U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIMBERLY A. CHAPPELLE and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

Docket No. 03-545; Submitted on the Record;
Issued June 5, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits.

Appellant, a 35-year-old letter carrier, filed a notice of occupational disease on February 23, 1998 alleging that she developed carpal tunnel syndrome due to factors of her federal employment. The Office accepted appellant's claim for bilateral tenosynovitis of the wrists on April 22, 1998. Appellant performed light-duty work full time until March 22, 1999, when she alleged that she sustained a recurrence of total disability. Appellant returned to light-duty work on April 21, 1999. Appellant began working six hours a day and filed a second claim for a recurrence of total disability on July 5, 1999 for disability beginning on June 16, 1999. Appellant stopped work on November 16, 1999 due to surgery. The Office accepted appellant's periods of total disability as work related and authorized compensation.

The Office authorized surgery and on November 16, 1999 appellant's attending physician Dr. Scott M. Fried, an osteopath, performed an anterior submuscular transposition of the ulnar nerve in her right elbow. Dr. Fried did not release appellant to return to work. The Office referred appellant for a second opinion evaluation with Dr. Gregory S. Maslow, a Board-certified orthopedic surgeon, on August 16, 2000. Due to a conflict of medical evidence between Drs. Maslow and Fried, the Office referred appellant to Dr. Joseph Bernardini, a Board-certified orthopedic surgeon, to resolve the conflict of medical evidence regarding appellant's continuing disability and medical residuals.

In a letter dated April 11, 2001, the Office proposed to terminate appellant's compensation benefits based on Dr. Bernardini's February 21, 2001 report. Appellant submitted a report from Dr. Fried dated May 1, 2001. By decision dated July 31, 2001, the Office terminated appellant's compensation and medical benefits.

Appellant, through her attorney, requested an oral hearing on August 3, 2001. She submitted a work capacity evaluation from Dr. Fried's office dated July 17, 2001, finding that

she was not totally disabled. Dr. Fried reviewed this report on August 10, 2001. Appellant testified at her oral hearing on January 3, 2002. By decision dated May 9, 2002, the hearing representative affirmed the Office's July 31, 2001 decision.

Appellant requested reconsideration on August 1, 2002 and submitted additional medical evidence. By decision dated September 13, 2002, the Office reviewed appellant's claim on the merits and denied modification of its May 9, 2002 decision.

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits.

Once the Office 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.[1] After it has determined that an employee has disability causally related to his or 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] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[3] 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.[4]

Appellant's attending physician, Dr. Fried, an osteopath, completed a report on August 10, 2000 diagnosing bilateral median neuropathy wrists with a positive electromyelogram (EMG); brachial plexitis bilaterally with a positive EMG, left side more involved than the right; radial tunnel EMG positive right side greater than the left; ulnar abutment syndrome left and right wrists; acute fall January 8, 1999 with right brachial plexus and long thoracic nerve traction injury and scapular winging and status postanterior submuscular transposition ulnar nerve right November 16, 1999. He found that appellant was severely symptomatic with respect to her right upper extremity in the radial tunnel and long thoracic nerve. Dr. Fried stated, "C7 is really hot through the right arm." He found ulnar nerve symptoms on the left and plexus symptoms bilaterally. He found that appellant demonstrated an exquisitely positive Tinel's sign at the brachial plexus on the right as well as at the ulnar nerve in the left elbow. He further found positive compression at her radial tunnel on the right and weakness on extension as well as mild irritability of the radial nerve on the left.

The Office referred appellant for a second opinion evaluation with Dr. Maslow, a Board-certified orthopedic surgeon. In his August 31, 2000 report, Dr. Maslow noted appellant's history of injury and described her medical treatment. He reported his findings on physical examination including full range of motion of the cervical spine, no Tinel's sign at the brachial plexus on either side and no atrophy, spasm or droop to the shoulder girdle. Dr. Maslow found that appellant had full range of motion in her shoulder and full shoulder stability bilaterally.

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

[2] *Id.*

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

[4] *Id.*

Examination of appellant's elbows revealed a scar on the right side but no Tinel's sign on either elbow. Dr. Maslow found full range of motion, full stability and no evidence of synovitis or effusion in either elbow. He found tenderness in the right superior trapezius and perhaps in the right supraspinatus region, as well as some pain on full external rotation of the right shoulder. Appellant's left upper extremity examination was abnormal as appellant complained of a great deal of tenderness in the musculature of the upper arm in the biceps and triceps region. However, Dr. Maslow found no observable swelling, no increased warmth nor redness. He noted that appellant had normal range of motion in her wrists with full stability. Dr. Maslow found negative wrist compression testing bilaterally with no Tinel's signs and normal neurologic testing of the upper extremities.

