

Office accepted appellant's claim under file number A12-0130277 for acute strain of flexion tendons, right wrist and paid appropriate benefits. The record reflects that the Office had previously accepted a left wrist tendinitis condition for a May 2, 1990 injury under file number A12-0114783.

On June 7, 1996 the Office found that appellant's limited-duty six-hour position, comprised of four hours of keying and two hours of other duties consistent with her medical restrictions, represented her wage-earning capacity. However, on September 18, 2000 the employing establishment reduced appellant's work hours to four hours per day on the basis of a September 18, 2000 duty status report from Dr. Patricia Flood, a Board-certified internist and appellant's treating physician. In the September 18, 2000 duty status report, she noted that appellant was examined on September 13, 2000 and that she scans mail for 2 hours, works the 532 chute and does not pull or lift sacks. Dr. Flood noted appellant's restrictions as: lifting no more than 30 pounds 4 hours per day; sitting and standing up to 4 hours per day; walking 1 to 4 hours per day; climbing a half hour per day; kneeling 0 to 4 hours per day; bending/stooping 1 hour per day; twisting 4 hours per day; pushing/pulling 2 hours per day; fine manipulation 2 hours per day; and reaching above shoulder 2 hours per day.

In a January 30, 2001 report, Dr. Flood advised that appellant's diagnosis was bilateral wrist tendinitis, her condition was unchanged, the progress for improvement was poor and she was being treated with wrist splints and the work restrictions from the September 13, 2000 examination.

On March 8, 2001 the Office doubled appellant's previous claim for her left wrist tendinitis condition into the current claim of an acute strain of flexion tendons, right wrist.

On March 12, 2001 appellant filed a recurrence claim commencing September 13, 2000 asserting that her work hours were changed from six hours per day to four hours per day due to chronic pain she experienced with the repetitive motion. In an April 19, 2001 attending physician's report, Dr. Flood advised that appellant had chronic tendinitis caused or aggravated by the repetitive motion of her employment activity. The history of injury was noted as being that of overuse and heavy lifting while scanning mail which resulted in bilateral wrist pain. Appellant's disability was noted as having stabilized in 1995.

In an April 25, 2001 report, Dr. Flood advised that appellant's restrictions and the fact that she should only work four hours a day was based on her September 13, 2000 examination. In a June 4, 2001 report, she reported that appellant was no longer able to perform her duties six hours a day because of intolerable pain from her chronic bilateral wrist tendinitis.

By letter dated October 31, 2001, the Office referred appellant, together with a statement of accepted facts, a set of questions and a copy of the case record, to Dr. Jack H. Akmakjian, an orthopedic surgeon, for a second opinion evaluation. He was advised that the evaluation was for the condition of acute strain of flexion -- right wrist and that appellant's concurrent tendinitis condition in her left wrist was not due to the work-related injury.

In a November 21, 2001 report, Dr. Akmakjian noted that, although appellant was referred for problems related to bilateral upper extremities, the claim had only been allowed for

the acute strain of flexion of the right wrist. History of both injuries were noted along with the fact that appellant had been working modified duty six hours a day, but recently had been limited to four hours a day. On physical examination, the right and left wrist revealed a full range of motion with no evidence of swelling. Dorsoradial tenderness was reported, but no other abnormal findings were noted. There was no pain to resistive or passive wrist extension. Neurologic examination was normal. Phalen's and Tinel's tests were normal at the elbow and at the wrist for both median and carpal nerves. There was no evidence of muscle atrophy. Examination of the left wrist revealed tenderness across the dorsoradial aspect, primarily subjective, with no specific abnormal findings. Full range of motion of the cervical spine, shoulders, elbows and wrists were noted. Subjective symptoms of tendinitis of both wrists were assessed, with no active medical treatment indicated. Appellant's physical examination findings were primarily subjective, with her relating tenderness to soft tissue palpation. Finkelstein's test, Tinel's test and range of motion tests were normal. Dr. Akmakjian noted that appellant had subjective complaints which outweighed objective findings. The physician opined that appellant did not have any objective residuals related to her work injury of April 19, 1992 as there were no objective findings on examination. Although she had some subjective complaints of subjective residuals, nothing was based objectively, which earlier medical evaluations had supported. The physician, thus, opined that appellant was capable of performing her regular duties without restrictions on a full-time basis.

