

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

S.N., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Storm Lake, IA, Employer**

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**Docket No. 08-1869
Issued: May 5, 2009**

Appearances:

*Willis J. Hamilton, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 23, 2008 appellant filed an appeal of the May 27, 2008 decision of the Office of Workers' Compensation Programs' hearing representative. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's medical and compensation benefits effective May 14, 2007. Appellant's attorney argues on appeal that the employment aggravation of appellant's condition was permanent and, but for the aggravation, she would still be employable.

FACTUAL HISTORY

On October 27, 2003 appellant, then a 54-year-old rural carrier, filed an occupational disease claim alleging that she suffered from rheumatoid arthritis causally related to the duties of her federal employment. She noted that she was on her feet 2½ to 3 hours every morning and

used her hands constantly. Appellant noted that, after riding in her truck, her joints hurt when she got out of the truck to deliver parcels and other items. On January 27, 2004 the Office accepted her claim for aggravation of rheumatoid arthritis, bilateral hands and feet.

In a February 16, 2004 attending physician's report, Dr. Eric Matteson, a Board-certified internist with a subspecialty in rheumatology, indicated that appellant's arthritis was not caused by employment but was aggravated by it. In an accompanying work capacity evaluation, he indicated that appellant was able to work four hours a day with the following restrictions: sitting, standing and operating a motor vehicle for two hours each; walking, twisting, bending/stooping, repetitive movements with wrists and elbows, pushing and pulling up to 35 pounds for one hour each, and lifting of 35 pounds. In a February 23, 2004 note, Dr. Matteson found that appellant's permanent disability was due to aggravation of the disease process caused by work, "in my best judgment."

The Office referred appellant to Dr. John A. Hurley, a Board-certified internist with a subspecialty in rheumatology, for a second opinion. In a medical report dated May 19, 2004, Dr. Hurley diagnosed appellant with rheumatoid arthritis, history of Crohn's disease, diabetes mellitus and hypertension. He indicated that he believed appellant was suffering from rheumatoid arthritis but that he did not believe the rheumatoid arthritis was caused by her work activities although he did note that these activities did aggravate the underlying arthritis. Dr. Hurley specifically stated, "I do not believe that [appellant's] underlying arthritis was caused by her work activities but that they did indeed aggravate her underlying arthritis." He opined that appellant was unable to perform any sort of gainful employment. In an accompanying work capacity evaluation, Dr. Hurley indicated that appellant could sit 15 minutes at a time, walk 10 minutes at a time, and stand 15 minutes at a time. He opined that appellant could not reach above her shoulder, could twist, perform repetitive movements with her wrists and elbow for 1 hour, push and pull 20 pounds for 1 hour, lift 10 pounds for 1 hour, squat and kneel for ½ hour, twist for 1 hour and operate a motor vehicle at work for 1 hour. In a follow-up letter dated June 2, 2004, Dr. Hurley stated that appellant's occupation aggravated but did not cause her rheumatoid disease in that it caused the disease to become more active and functionally limited. He reiterated that the disease had progressed to the point where she would be unable to return to her employment.

In a report dated June 30, 2004, Dr. Matteson again noted that appellant continued to have active rheumatoid arthritis despite intense medical treatment and that this arthritis was not caused by her occupation but that her occupation accelerated and aggravated the rheumatoid arthritis. He opined that appellant was unable to perform her job because of rheumatoid arthritis which caused 80 percent impairment of the joints in her hands, shoulders and knees.

Noting a conflict of medical opinion between Dr. Matteson and Dr. Hurley regarding appellant's work restrictions, the Office referred appellant to Dr. William R. Palmer, a Board-certified internist with a subspecialty in rheumatology. In a report dated November 29, 2004, Dr. Palmer diagnosed appellant with probable seronegative rheumatoid arthritis and moderately severe osteoarthritis in her knees. He found that appellant's subjective symptoms outweighed his objective findings and found no reason why a label of total disability should be applied to appellant. Dr. Palmer did not believe that appellant's job had aggravated her rheumatoid arthritis

in her hands and feet. He opined that appellant should never have stopped working and concluded that she could work eight hours a day limited work.

On January 28, 2005 the Office proposed terminating appellant's compensation benefits and by decision dated March 15, 2005, it terminated appellant's medical and wage-loss benefits effective that date.

By letter dated February 8, 2005, appellant, through her attorney, requested a hearing.

