

neuropathy, for which she underwent transposition of the ulnar nerve.¹ Appellant received medical benefits and compensation for wage loss on the periodic rolls. She also received a schedule award for a 24 percent impairment to her left upper extremity. Appellant retired on disability in 1983.

In 2009, when current medical evidence was not forthcoming from the attending physician, the Office referred appellant, together with her medical record and a statement of accepted facts, to Dr. David Lotman, an orthopedic surgeon, for a second opinion evaluation. On April 28, 2009 Dr. Lotman reviewed the history of appellant's injury, her symptoms and complaints. He described findings on physical examination and diagnosed chronic left ulnar neuropathy.

Dr. Lotman explained that appellant showed no evidence of tendinitis of the left hand or wrist and no evidence of left wrist compression. Objective physical findings were limited to decreased sensation on the volar surface of the left little finger and equivocal atrophy. Dr. Lotman concluded that appellant had evidence of chronic neuropathy of the left elbow. He noted that she did not respond well to surgical intervention for this condition. Dr. Lotman found that appellant was incapable of working eight hours in any capacity. "This is not because of her left elbow pathology, although that contributes. It is primarily due to her multiple other conditions, including her macular degeneration and overall debility."

In a decision dated September 2, 2009, the Office terminated appellant's compensation for the accepted aggravation of left hand and wrist tendinitis. It found that Dr. Lotman's opinion represented the weight of the medical evidence and established that her accepted conditions had resolved. The Office noted that appellant's claim remained open for the payment of compensation for the accepted left elbow compression neuropathy.

On appeal appellant argues that Dr. Lotman did not address the pain in her wrist and little finger. "He only looked at my arm and wrist. Dr. Lotman had no EMG or x-ray reports of little finger and wrist." Appellant stated that she has not been treated by a doctor for her arm conditions for the past 10 years.

¹ The record does not establish the acceptance of left carpal tunnel syndrome or "left hand and wrist compression." The medical record indicates that appellant's main problem was tendinitis "affecting the flexor tendons of the palm and carpal tunnel area of the left hand." A November 6, 1978 diagnostic report showed normal electromyography (EMG) and motor and sensory studies of the left median nerve. Studies on April 9, 1981 were also normal. On February 25, 1987, following acceptance of left elbow compression neuropathy, the Office medical adviser awkwardly noted the two accepted conditions thusly: "aggravation of tendinitis; left hand and wrist; compression neuropathy left elbow." Thereafter, the Office wrote the accepted conditions as though there were three: "aggravation of tendinitis of the left hand; left hand and wrist compression; and neuropathy of the left elbow." On the last appeal the Board correctly noted the acceptance of only two medical conditions: aggravation of left hand and wrist tendinitis and left elbow compression neuropathy. Docket No. 92-2151 (issued January 14, 1994).

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.² Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.³ After the Office has determined that an employee has disability causally related to her federal employment, it may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴

ANALYSIS

The Office referred appellant to Dr. Lotman, an orthopedic surgeon, because the record contained no current medical evidence on her medical condition or disability status. As appellant notes on appeal, she had received no treatment for her left arm in many years. So there was no longer any current evidence to support her entitlement to continuing compensation benefits.

Dr. Lotman provided an up-to-date examination, which showed no evidence of left hand or wrist tendinitis or "wrist compression." Tinel's sign over the carpal tunnel was negative, thumb opposition to the index finger was normal and wrist flexion and extension were normal. There were no objective physical findings to support appellant's subjective complaint of soreness.

Dr. Lotman's findings support the conclusion that appellant showed no evidence of left hand or wrist tendinitis. His opinion is sufficiently well rationalized and based on a proper history. There is no contemporaneous medical evidence to the contrary. The Board, therefore, finds that Dr. Lotman's opinion constitutes the weight of the medical evidence and establishes that the accepted aggravation of left hand and wrist tendinitis has resolved. The Board will affirm the Office's September 2, 2009 decision terminating compensation for that accepted condition.

It is important to note, however, that the Office did not terminate appellant's compensation for her other accepted condition: left elbow compression neuropathy. Dr. Lotman found that she did not respond well to her left elbow surgery and still had chronic left ulnar neuropathy. Objective physical findings included a slightly decreased sensation in the ulnar distribution of the left hand, specifically, decreased sensation on the volar surface of the left little finger with equivocal atrophy. There was weakness in thumb opposition to the little finger and appellant's complaints included the ulnar two fingers (little and ring) starting to curl up, no feeling whatsoever in the little finger and diminished feeling in the ring finger.

² 5 U.S.C. § 8102(a).

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

Appellant contends that Dr. Lotman did not consider the pain in her wrist and little finger and only looked at her arm and wrist. Dr. Lotman did report that she complained of soreness involving the entire left upper extremity extending from the triceps through the elbow and down into the left wrist and hand. He noted that appellant reported “no feeling in the little finger whatsoever.” Dr. Lotman’s findings on physical examination showed that he did evaluate appellant’s left wrist, hand and little finger, but objective findings were limited to decreased sensation in the little finger; they did not support her subjective complaints of soreness. As for not obtaining current diagnostic testing, Dr. Lotman explained: “If this claimant were considered a candidate for additional intervention, electrophysiologic studies would be appropriate. However, based on her overall medical status, combined with her reluctance to undergo any more aggressive treatment, additional diagnostic studies are not indicated.” Dr. Lotman’s decision not to obtain additional studies does not undermine the fact that findings on physical examination showed no evidence of tendinitis in the left hand or wrist.

CONCLUSION

The Board finds that the Office properly terminated compensation for the accepted aggravation of appellant’s left hand and wrist tendinitis.

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2009 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: August 24, 2010
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