Dr. Maslow stated:

> "This patient has multiple complaints in the upper extremities, none of which in my opinion, are job related…. I feel that Dr. Fried has made diagnoses, which are extremely unreasonable, primarily because of their multiplicity. There is on today's clinical examination absolutely no indication of peripheral neurapraxia of any sort. The patient does not have any evidence that she is disabled and in my opinion is perfectly capable of working full duties, including such lifting as might be required."

Dr. Fried completed a report on November 3, 2000 and found a positive brachial plexus Tinel's sign on the left side as well as exquisite tenderness at the long thoracic nerve on the right. Dr. Fried stated, "Ulnar nerve is positive at the left elbow and radial nerve is positive on the right and left at the arcade of Frosche." He also found that appellant had a positive Phalen's sign on the left side and that Hunter and Roos' testing were positive on the right side greater than the left. Dr. Fried repeated his earlier diagnoses and stated that appellant had significant limitations based on her functional capacity evaluation and opined that appellant could not return to her date-of-injury position or any aggressive activities with her upper extremities.

Section 8123(a) of the Federal Employees' Compensation Act,[5] provides, "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." In this case, appellant's attending physician, Dr. Fried, found that she had several employment-related conditions as well as disability. The Office referral physician, Dr. Maslow, found that appellant had no diagnosed condition and no disability for work. Due to this difference of medical opinion, the Office properly referred appellant to Dr. Bernardini, a Board-certified orthopedic surgeon, for an impartial medical examination.

In his February 21, 2001 report, Dr. Bernardini noted reviewing appellant's history of injury as well as her medical treatment and the statement of accepted facts. He noted that appellant's physical examination of the upper extremities including fingers, thumb, wrists, elbow and shoulders revealed no evidence of synovitis, redness or warmth to any of her joints with no evidence of atrophy or deformity. Appellant's deep tendon reflexes in the upper extremity,

[5] 5 U.S.C. §§ 8101-8193, 8123(a).

biceps, brachial radialis and triceps were equal and symmetric bilaterally, as were the knees and ankles.

Appellant demonstrated some pain on extreme of movements in her cervical spine as well as discomfort on palpation over the posterior shoulders and complaints of pain with overhead movement in both shoulders. She complained of pain in each supraclavicular fossa without evidence of unusual swelling, fullness or palpable masses. Appellant had a positive Tinel's sign at the right wrist, but a negative Phalen's sign. Phalen's examination on the left side caused numbness over the ulnar nerve distribution of the fourth and fifth fingers and radiating pain into the left shoulder. Dr. Bernardini stated, "These examinations … are clinically inconsistent with a specific diagnosis of thoracic outlet syndrome, cubital tunnel syndrome, radial tunnel syndrome and neuropathies of the wrist of median and ulnar nerves." He concluded that there were no objective findings suggesting ongoing or residual findings of bilateral tenosynovitis of either arm or wrist. Dr. Bernardini stated that there was no evidence that appellant's current conditions or disability were due to her work injury. He suggested that appellant may have sustained an aggravation of preexisting carpal tunnel syndrome due to her work factors, but that this condition had resolved prior to his examination. Dr. Bernardini stated that appellant could perform the duties of a letter carrier with no limitations.

In situations were there are 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 on a proper factual background, must be given special weight.[6] In this case, Dr. Bernardini's report was based on a proper factual background. He reviewed the statement of accepted facts, appellant's statements and the medical history. Dr. Bernardini performed a detailed physical examination and reported no objective findings in support of appellant's continued disability for work. Although appellant reported pain and discomfort during the examination, she also demonstrated give away weakness in her fingers and as well as nonanatomical pain patterns. Dr. Bernardini specifically noted that appellant's examination was clinically inconsistent with her current diagnoses and her accepted employment injury. Dr. Bernardini based his conclusion that appellant could return to her date-of-injury position on the lack of physical findings supporting her current diagnoses and any disability for work.

Dr. Fried submitted a report dated May 1, 2001, in which he listed his findings on physical examination including positive plexus Tinel's sign bilaterally, as well as positive Phalen's sign, Roos and Hunter's test and positive Tinel's sign bilaterally at the wrist. Dr. Fried found that appellant's radial nerve was markedly positive on the right and that she demonstrated a positive ulnar nerve at the left elbow. He noted that appellant's right radial nerve had positive compression and resisted supination testing. Dr. Fried repeated his earlier diagnosis and reviewed Dr. Bernardini's report. He found that appellant had objective evidence of injury through his multiple examinations, through electrodiagnostic testing establishing nerve scarring and injury, through multiple functional capacity evaluations and as well as through his observation during surgery. He further noted that appellant had positive Phalen's sign, Tinel's sign and compression testing on serial examination and that appellant continued to exhibit flexor

[6] *Nathan L. Harrell,* 41 ECAB 401, 407 (1990).

tenosynovitis, carpal tunnel syndrome and ulnar nerve problems. Dr. Fried concluded that appellant's current conditions were due to her employment.

