U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUANDA L. MARCO and U.S. POSTAL SERVICE,
POST OFFICE, Petaluma, CA

Docket No. 97-2728; Submitted on the Record;
Issued September 3, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective February 24, 1995.

On September 22, 1992 appellant, then a 51-year-old clerk, filed a notice of occupational disease alleging that she injured her right hand and wrist in the course of her federal employment. The Office accepted the claim for right wrist/forearm tenosynovitis and right trigger finger and paid appropriate compensation benefits. The Office subsequently approved surgery for the release of the flexor pulley of the right long finger, which was performed on April 16, 1993.

On June 11, 1993 Dr. Jerome C. Beatie, appellant's treating physician and a Board-certified orthopedic surgeon, examined appellant and stated that appellant's ability to work depended upon how much discomfort she could endure. In reports dated July 14 through April 8, 1994, Dr. Beatie indicated that appellant could not return to her regular work.

On October 15, 1993 Dr. Robert L. Brown, a Board-certified orthopedic surgeon specializing in hand surgery, examined appellant at the request of Dr. Beatie. He reviewed appellant's history and performed a physical examination. Dr. Brown indicated that appellant's wrist condition was permanent and stationary. He noted some slight limitations in wrist motions, but stated that appellant could do all activities normally. He indicated that appellant's trigger finger condition was not yet permanent and stationary as it had only been four and one-half months after her trigger finger release.

On April 18, 1994 Dr. Beatie stated that he did not understand why appellant could not perform some tasks, but that he guessed her pain level precluded her from performing her regular duties. On May 6, June 6 and 23, 1994 Dr. Beatie again indicated that appellant was disabled from her usual work.

On July 25, 1994 the Office requested that Dr. Brown provide a second opinion examination and respond to specific questions.

On August 1 and 22, September 19 and October 12, 1994 Dr. Beatie indicated that appellant could not perform her usual work. He noted that appellant could not use her right hand secondary to pain.

On August 29, 1994 Dr. Brown provided his second opinion examination for the Office. Dr. Brown reviewed his previous report and the intervening history. On examination, he noted that appellant made a very deliberate effort not to use her right hand. Dr. Brown noted no signs of synovitis or tenosynovitis about the hand or wrist. He noted that appellant's right wrist dorsiflexion, planar flexion, radial deviation and ulnar deviation were 55, 55, 15 and 25 degrees, respectively, while the left wrist showed 75, 60, 15 and 40 degrees, respectively. Dr. Brown indicated that appellant was voluntarily restricting her right wrist movements. He indicated that appellant's fingers extended completely and flexed fully to the middle palm. Dr. Brown noted very mild crepitation along the flexor tendon sheath of the index finger at the base of the palm, but no locking. He noted no changes on his review of the x-rays. Dr. Brown diagnosed resolved trigger fingers of the right hand and resolved tenosynovitis of the wrist. He stated that appellant's normal musculature of the right upper extremity indicated that she had been using it actively and normally. Dr. Brown stated that appellant voluntarily inhibited wrist motion and gripping. He stated that her subjective complaints were exaggerated. Dr. Brown indicated that her prognosis was good and that she was able to return to her usual work. He indicated that there were no residuals from her accepted conditions.

On November 12, 1994 Dr. Beatie indicated that appellant had chronic tendinitis. On November 15, 1994 he again diagnosed chronic tendinitis, but stated that there was no objective evidence of disability. Dr. Beatie also indicated that appellant had a rheumatoid diathesis that caused inflammation with the slightest amount of effort. He stated that repetitive activities were precluded, especially those involving significant hand or forearm strength. On December 12, 1995 and December 15, 1994 Dr. Beatie diagnosed chronic tendinitis.

On January 12, 1995 the Office issued a "Notice of Proposed Termination of Compensation" on the basis that the disability resulting from appellant's work-related condition had ceased. In an accompanying memorandum, the Office indicated that the weight of the medical evidence rested with the well-rationalized opinion of Dr. Brown who opined that appellant's employment-related condition had resolved. The Office noted that Dr. Beatie's opinion was neither supported by objective evidence nor adequate explanation. Appellant was given 30 days to submit additional evidence and argument.

On January 12, 1995 Dr. Charles W. Moulton, a Board-certified orthopedic surgeon, indicated that appellant was totally disabled for her usual work due to right shoulder impingement syndrome, right de Quervain's tenosynovitis and right middle finger trigger finger/ tendinitis. He checked "yes" to indicate that the condition was due to the injury for which compensation was claimed.

By decision dated February 24, 1995, the Office rejected appellant's claim because the weight of the medical evidence established that claimant no longer had a condition causally

related to her September 19, 1989 injury. In an accompanying memorandum, the Office noted that Dr. Brown's opinion continued to constitute the weight of the medical evidence because Dr. Moulton failed to provide a reasoned opinion.

On January 27 and February 13, 1995 Dr. Moulton diagnosed de Quervain's tenosynovitis, right wrist.

