United States Department of Labor
Employees' Compensation Appeals Board

K.C., Appellant	)	
and	)	**Docket No. 13-1150**
	)	**Issued: March 11, 2014**
DEPARTMENT OF THE ARMY, FORT McCOY, WI, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 8, 2013 appellant, through her attorney, filed a timely appeal of an April 3, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's medical and wage-loss compensation benefits effective October 23, 2012.

On appeal, counsel argued that OWCP provided Dr. Alexander Doman, a Board-certified orthopedic surgeon, with leading questions. He further stated the finding of no residuals after cervical fusion strain credulity and that appellant's claim should have been updated to include her alleged emotional condition.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 10, 2010 appellant, then a 39-year-old administrative officer, filed an occupational disease claim alleging that she developed chronic pain in her right arm and left side using the computer mouse and keyboard with the right hand. OWCP accepted her claim for right carpal tunnel syndrome and cervical radiculopathy at C6 on January 24, 2011. On May 10, 2011 it accepted the additional condition of aggravation of cervical stenosis. Dr. John Min Rhee, a Board-certified orthopedic surgeon, performed a C5-7 anterior cervical discectomy and fusion on May 24, 2011.

On June 13, 2011 the employing establishment provided a removal notice based on her decision to decline a change in duty station position offer.

Dr. Rhee completed a work restriction evaluation on July 20, 2011 and indicated that appellant could return to light-duty work due to her cervical condition working four hours a day. He further indicated that she could not reach above her shoulder or perform repetitive movements of her wrists or elbow.

On September 13, 2011 OWCP referred appellant for a second opinion evaluation with Dr. Raju Vanapalli, a Board-certified orthopedic surgeon. In his October 12, 2011 report, Dr. Vanapalli examined appellant's cervical spine and upper extremities. He found that there was no wasting of the upper extremity on the left and that sensation of filament and pinprick were inconsistent and her reported pain did not conform to any nerve root pattern. In regards to appellant's right upper extremity, Dr. Vanapalli found positive Phalen's test and Tinel's sign. He noted that appellant's upper extremity sensations were inconsistent as to what she could feel or not feel. Dr. Vanapalli found no wasting of the thenar muscles. He reviewed appellant's electromyogram testing and found electrodiagnostic evidence of right median neuropathy consistent with carpal tunnel syndrome. Dr. Vanapalli diagnosed mild carpal tunnel syndrome on the right and residual C6 radiculitis in the left upper extremity. He found that appellant's left cervical radiculopathy had resolved and that the aggravation of her underlying cervical stenosis had improved. Dr. Vanapalli noted that she had decreased neck pain and increased mobility following her surgery. He opined that appellant was not a good candidate for carpal tunnel surgery because she displayed significant anxiety reaction and crying while talking. Dr. Vanapalli noted that she was seeing a clinical psychologist and was exhibiting symptom magnification. He did find that appellant could return to her regular position as she had no wasting of the thenar muscles, good grip strength and an inconsistent pain pattern for carpal tunnel syndrome. Dr. Vanapalli stated that she had a gross disparity between her symptoms and her objective findings. He stated, "[Appellant] can resume eight hours of work five days a week performing sedentary work with wrist support and repetitive wrist motion not to exceed four hours in an eight-hour workday."

OWCP requested a supplemental report from Dr. Vanapalli clarifying whether appellant's C6 cervical radiculopathy had resolved and whether appellant could return to her date-of-injury position. Dr. Vanapalli responded on December 12, 2011 and stated that his conclusions were not contradictory. He stated that while the radiculopathy was resolved appellant's radiculitis persisted. Dr. Vanapalli stated that due to partly positive and partly

negative results regarding her carpal tunnel syndrome required reevaluation in about three months.

OWCP referred appellant for a second opinion evaluation on May 21, 2012 with Dr. Doman. The questions to Dr. Doman included appellant's current diagnosis; whether the accepted conditions had resolved, whether the aggravation of cervical stenosis had resolved or returned to baseline; and objective findings in support of his opinions. OWCP also asked whether she could return to her date-of-injury position; requested a description of her physical limitations and requested recommendations for further treatment if necessary.