On December 11, 2001 the Office issued a proposed notice of termination of compensation. The Office advised appellant that her compensation for wage loss and medical benefits were being terminated because she no longer had any continuing injury-related disability from the employment injury of April 29, 1992. The Office indicated that the weight of the medical evidence, as demonstrated by the opinion of Dr. Akmakjian, showed that appellant's work injury had resolved.

In letters dated December 18 and 26, 2001, both appellant and her attorney requested an extension of time.

By decision dated January 24, 2002, the Office finalized its proposed termination of benefits effective January 27, 2002. The Office indicated that the November 21, 2001 report from Dr. Akmakjian established that there was no objective evidence of a condition or a disabling residual resulting from the employment injury of April 29, 1992.

In a February 4, 2002 letter, appellant's attorney requested an oral hearing, which was held August 1, 2002. On February 6, 2002 the Office received a January 16, 2002 report from Dr. Caroline Gellrick, a Board-certified family practitioner, who noted the history of appellant's work injuries and her medical progress. Examination findings did not reveal any evidence of atrophy or thenar or hypothenar eminence muscles, but was positive for Tinel's test bilateral wrists, positive Phalen's test and bilateral wrists with Finkelstein's test. Positive tenderness lateral epicondyle greater than medial epicondyle, right equal left, with Adson's negative bilaterally with range of motion of the shoulder within normal limits. Neurological examination was noted as being good in the upper extremity, biceps, triceps and brachioradialis with a decreased range of motion of about 10 percent noted in the neck. An impression of repetitive strain disorder of upper extremities by history with flexor tendinitis, wrists and lateral

epicondylitis bilateral was provided. An electromyogram (EMG) and nerve condition study (NCS) were recommended along with temporary restrictions.

A March 25, 2002 NCS report noted that the bilateral median and ulnar conduction studies were normal. The EMG of the right forearm and hand muscles were normal, with the exception of a few fibrillations in the FDI, which were noted to be representative of a mild C8 radiculopathy. Clinical correlation was recommended to make a definitive diagnosis. An April 2, 2002 magnetic resonance imaging (MRI) scan of the cervical spine revealed a broad-based C5-6 disc protrusion, mild ventral cord impingement, mild asymmetric left-sided prominence and minor bilateral foramina spurring. A May 17, 2002 MRI scan of the thoracic spine was negative.

By decision dated October 28, 2002, an Office hearing representative affirmed the January 24, 2002 termination decision.

By letter dated October 23, 2003, appellant's attorney requested reconsideration. In an October 1, 2003 report, Dr. Gellrick noted that appellant has had chronic neck pain with no history of trauma, getting hit or falling down. She opined that appellant had no etiology for causation of a herniated disc at C5-6 with an EMG showing C8 radiculopathy. Dr. Gellrick further stated that as the neck lesion found on an MRI scan was in a different location from that shown on the EMG, causation could not be determined from the information she had. She further noted that there was no history of trauma to the neck or the back which would produce herniated discs in the spine and appellant had not been doing "heavy" lifting on her job. Dr. Gellrick thus, opined that appellant's neck conditions were not causally related to her work claims. She, however, opined that appellant's arm pain was compensable as it resulted from repetitive sort, key, type and write duties. The physician noted the examination findings, which included early kyphosis of range of motion findings, palpable tenderness and positive Tinel's and Phalen's signs at the level of both wrists at 15 seconds and provided an assessment of repetitive strain disorder of the upper extremities manifested as flexor tendinitis. Dr. Gellrick opined that the trauma induced lesions of wrist sprains from 1990 and 1992 precipitated the tendinitis and that the condition had been aggravated from ongoing jobs of sorting the mail, handling the mail and key, type and write duties which caused prolongation of her symptoms. Further testing, such as a sedimentation rate and another EMG study, were recommended.