On February 22, 1995 Dr. Moulton diagnosed inflammation, right radial wrist and ganglion right, wrist, dorsal aspect. He indicated that the cause of appellant's ganglion was not clear. He further stated that based on appellant's subjective complaints that she should avoid repetitive motions. On March 13, 1995 Dr. Moulton diagnosed de Quervain's tenosynovitis, right wrist. On March 21, 1995 Dr. Moulton diagnosed tendinitis, right wrist. Dr. Moulton repeated this diagnosis on March 31, 1995 and indicated that appellant was totally disabled from her usual work. On April 11, May 2 and 30, 1995, Dr. Moulton diagnosed tendinitis, right wrist and de Quervain's tenosynovitis, right wrist. On May 4, 8 and 22, 1995 Dr. Moulton diagnosed right de Quervain's tenosynovitis and indicated appellant was totally disabled.

On May 11, 1995 Dr. Robert A. Harf, a Board-certified orthopedic surgeon, diagnosed a repetitive stress injury with the possibility of a neuroma formation along the dorsoradial sensory branch of the arm. He indicated that the condition may be from appellant's surgery, but that such a result would be unusual. Dr. Harf indicated that appellant was not a candidate to return to her previous position. On June 1, 1995 he indicated that appellant's duties resulted in a repetitive stress injury.

On May 15, 1995 Dr. Konstantin Zaharoff, a physician Board-certified in occupational medicine, diagnosed chronic pain syndrome. On May 30, 1995 Dr. Zaharoff repeated his diagnosis and stated that although appellant could perform full-time work, she must avoid repetitive range of motion activities and lifting more than 10 pounds with her wrist.

On June 6 and 19, 1995 Dr. Moulton diagnosed right de Quervain's tenosynovitis and indicated that appellant was totally disabled from her usual work.

On June 27, 1995 appellant requested reconsideration.

On July 17 and 18, 1995 Dr. Moulton diagnosed extensor tendinitis, right wrist.

On August 23, 1995 the Office medical adviser reviewed the medical evidence and stated that he would be hard pressed to accept that appellant's current condition, tendinitis, was causally related to appellant's employment.

By decision dated September 6, 1995, the Office reviewed the merits of the case and found that the evidence submitted in support of the application was not sufficient to warrant modification of its prior decision. In an accompanying memorandum, the Office noted that the weight of the medical evidence continued to rest with the opinion of Dr. Brown inasmuch as the additional medical evidence was not supported by the objective evidence.

On July 14, 1996 Dr. Moulton diagnosed middle finger and tendinitis related to repetitive motion. He indicated that this was due to her employment injury and that appellant could not perform repetitive motions with her right wrist.

On July 23, 1996 Dr. Gary P. McCarthy, a Board-certified orthopedic surgeon, reviewed appellant's history and conducted a physical examination. Dr. McCarthy diagnosed ganglion, right wrist, status postoperative excision; evidence of carpal tunnel syndrome, right wrist; stenosing tenosynovitis, trigger finger, long finger, status postoperative release; de Quervain's tendinitis as well as probable neuroma formation, superficial radial nerve. He noted that appellant's demonstrated several objective factors of disability including a positive Finkelstein's test, positive median nerve compression test, decreased grip strength, decreased range of motion, weakness of intrinsics, positive Tinel's sign over the superficial radial nerve and evidence of surgical release with scar formation. He indicated that appellant's surgery resulted in neuroma formation and that appellant had an element of reflex sympathetic dystrophy of her right hand as a direct result of her injury and surgery.

On July 26, 1996 appellant requested reconsideration.

Following the Office request for clarification, Dr. McCarthy indicated on September 23, 1996 that appellant's injury continued unabated. He further indicated that the neuroma resulted from appellant's surgery and that the positive Tinel's test suggested reflex sympathetic dystrophy.

On September 30, 1996 the Office found that a conflict existed between the opinions of Drs. Brown and McCarthy on the issue of whether appellant continued to suffered residuals from her accepted employment injury. It, therefore, referred appellant to Dr. Arthur M. Auerbach, a Board-certified orthopedic surgeon, for a referee opinion.

On October 11, 1996 Dr. Auerbach reviewed appellant's work and treatment history and performed a comprehensive physical examination. He diagnosed a history of right ganglion cyst post-surgical excision, resolved; history of right de Quervain's tenosynovitis post-surgical release of the first dorsal component, resolved; history of right third trigger finger post-surgical release of pulley, resolved; possible but not probably neuroma of the superficial branch of the right radial nerve; and no present evidence of right reflex sympathetic dystrophy, right upper extremity. Dr. Auerbach noted that appellant complained of slight pain in the right forearm, right wrist, right palm, right third finger, right radial thumb into the radial side of the right wrist and forearm. He also noted hypersensitivity to touch on the radial side of the right forearm. Dr. Auerbach also noted decreased range of motion, right wrist; decreased ability to make a fist, decreased right thumb range of motion; healed scars on the radial right wrist and palm; questionable positive Tinel's sign, decreased sensation of the right thumb; and questionable weakness of the right thumb. He stated that there was no evidence of any reflex sympathetic dystrophy. He indicated that appellant's subjective complaints were not supported by the objective findings. Dr. Auerbach noted that appellant showed signs of exaggeration of her symptoms. He indicated that appellant did not suffer any objective evidence of residuals and that she was not disabled from her work.