In his June 18, 2012 report, Dr. Doman reviewed the statement of accepted facts and found that appellant had no swelling and normal deep tendon reflexes in the upper extremities with normal muscle strength testing and manual dexterity. He found that she had complaints of paresthesias in the left hand only with Phalen's test and Tinel's sign. Dr. Doman concluded that appellant had a successful anterior cervical fusion at C5-7 without evidence of carpal tunnel syndrome. He opined that her right carpal tunnel syndrome had resolved and that she had no signs of ongoing cervical radiculopathy based on normal nerve conduction velocity studies. Dr. Doman stated that appellant's aggravation of cervical stenosis had totally resolved without residuals and that she had returned to her preinjury state. He further concluded that she could perform her date-of-injury position of administrative officer full time. Dr. Doman completed a work capacity evaluation and indicated that appellant had no work limitations, was capable of performing her usual job and had reached maximum medical improvement.

In a letter dated August 9, 2012, OWCP proposed to terminate appellant's medical and wage-loss compensation benefits on the grounds that she had no residuals or disability for work due to her accepted conditions. It allowed her 30 days to respond.

In a letter dated September 5, 2012, appellant stated that she required psychological treatment due to her fear of being paralyzed due to her work injuries. She further stated that she had not received a copy of Dr. Doman's report. OWCP responded on September 11, 2012 and provided appellant Dr. Doman's report as well as an additional 30 days to provided additional evidence or argument.

By decision dated October 23, 2012, OWCP terminated appellant's medical and wage-loss compensation benefits effective that date based on Dr. Doman's report.

In a report dated August 8, 2012, Dr. Rhee noted that appellant continues to have a variety of aches. He reviewed x-rays and found that she had a solid fusion at C5-6. Dr. Rhee recommended therapy for cervical range of motion strengthening and a home program.

Dr. Joseph Saba, a Board-certified neurologist, completed a report on October 4, 2012 and noted appellant's conditions of bilateral carpal tunnel syndrome, chronic cervical syndrome and persistent left cervical radiculopathy with severe muscle spasms. Each page of this three-page report is dispersed). Dr. Saba found mild weakness of the left brachial radialis and left triceps. He found no atrophy and no abnormal movement. Dr. Saba also reported a positive Phalen's test at the wrist bilaterally with no Tinel's sign. He found mild sensory lags at the left C6-7 distribution to pin prick and light touch. Dr. Saba found muscle spasms in the neck and

trapezius muscle which could be felt and visualized. He diagnosed chronic cervical syndrome and residual mild left C6, C7 radiculopathy, muscle spasms, mild bilateral carpal tunnel syndrome worse on the right and extremely symptomatic as well as chronic moderate depression secondary to her diagnosed conditions and chronic persistent pain. Dr. Saba opined that bilateral carpal tunnel release surgery was appropriate even though mild by electrophysiological criteria as appellant was extremely symptomatic. He released her from his care.

Appellant requested an oral hearing before an OWCP hearing representative on November 6, 2012. In a report dated December 20, 2012, Dr. Saba stated that appellant's anxiety and depression might require a psychiatrist's evaluation. Counsel submitted argument on February 26, 2013 alleging that OWCP requested that Dr. Doman respond to leading questions. He specifically alleged that the question "Have the accepted conditions of right carpal tunnel syndrome and cervical radiculopathy resolved? If not, provide objective findings to support that the conditions are still present" suggests and implies the answer to the questions posed. Counsel argued that the third question provides two suggestions of rationale for why the condition would have resolved. He also argued that Dr. Doman ignored the accepted condition of permanent aggravation of cervical stenosis. Appellant testified at the oral hearing on February 26, 2013.

By decision dated April 3, 2013, OWCP's hearing representative affirmed the October 13, 2012 termination of medical and compensation benefits relying on Dr. Doman's report.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[2] After it has determined that an employee has disability causally related to his or 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.[3] Furthermore, 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, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[5]

ANALYSIS

OWCP accepted appellant's claim for right carpal tunnel syndrome and cervical radiculopathy at C6 as well as aggravation of cervical stenosis. Appellant underwent a C5-7 anterior cervical discectomy and fusion on May 24, 2011.