In a December 4, 2002 report, Dr. Mark Hayman, a Board-certified family practitioner, from Kaiser Permanente, advised that appellant had work-related bilateral wrist tendinitis, had reached maximum medical improvement on September 13, 2000, had suffered a permanent loss and residuals from the injury had not resolved. Permanent restrictions were noted as working four hours a day with the following restrictions: no lifting, pushing or pulling over 30 pounds; standing limited to 4 hours a day; walking limited to 1 to 4 hours a day; simple grasping limited to 4 hours a day; and fine manipulation limited to 2 hours a day. In a January 15, 2003 report, Dr. Hayman advised that he had been appellant's physician for over a year and has seen her in follow-up for complaints of wrist tendinitis and other injuries which relate back to her original work-related injuries of approximately 10 years earlier. He further opined, based on her history of work-related injuries and current physical findings, that appellant's ongoing symptoms of bilateral wrist tendinitis, bilateral forearm tendinitis and bilateral epicondylitis were due to her original work-related injuries and were sustained due to her current regular work-related duties.

Copies of appellant's work restrictions from as early as December 16, 2002 denoting a four-hour workday from Dr. Hayman and other Kaiser Permanente physicians were provided along with appellant's medical record from Kaiser Permanente.

In a January 16, 2003 email, Dr. Matthew M. Hine, Associate Area Medical Director for the employing establishment, noted that he spoke with Dr. Hayman, who had advised that appellant's restrictions were based upon history and a December 16, 2002 physical examination and were necessary in order to prevent an exacerbation of a preexisting condition. Dr. Hine noted his agreement and opined that, while it was possible that appellant might be able to perform repetitive motion and fine manipulation (*i.e.* keyboarding) for up to four hours per day without causing a flare-up, a flare-up would be unlikely if those activities were limited to two hours per day.

By decision dated January 8, 2004, the Office denied modification of its previous decisions.

LEGAL PRECEDENT -- ISSUE 1

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

ANALYSIS -- ISSUE 1

The Office found that the weight of the medical evidence rested with the opinion of Dr. Akmakjian, an orthopedic surgeon and Office referral physician, in terminating benefits for appellant's April 29, 1992 employment injury which resulted in an acute strain of flexion tendons of the right wrist.⁵ In a letter dated October 31, 2001, to him, the Office advised that appellant's claim had been accepted for an acute strain of flexion tendons of the right wrist and enclosed her medical history, a statement of accepted facts dated October 24, 2001 (which noted

¹ *Manuel Gill*, 52 ECAB 282 (2001); *Lawrence D. Price*, 47 ECAB 120 (1995).

² *See Mary A. Lowe*, 52 ECAB 223 (2001).

³ *See Mary A. Lowe, id*; *see also Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *See Mary A. Lowe, supra* note 2.

⁵ Although the medical evidence in this case discusses appellant's bilateral wrist tendinitis and the Office had accepted a May 2, 1990 employment injury for the condition of left wrist tendinitis, the Board's jurisdiction in this case is limited to the termination of appellant's compensation benefits resulting from her April 29, 1992 employment injury, which the Office had accepted as an acute strain of flexion tendons of the right wrist. 20 C.F.R. § 501.2(c).

that appellant's concurrent tendinitis condition in her left wrist was not due to the April 29, 1992 employment injury) and a list of specific questions. In his November 21, 2002 report, Dr. Akmakjian noted appellant's history of injury, physical complaints, results of objective tests and findings on physical examination. He opined that although subjective symptoms of both wrists were assessed, appellant did not have any objective residuals related to her work injury of April 19, 1992 as there were no objective findings on examination. Finkelstein, Tinel's and Phalen's tests and range of motion tests were noted as being normal. The lack of objective findings were further supported by a review of the medical record. On that basis Dr. Akmakjian opined that appellant had no medical residuals resulting from her April 29, 1992 employment injury and was capable of performing her regular duties without restriction on a full-time basis. He further opined that her continued subjective complaints outweighed the objective findings. The physician found no basis on which to attribute any continuing condition due to the April 29, 1992 employment injury.

