

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

_____)	
J.A., Appellant)	
)	
and)	Docket No. 08-2281
)	Issued: June 1, 2009
U.S. POSTAL SERVICE, POST OFFICE,)	
Mastic, NY, Employer)	
_____)	

Appearances:
Paul Kalker, Esq., 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 August 18, 2008 appellant, through counsel, filed a timely appeal from a February 12, 2008 merit decision of the Office of Workers' Compensation Programs terminating her compensation benefits and a June 19, 2008 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation benefits effective February 17, 2008; and (2) whether the Office properly refused to reopen her case for further review of the merits under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 2, 2006 appellant, then a 55-year-old mail carrier, filed an occupational disease claim alleging that on May 25, 2006 she first became aware that she had carpal tunnel syndrome, severe tendinitis and de Quervain's disease. On June 19, 2006 she realized these conditions were caused or aggravated by her employment, which required repetitious movements. The Office accepted the claim for right radial styloid tenosynovitis (de Quervain's disease) and authorized

incision of the tendon sheath, which was performed on March 22, 2007. By letter dated March 9, 2007, the Office placed appellant on the periodic rolls for temporary total disability.

In a June 13, 2007 report, Dr. Itchak Schwarzbard, an examining Board-certified orthopedic surgeon, diagnosed a successful de Quervain's release and basilar thumb joint arthritis consistent with her symptoms. He found no evidence of recurrent symptoms, first compartment tendon subluxation, or neuroma formation. A physical examination revealed no deformity, swelling, tenderness or hyperesthesia at the radial styloid incision site and a negative sensory radial nerve Tinel's sign.

On August 8, 2007 the Office referred appellant for a second opinion evaluation with Dr. Salvatore Corso, a Board-certified orthopedic surgeon, to determine whether she had residuals of her accepted employment injury. In an August 27, 2007 report, Dr. Corso recommended physical therapy for appellant for six to eight weeks with a reevaluation after completion. He diagnosed status post right wrist de Quervain's release. Physical examination revealed significant grip strength and wrist weakness.

In progress notes dated September 5 and October 17, 2007, Dr. Schwarzbard diagnosed symptomatic basal thumb joint arthritis. He opined that appellant's condition was not responsive to conservative treatment.

On November 21, 2007 the Office again referred appellant to Dr. Corso for a second opinion evaluation to determine her current medical status. On December 6, 2007 Dr. Corso diagnosed status post de Quervain's release at the right wrist with exacerbation of preexisting carpometacarpal or basal joint arthritis of the thumb. A physical examination revealed first dorsal compartment tenderness and significant thumb carpometacarpal joint tenderness with a positive basal grind test. Dr. Corso opined that appellant's accepted radial styloid tenosynovitis condition had resolved. He concluded that appellant was disabled from performing her usual work duties, but was capable of working with restrictions. Dr. Corso noted that appellant currently had basilar joint degeneration of the right thumb which was unrelated to her accepted employment injury. He noted that the condition of basilar joint was a chronic degenerative condition. Dr. Corso concluded that appellant no longer required any medical treatment for her accepted employment injury.

In a December 18, 2007 work capacity evaluation form, Dr. Schwarzbard advised that appellant was capable of working an eight-hour day with restrictions. The restrictions include no right hand repetitive movement.

On January 11, 2008 the Office proposed to terminate appellant's compensation, finding that the medical evidence established that she no longer had any residuals or disability due to her accepted work injury.

In a February 5, 2008 letter, appellant's counsel disagreed with the proposed termination, contending that the Office's characterization of appellant's condition as right radial styloid tenosynovitis (de Quervain's disease) was unduly narrow. Appellant contended that Dr. Corso's reports supported that she had continuing disability due to her right thumb condition.

By decision dated February 12, 2008, the Office finalized the termination of appellant's wage-loss and medical benefits effective February 17, 2008. It found that she no longer had any

residuals or disability due to her accepted May 25, 2006 employment injury. The weight of the medical evidence rested with the opinion of Dr. Corso.

In a letter dated March 19, 2008, appellant's counsel requested reconsideration.

In a nonmerit decision dated June 19, 2008, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.¹ After it has determined that an employee has disability causally related to 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.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.⁵

ANALYSIS -- ISSUE 1

Appellant's claim was accepted for right radial styloid tenosynovitis (de Quervain's disease). The Board finds that the medical evidence is insufficient to meet the Office's burden of proof.

The Office based its termination of appellant's compensation benefits on the December 6, 2007 report by Dr. Corso. It referred appellant to Dr. Corso for second opinion evaluations. On August 27, 2007 Dr. Corso recommended physical therapy as appellant's condition had not resolved and advised that her condition be reevaluated following the six to eight weeks of physical therapy. In his December 6, 2007 report, Dr. Corso concluded that the accepted condition of right radial styloid tenosynovitis had resolved. Under his diagnosis, he stated that appellant's preexisting basal joint thumb arthritis had been exacerbated by the right wrist de Quervain's release. However, later in his report, Dr. Corso concluded that appellant's basilar joint arthritis was a chronic degenerative condition unrelated to the accepted work injury. He also opined that appellant could work full time with restrictions based in her basilar joint arthritis. Dr. Corso, however, did not fully explain why appellant's accepted condition of right

¹ *S.F.*, 59 ECAB ____ (Docket No. 08-426, issued July 16, 2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

² *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Elsie L. Price*, 54 ECAB 734 (2003).

³ *See J.M.*, 58 ECAB ____ (Docket No. 06-661, issued April 25, 2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁴ *T.P.*, 58 ECAB ____ (Docket No. 07-60, issued May 10, 2007).

⁵ *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *James F. Weikel*, 54 ECAB 660 (2003).

radial styloid tenosynovitis had resolved.⁶ He did not reference any findings on examination as support for his opinion or otherwise explain his stated conclusions. Moreover, Dr. Corso's opinion is contradictory as he stated that appellant's preexisting thumb basal joint arthritis had been aggravated by the right wrist de Quervain's release but, in his response to questions posed by the Office, stated that the basal joint arthritis condition was unrelated to the accepted employment injury. He did not sufficiently explain why appellant had no further residuals of her accepted right radial styloid tenosynovitis.⁷ Dr. Corso's opinion is insufficient to the Office's determination that appellant had no further condition or disability causally related to the accepted condition.

CONCLUSION

The Board finds that the Office failed to meet its burden to terminate compensation for the accepted condition of right radial styloid tenosynovitis (de Quervain's disease).⁸

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 19 and February 12, 2008 are reversed.

Issued: June 1, 2009
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

⁶ *T.F.*, 58 ECAB ____ (Docket No. 06-1186, issued October 19, 2006) (a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale); *see also S.D.*, 58 ECAB ____ (Docket No. 07-1120, issued September 24, 2007) (the Board has held that a medical opinion not fortified by medical rationale is of little probative value).

⁷ *See Elaine Sneed*, 56 ECAB 373 (2005).

⁸ The issue of whether the Office properly refused to reopen appellant's case for further review of the merits is rendered moot.