[2] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[3] *Id.*

[4] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[5] *Id.*

OWCP referred appellant to a second opinion evaluation by Dr. Vanapalli, who opined on December 12, 2011 that, while the radiculopathy was resolved, her radiculitis persisted. Dr. Vanapalli also stated that due to partly positive and partly negative results regarding appellant's carpal tunnel syndrome required reevaluation in three months.

OWCP referred appellant for a second opinion evaluation with Dr. Doman, who completed a report on June 18, 2012 report and found that she had a successful anterior cervical fusion at C5-7 without evidence of carpal tunnel syndrome. Dr. Doman opined that appellant's right carpal tunnel syndrome had resolved and that she had no signs of ongoing cervical radiculopathy based on normal nerve conduction velocity studies. He stated that her aggravation of cervical stenosis had totally resolved without residuals and that she had returned to her preinjury state. Dr. Doman further concluded that appellant could perform her date-of-injury position of administrative officer full time.

OWCP proposed to terminate appellant's compensation and medical benefits based on Dr. Doman's report. It finalized the termination effective October 23, 2012. Appellant requested an oral hearing and submitted a report dated October 4, 2012 from Dr. Saba diagnosing bilateral carpal tunnel syndrome, chronic cervical syndrome and persistent left cervical radiculopathy with severe muscle spasms which could be felt and visualized. Dr. Saba also diagnosed chronic moderate depression secondary to her diagnosed physical conditions. He recommended bilateral carpal tunnel release surgery as appellant was extremely symptomatic.

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits based on Dr. Doman's report. Dr. Doman indicated that appellant's employment-related conditions had ceased, that she could return to work with no restrictions and that she required no further medical treatment. His report was based on a proper history of injury, included detailed physical findings and a clear opinion that she no longer had disability or residuals due to her accepted employment injury.

Appellant's physician, Dr. Saba, found mild weakness of the left brachial radialis and left triceps, however, he also found no atrophy and no abnormal movement. He found mild sensory deficits at the left C6-7 distribution to pin prick and light touch as well as muscle spasms in the neck and trapezius muscle which could be felt and visualized. Dr. Saba found a positive Phalen's test and negative Tinel's sign at the wrists. He diagnosed chronic cervical syndrome and residual mild left C6, C7 radiculopathy, muscle spasms, mild bilateral carpal tunnel syndrome worse on the right and extremely symptomatic as well as chronic moderate depression secondary to her diagnosed conditions and chronic persistent pain. Dr. Saba opined that bilateral carpal tunnel release surgery was appropriate even though mild by electrophysiological criteria as appellant was extremely symptomatic.

The Board finds that Dr. Saba's reports are not sufficiently detailed and well reasoned to overcome Dr. Doman's report or to create a conflict with this report. Dr. Saba found no atrophy, no abnormal movement and no Tinel's sign. He noted that appellant had only mild electrodiagnostic findings of carpal tunnel syndrome. Dr. Saba did not provide the necessary detailed physical findings and opinion evidence necessary to support her continuing disability or medical residuals.

In regard to appellant's attorney's arguments on appeal, the Board has defined a leading question as one which suggests or implies an answer to the question posed.[6] The six questions asked by the claims examiner in this case were open-ended and did not suggest an answer. In fact, they posed an injury and included options for both ways to respond to the questions. They were of the type of medical query to be answered by a physician in describing a claimant's condition.[7] Therefore, Dr. Doman's report does not have to be excluded from the record.[8]

CONCLUSION

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective October 23, 2012.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[6] *Carl D. Johnson*, 46 ECAB 804 (1995).

[7] *See J.D.*, Docket No. 11-131 (issued December 21, 2011).

[8] *See J.T.*, Docket No. 13-452 (issued May 29, 2013); *S.H.*, Docket No. 12-1666 (issued March 18, 2013).