By decision dated November 20, 1996, the Office reviewed the merits of the claim and denied modification because the weight of the medical evidence established that appellant no longer had a condition related to work factors. In an accompanying memorandum, the Office indicated that the weight of the medical evidence rested with the opinion of Dr. Auerbach, the referee examiner.

On October 23, 1996 Dr. Moulton indicated that appellant still had weakness in her hand with a positive Tinel's and a decreased range of motion. On December 11, 1996 he reported problems with appellant's third finger on her right hand. On February 5, 1997 he indicated that there was swelling in the right dorsum of appellant's hand and in her fingers.

On June 5, 1997 appellant requested reconsideration. In support, appellant submitted an April 18, 1997 opinion from Dr. Dominic Tse, a Board-certified orthopedic surgeon. Dr. Tse reviewed appellant's work history and treatment and conducted a physical examination. He stated that appellant presented with a classical clinical picture of a repetitive stress injury affecting the upper extremity, primarily the wrist and hand. Dr. Tse did not diagnose a specific condition, but stated that there was a direct causal relationship between appellant's current condition and her employment. He also stated that for a better objective assessment of appellant's physical abilities a functional capacities test or work tolerance screening would be beneficial.

By decision dated June 24, 1997, the Office reviewed the merits of the claim and found that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office indicated that Dr. Auerbach's opinion, as that of the referee examiner, carried the weight of the medical evidence. The Office further noted that Dr. Tse's opinion was not well reasoned, represented no new findings and was equivocal.

The Board finds that the Office met its burden in terminating appellant's compensation effective February 24, 1995.

Once the Office accepts a claim, it has the burden of proving that the disability ceased or lessened in order to justify termination or modification of compensation benefits.[1] After it has determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that disability has ceased or that it is no longer related to employment.[2] Furthermore, the right to medical benefits for the accepted condition is not limited to the period of entitlement to disability.[3] To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which no longer requires medical treatment.[4]

[1] *Frederick Justiniano*, 45 ECAB 491 (1994).

[2] *Id.*

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

[4] *Id.*

In the present case, the Office accepted the claim for a right wrist/forearm tenosynovitis, right trigger finger and surgery for release of the flexor pulley of the right long finger and authorized appropriate compensation. On August 29, 1994 Dr. Brown, a Board-certified orthopedic surgeon, provided a second opinion examination upon the Office's request. He reviewed appellant's history and conducted a thorough examination. In a well-reasoned opinion, he explained that appellant's accepted conditions had resolved inasmuch as there was no objective evidence of continuing disability. Dr. Brown's opinion, however, was contradicted by the well-reasoned opinion of Dr. McCarthy, a Board-certified orthopedic surgeon, who opined that the objective evidence supported appellant's continued disability from her accepted injuries. Because of the conflict between these reports, the Office referred appellant to Dr. Auerbach, a Board-certified orthopedic surgeon, for an impartial medical examination pursuant to section 8123 of the Federal Employees' Compensation Act.[5]

In situations where there are opposing medical reports of virtually equal weight and the case is referred to an impartial specialist, the opinion of such a specialist will be given special weight if the opinion is based on proper factual background and well rationalized.[6] In this case, Dr. Auerbach thoroughly reviewed appellant's medical history, performed an complete orthopedic examination and reviewed appellant's objective testing. He concluded that based on the absence of objective findings and appellant's exaggerated subjective complaints, appellant's accepted conditions had resolved. Because Dr. Auerbach's opinion was based on a proper factual background and supported by medical rationale his opinion, as that of the impartial specialist, constitutes the weight of the evidence. Moreover, the April 18, 1997 opinion of Dr. Tse, a Board-certified orthopedic surgeon, diagnosing continued employment-related disability, fails to outweigh the opinion of the referee examiner because he failed to explain how appellant's conditions were related to her employment and failed to diagnose a specific condition.[7] Moreover, the treatment notes of Dr. Moulton, a Board-certified orthopedic surgeon, submitted following the Office's November 20, 1996 decision failed to explain how appellant's condition related to her employment.

[5] 5 U.S.C. § 8128 *et seq*.

[6] *See Jack R. Smith*, 41 ECAB 691 (1990).

[7] *Charles E. Burke*, 47 ECAB 185 (1995);

Accordingly, the decision of the Office of Worker's Compensation Program dated June 24, 1997 and November 20, 1996 are affirmed.

Dated, Washington, D.C.
September 3, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member