In a report dated May 20, 2005, Dr Matteson reiterated that he was treating appellant for rheumatoid arthritis. He noted that her rheumatoid arthritis has improved markedly since he began treating her and that, at the time of his last assessment, "the rheumatoid arthritis was not wholly quiescent but under good control." Dr. Matteson noted that appellant's knee replacements were required because of advanced knee arthritis which was due to changes of the degenerative type of arthritis (osteoarthritis) as well as rheumatoid arthritis. He indicated that she should not walk or stand more than 15 or 20 minutes at a stretch and that there was potential that repetitive activity can aggravate the arthritis in areas such as the hands and shoulders. Dr. Matteson noted that, if appellant were to return to work, it would have to be assessed on an ongoing basis. He noted in the past, the task of her employment appeared to aggravate her arthritis.

At the hearing held on June 27, 2006, appellant described her work duties and her treatment history.

By decision dated September 14, 2006, the Office hearing representative found that the Office improperly terminated appellant's compensation and medical benefits based on an inappropriate referee examination as there was no conflict between Drs. Matteson and Hurley. He noted that Dr. Palmer's examination was, at most, a second opinion examination. The hearing representative ordered the Office to reinstate appellant's benefits and refer appellant to an appropriate specialist to resolve the issue of whether appellant has residuals related to the accepted condition.

On remand, the Office referred appellant to Dr. Joseph Steven Strong, a Board-certified internist with a subspecialty in rheumatology, for an impartial medical examination. In a medical report dated February 2, 2006, Dr. Strong noted, "The etiology of rheumatoid arthritis is an autoimmune disease, which we do not feel is caused by injury, but may be aggravated by injury." He further noted that osteoarthritis is a degenerative disease involving appellant's knees which subsequently required total joint arthroplasty. Dr. Strong noted more recent evidence of mechanical lumbar disease with facet degenerative change and degenerative disc change. He also noted that a review of the records and the physical examination suggests that appellant "has a history of polyarticular arthralgias with minimal evidence of aggressive erosive synovitis." Dr. Strong opined that, since appellant has not worked since April 24, 2004, he did not feel that she had continued aggravation of any underlying inflammatory joint disease. He opined that repetitive motion and weight lifting with extension of her arms above her head and twisting motion related to her lower back will aggravate her symptoms and result in pain and discomfort. Dr. Strong did not believe that appellant could return to her full duties as a rural carrier, but did feel that appellant could work for four hours a day with restrictions of weight lifting to less than

10 pounds and if not required to raise her arms repeatedly over her head or stand for a prolonged period of time (in excess of 15 minutes). He also noted that appellant was now demonstrating degenerative changes in her lower back. In a work capacity evaluation completed the same date, Dr. Strong limited appellant to sitting 4 hours, walking 15 to 30 minutes, standing 15 minutes and repetitive motion with his wrists and elbows for 4 hours limited to 10 pounds. He indicated that appellant should limit pushing and pulling to 10 pounds and lifting to 5 pounds. Dr. Strong recommended that appellant avoid reaching, twisting, bending, stooping, operating a motor vehicle at work, squatting, kneeling and climbing. Finally, he recommended that appellant take 10-minute breaks hourly.

In response to a letter from the Office dated February 28, 2007, Dr. Strong noted on March 3, 2007, “[R]heumatoid arthritis has no etiological connection with traumatic events and, therefore, the disease will be aggravated only during the time of repetitive motion, weight lifting and change of position, which may occur during the work environment. He noted that appellant has not been employed since April 24, 2004, she had no work-related aggravation since April 24, 2004. Dr. Strong did not believe his work restrictions were prophylactic but rather that if appellant returned to work, she will have an aggravation and will have limitations.

On April 12, 2007 the Office proposed to terminate appellant’s medical and compensation benefits since the weight of the medical evidence demonstrated that the accepted condition of aggravation of bilateral hands and feet rheumatoid arthritis had ended on April 24, 2004 and that there was no indication that any current residual symptoms are related to the work-related aggravation. By decision dated May 14, 2007, the Office made the termination of benefits final.

By letter dated May 10, 2007 and received by the Office on May 15, 2007, appellant, through his attorney, objected to the proposed decision.

On June 12, 2007 appellant requested an oral hearing. At the telephonic hearing held on March 12, 2008 her attorney argued that the medical evidence indicated that if appellant returned to work she would sustain an aggravation of her condition. Appellant also testified that she worked for 23 years as a rural mail carrier but that she had not been employed since April 2004 when she took early retirement. She discussed her prior attempts to return to work and indicated that this irritated her shoulder, hands, leg, joints and back. Appellant noted that she tried to return to work but that the postmaster would not put her back to work because she could not do the weight lifting and other physical aspects of the job.