Dr. Fried continued to support that appellant had an active condition as a result of her accepted employment injury, but he offered no new findings in support of his conclusion. Dr. Fried did not submit new diagnostic studies and did not explain how appellant's current condition rendered her disabled from her date-of-injury position. Although he reviewed appellant's medical history and performed a physical examination, this evidence was before Dr. Bernardini at the time of his February 21, 2001 report. Dr. Bernardini reviewed appellant's medical history and the statement of accepted facts and performed a detailed physical examination. He reached a different conclusion based on this evidence, finding that appellant did not have a continuing employment-related condition or residuals. The May 1, 2001 report from Dr. Fried, does not explain how or why Dr. Bernardini failed to find the positive diagnostic tests. As the impartial medical specialist, Dr. Bernardini's report was entitled to the weight of the medical evidence, this report from Dr. Fried is insufficiently well rationalized to overcome that weight. Therefore, the Office met its burden of proof to terminate appellant's compensation benefits.

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had disability causally related to her accepted employment injury.[7] To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

Following the Office's July 31, 2001 termination decision, appellant submitted several additional reports from Dr. Fried. On November 20, 2001 Dr. Fried reported that appellant felt that her symptoms had increased. In a January 16, 2002 report, Dr. Fried reviewed additional diagnostic testing and physical examination. He found that appellant had limited range of motion in her cervical spine and additional "positive" findings in several locations. He did not provide any opinion on the causal relationship between his findings and appellant's employment injury. In an August 10, 2001 report, Dr. Fried determined that appellant could work at a sedentary level, but could not return to her date-of-injury position based on a functional capacity evaluation. These reports do not offer the necessary rationalized medical evidence to establish appellant's continuing disability due to her accepted employment-related condition. Although

[7] *George Servetas*, 43 ECAB 424, 430 (1992).

[8] *James Mack*, 43 ECAB 321 (1991).

Dr. Fried opined that based on appellant's functional capacity evaluation she could not return to her date-of-injury position, he did not correlate these tests with appellant's accepted employment injury and explain why or how the accepted condition of bilateral tenosynovitis prevented appellant from performing her employment duties.

Dr. Fried completed a report on June 17, 2002 and stated that appellant had increased symptoms with increased activity. He found a positive plexus Tinel's sign on the right and moderate on the left. He stated that appellant's ulnar nerve was positive on the right forearm and that the medial nerve was equivocal at both wrists. Dr. Fried found that Phalen's sign as well as Roos and Hunter's tests were positive bilaterally. He repeated his diagnoses and stated that appellant did not have normal arms and that she remained symptomatic. Dr. Fried discussed surgery with appellant. This report does not address the central issue of the case, the causal relationship between appellant's currently diagnosed conditions and her accepted employment injury. Without a definite opinion on causal relationship and medical reasoning supporting that opinion, Dr. Fried's report is insufficient to meet appellant' burden of proof in establishing continuing disability. Furthermore, as Dr. Fried was on one side of the conflict that Dr. Bernardini resolved, the additional reports from Dr. Fried are insufficient to overcome the weight accorded Dr. Bernardini's report as the impartial medical specialist or to create a new conflict with it.[9]

Dr. Ernest M. Baran, a Board-certified physiatrist, completed somatosensory evoked potential testing studies on February 14, 2002. He found that appellant's findings were consistent with a moderate diffuse cord/truck lesion of the left brachial plexus; either radial or ulnar nerve lesions at the elbow or between the wrist and the elbow "most likely" due to her surgery; and a mild diffuse cord/truck lesion of the right brachial plexus. Dr. Baran provided his findings on physical examination and diagnosed bilateral brachial plexopathies with greater involvement on the left, as well as bilateral radial nerve entrapment syndromes at the elbow, left ulnar nerve at the elbow and bilateral median neuropathies at the wrist. He concluded, "[Appellant] has multiple peripheral nerve Tinel's signs that are most likely on the basis of entrapment syndromes, however, a polyneuropathy (*i.e.*, metabolic, postinfectious, nutritional, immunologic, toxic, endocrine, connective tissue, etc.) may want to be excluded pending your analysis."

This report is insufficient to establish any continuing employment-related disability or medical residuals. Dr. Baran did not offer any clear opinion on the causal relationship between his diagnoses and appellant's employment injuries or the authorized surgery. Furthermore, he suggested that due to her multiple findings additional testing should be done. Without a clear opinion on the causal relationship between appellant's accepted employment injury and her current condition, complete with supportive medical reasoning, explaining how or why appellant's employment injury resulted in her current condition, Dr. Baran's report is not sufficient to meet appellant's burden of proof.

As appellant has failed to submit the necessary rationalized medical opinion evidence establishing that she has a continuing condition or disability causally related to her accepted

[9] *Dorothy Sidwell,* 41 ECAB 857, 874 (1990).

employment injury, she has failed to meet her burden of proof and the Office properly declined to modify its termination decision.

The September 13 and May 9, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
June 5, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member