The Board has carefully reviewed the opinion of Dr. Akmakjian in light of the April 29, 1992 employment injury and finds his opinion to be well reasoned and supportive of the fact that residuals from right wrist flexion tendon strain had ceased. His opinion is based upon a complete and well-documented factual and medical history of appellant, it is consistent with objective physical findings and of reasonable medical certainty and is well rationalized and supported by the physical evidence noted in the record.⁶ In contrast, although Dr. Flood advised that appellant was only able to work in her limited-duty position for four hours due to the intolerable pain caused by her chronic bilateral wrist tendinitis, she offered no medical rationale for her opinion that appellant's chronic bilateral wrist tendinitis or specifically her right wrist tendinitis, was caused or aggravated by the repetitive motion of appellant's employment in her reports dated January 30, April 19 and 25, 2001. Furthermore, Dr. Flood failed to provide any objective findings to support that residuals from appellant's right wrist tendinitis or any accepted right arm condition continued to exist.

Accordingly, the Board finds that, at the time the Office issued its January 24, 2002 decision the weight of the medical opinion evidence rested with Dr. Akmakjian, the Office referral physician. Therefore, the Office has discharged its burden of proof to justify termination of appellant's compensation and entitlement to medical benefits for her right wrist condition effective January 27, 2002.

LEGAL PRECEDENT -- ISSUE 2

If the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts 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

⁶ See *James Mack*, 43 ECAB 321 (1991).

⁷ See *Manuel Gill*, *supra* note 1; *George Servetas*, 43 ECAB 424, 430 (1992).

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 the 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

ANALYSIS -- ISSUE 2

Following the Office's January 24, 2002 decision, appellant submitted additional new evidence. Although Dr. Gellrick opined, in her October 1, 2003 report, that appellant's flexor tendinitis had originated from the trauma-induced lesions of wrist strains from 1990 and 1992, she failed to provide any medical rationale as to whether appellant's condition was a result of or related to the 1992 accepted employment injury. She reported that the trauma-induced lesions of the wrists from 1990 and 1992 have precipitated the tendinitis, but provided no discussion of what is meant by the wrist sprains precipitating the tendinitis or any explanation as to how such condition could result. Although Dr. Gellrick opined that appellant's flexor tendinitis had been further aggravated from duties such as sorting the mail, handling the mail and key, type and write duties, there was no discussion indicating whether appellant's original or limited-work duties caused the current condition. Dr. Gellrick further failed to explain whether appellant's permanent work restrictions resulted from her original or limited-work duties. The Board further notes that although Dr. Gellrick provided objective findings to support her diagnosis, she failed to relate those findings with the negative results shown in the March 25, 2002 motor NCS test and EMG study. Accordingly, Dr. Gellrick's reports are insufficient to overcome or cause a conflict with Dr. Akmakjian's opinion that the residuals from the 1992 work injury had ceased.

Although Dr. Hayman opined that appellant had suffered a permanent loss from her work-related bilateral wrist tendinitis and that the residuals from the injury had not resolved, he provided no rationale supported by objective evidence for his opinion concerning causality. Additionally, based on Dr. Hine's January 16, 2003 email, Dr. Hayman appears to have assigned restrictions on a preventative basis, which infers that there were no objective factors of disability. Preventative restrictions or fear of reinjury is not covered under the Act as such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.⁹ Therefore, Dr. Hayman's opinion is insufficient to overcome or cause a conflict with Dr. Akmakjian's opinion.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation and medical benefits effective January 27, 2002. The Board further finds that

⁸ See *Connie Johns*, 44 ECAB 560 (1993).

⁹ The Board has frequently explained that subjective complaints of symptoms unsupported by objective physical findings of disability are not compensable. *John L. Clark*, 32 ECAB 1618 (1981); *Charles D. Wallace*, 21 ECAB 347 (1970).

appellant failed to establish that she has a continuing condition or disability causally related to her employment injury of April 29, 1992 on or after January 27, 2002.

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2004 decision of the Office of Worker's Compensation Programs is affirmed.

Issued: August 11, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member