By decision dated May 27, 2008, the second Office hearing representative affirmed the May 14, 2007 Office decision terminating benefits.

LEGAL PRECEDENT

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.¹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. 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.²

It is well established that, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.³ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.⁴ If the employment exposure causes a permanent condition, such as a heightened sensitivity to a wider field of allergens, the claimant may be entitled to continuing compensation,⁵ a medical restriction that is based on a fear of future aggravation due to employment exposure is not employment related.⁶

Section 8123 of the Act provides that, 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.⁷ When 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.⁸

ANALYSIS

The Office accepted appellant's claim for aggravation of rheumatoid arthritis, bilateral, hands and feet and appropriate medical and compensation benefits were paid. Dr. Matteson, appellant's treating rheumatologist, in a report dated June 30, 2004, noted that appellant's rheumatoid arthritis was aggravated by her employment and that she was still unable to perform her job because of rheumatoid arthritis. Dr. Hurley, in a second opinion report dated May 19, 2004, agreed that appellant's rheumatoid arthritis was aggravated by her work and that appellant was unable to perform any sort of gainful employment. He placed more restrictions on appellant than Dr. Matteson. The Office referred appellant for an impartial medical examiner, to resolve

¹ *Patricia A. Keller*, 48 ECAB 278 (1993).

² *Furman G. Peake*, 41 ECAB 361 (1990).

³ *Mary A. Moultry*, 48 ECAB 566 (1997).

⁴ *Id.*

⁵ *James C. Ross* 45 ECAB 424 (1994); *Gerald D. Alpaugh*, 31 ECAB 589 (1980).

⁶ *Gaetan F. Valenza*, 39 ECAB 1349 (1988).

⁷ 5 U.S.C. § 8123(a).

⁸ *Darlene R. Kennedy*, 57 ECAB 414 (2006); *James P. Roberts*, 31 ECAB 1010 (1980).

the conflict with regard to appellant's restrictions. Dr. Palmer, the impartial medical examiner, disagreed with both Drs. Hurley and Matteson, finding that appellant's subjective symptom outweighed his objective findings and found no reason that appellant should be considered totally disabled. He also did not believe that appellant's job aggravated her rheumatoid arthritis. The Office initially terminated appellant's compensation based on Dr. Palmer's opinion as an impartial medical examiner, but reinstated benefits after the hearing representative properly determined that there was no conflict between the opinions of Dr. Matteson and Dr. Hurley as both opined that appellant was totally disabled due to the work-related aggravation of her rheumatoid arthritis. The hearing representative properly found that Dr. Palmer's opinion was at most a second opinion.

The Board finds that Dr. Palmer's opinion created a conflict with the opinion of Dr. Matteson as to whether appellant remained totally disabled and as to whether appellant had any residuals from her work-related aggravation. Accordingly, the Office properly referred appellant to Dr. Strong for an impartial medical examination, to resolve that conflict. Dr. Strong, indicated that, since appellant had not been employed since April 24, 2004, she no longer suffered from the work-related aggravation of her rheumatoid arthritis. Accordingly, based on his opinion, the Office terminated appellant's medical and compensation benefits effective May 14, 2007.

The Board finds that the Office properly terminated appellant's compensation and medical benefits based on the well-rationalized opinion of Dr. Strong, the impartial medical examiner, who noted that, although rheumatoid arthritis was not caused by injury, it could be aggravated by injury. Dr. Strong noted that repetitive motion and weight lifting with extension of arms above head and twisting lower back would aggravate appellant's symptoms and result in pain and discomfort. However, he noted that, since appellant had not been employed since April 24, 2004, she would have had no work-related aggravation since April 24, 2004. Although appellant's attorney argues that the work-related aggravation of appellant's rheumatoid arthritis was permanent, the weight of the evidence does not support this argument. The Office properly gave special weight to the well-rationalized opinion of the impartial medical examiner, Dr. Strong, and terminated appellant's medical and compensation benefits due to the fact that the work-related aggravation of her rheumatoid arthritis had ceased.⁹

CONCLUSION

The Board finds that the Office properly terminated appellant's medical and compensation benefits effective May 14, 2007.

⁹ *Phillip H. Conte*, 56 ECAB 213 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 27, 2008 is affirmed.

Issued: May 5, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board