could return to work full time without restrictions and that she had reached maximum medical improvement. In a report dated July 6, 2004, Dr. Taylor noted that appellant

[1] The operative reports for these procedures are not in the record.

[2] On March 26, 2002 the Office combined appellant's claims for bilateral elbow tendinitis and bilateral carpal tunnel syndrome, File Nos. A10-2005813 and A10-2003126.

underwent a right trigger finger release on March 23, 2004 and was discharged from treatment on March 30, 2004.[3]

On September 28, 2004 the Office referred appellant to Dr. Bruce Davey, a Board-certified orthopedic surgeon, for a second opinion. In a November 8, 2004 report, he reviewed the records provided and examined appellant. Dr. Davey diagnosed chronic pain syndrome, possibly myofascial pain syndrome, resolved lateral epicondylitis and status post surgery for carpal tunnel syndrome which was successful. He found a full range of motion of the arms, shoulders and elbows, no tenderness of the shoulder, mild to moderate tenderness over the lateral epicondyles, no sign of radial nerve involvement, full pronation and supination, no atrophy of the forearms and no signs of pronator teres syndrome. Examination of the bilateral wrists and hands revealed well-healed carpal tunnel incisions, no thenar or phyothenar atrophy was noted, full range of motion of the wrists and fingers, no signs of swelling or discoloration, good grip strength bilaterally, no signs of arterial insufficiency in the hands, normal sensory examination of the hands and no atrophy of the intrinsic muscles of the hands. Dr. Davey noted that appellant's subjective symptoms far outweighed her minimal objective findings. He opined that appellant was capable of performing light work without restrictions and did not recommend further medical treatment. Dr. Davey prepared a work capacity evaluation and indicated that appellant was capable of performing her usual job and identified restrictions which were attributed to her diagnosed myofascial pain syndrome rather than the accepted bilateral epicondylitis or bilateral carpal tunnel syndrome conditions.

On March 17, 2006 the Office issued a notice of proposed termination of compensation benefits on the grounds that Dr. Davey's report dated November 8, 2004 established no residuals of the work-related employment conditions.

On May 25, 2006 appellant, through her attorney, asserted that Dr. Davey performed no testing as part of his examination, that the examination of appellant was brief and that he was unaware of the issues to be addressed in appellant's claim. Appellant requested that she be referred to an impartial physician.

By decision dated June 19, 2006, the Office terminated appellant's compensation benefits effective that day, finding that the weight of the medical evidence established that she had no continuing disability resulting from her accepted employment injury.

In a letter dated June 27, 2006, appellant requested an oral hearing before an Office hearing representative. On February 1, 2007 she withdrew her request for an oral hearing and requested a review of the written record. In a July 18, 2006 report, Dr. Weigert diagnosed chronic, recalcitrant, bilateral, lateral epicondylitis and forearm myofascial pain consistent with repetitive stress syndrome. He indicated that appellant would not benefit from further physical therapy or injection therapy but recommended botulinum toxin for pain. Dr. Weigert recommended a functional capacity evaluation and vocational rehabilitation.

By decision dated April 18, 2007, the hearing representative affirmed the June 19, 2006 decision.

[3] The operative report is not in the case record.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[4] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[6]

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for bilateral elbow tendinitis, bilateral carpal tunnel syndrome and right middle trigger finger. It authorized a right carpal tunnel release, which was performed on September 11, 2001, a left carpal tunnel release, which was performed on January 25, 2002 and a right middle trigger finger release, which was performed on March 23, 2004.

On June 30, 2004 Dr. Taylor found that appellant could return to work full time without restrictions. Therefore, the Office referred appellant for a second opinion evaluation by Dr. Davey, an orthopedist. In a November 8, 2004 report, he diagnosed chronic pain syndrome, possibly myofascial pain syndrome, resolved lateral epicondylitis and status post surgery for carpal tunnel syndrome. Dr. Davey noted full range of motion of the arms, shoulders and elbows, mild to moderate tenderness over the lateral epicondyles, no sign of radial nerve involvement, full pronation and supination and well-healed carpal tunnel incisions. No thenar or phyothenar atrophy was noted with full range of motion of the wrists and fingers, good grip strength bilaterally. Dr. Davey found a normal sensory examination of the hands and no atrophy of the intrinsic muscles of the hands. He stated that appellant's subjective symptoms outweighed the minimal objective findings, which he attributed to her diagnosed myofascial pain syndrome rather than the accepted bilateral epicondylitis or bilateral carpal tunnel syndrome conditions. Dr. Davey advised that appellant could return to her regular job with restrictions attributable to her myofascial pain syndrome.

The Board finds that the opinion of Dr. Davey represents the weight of the evidence and establishes that appellant's work-related conditions have resolved. He found that appellant did not have ongoing residuals of her accepted conditions. In this report, he agreed with Dr. Taylor that she could return to her regular duties. There is no contemporaneous medical evidence of equal weight supporting appellant's claim of ongoing disability and medical residuals. For these reasons, the Office met its burden of proof in terminating her benefits for her accepted conditions.

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[4] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[5] *Mary A. Lowe*, 52 ECAB 223 (2001).

[6] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant.[7]

To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. 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 the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not established that she has any continuing residuals of her bilateral elbow tendinitis, bilateral carpal tunnel syndrome and right middle trigger finger causally related to her accepted employment conditions on or after June 19, 2006.

Appellant submitted a report from Dr. Weigert dated July 18, 2006. She diagnosed chronic, recalcitrant, bilateral, lateral epicondylitis and forearm myofascial pain consistent with repetitive stress syndrome. Dr. Weigert indicated that appellant would not benefit from further physical therapy or injection therapy and recommended a functional capacity evaluation, vocational rehabilitation and work restrictions. However, she did not specifically address how any continuing condition was causally related to the accepted employment injury. Additionally Dr. Weigert's report did not include a rationalized opinion regarding the causal relationship between appellant's current condition and her accepted conditions.[9] Moreover, the Office never accepted that appellant sustained forearm myofascial syndrome as a result of her work injury.[10]

The evidence submitted by appellant after the termination of benefits does not provide a sufficiently rationalized opinion regarding the causal relationship between her current condition and her accepted work-related conditions.

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[7] *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

[8] *See Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

[9] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[10] *See Alice J. Tysinger, supra* note 4.

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective June 19, 2006. The Board further finds that appellant failed to establish that she had any continuing disability after June 19, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 18, 2007 is affirmed.

Issued: January 29, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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