

**United States Department of Labor
Employees' Compensation Appeals Board**

FRANCES C. FOEHLINGER, Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Lancaster, PA, Employer)

**Docket No. 04-1452
Issued: December 15, 2004**

Appearance:
Stephan Anderson, Esq. for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 11, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated February 9, 2004, which terminated her medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue on appeal is whether the Office properly terminated appellant's compensation and medical benefits effective February 9, 2004.

FACTUAL HISTORY

On October 28, 1999 appellant, then a 40-year-old letter carrier, injured her right wrist when she attempted to pull a door open. She continued with her work assignment and

compensated with use of her left hand, resulting in pain to both wrists. Appellant did not stop work.¹ On December 14, 1999 the Office accepted the claim for a right wrist strain.

Appellant's treating physician, Dr. James H. Carson, a Board-certified orthopedic surgeon, diagnosed right wrist pain and prescribed occupational therapy, which continued for several years.

On December 29, 2001 appellant filed a recurrence of disability claim commencing January 7, 2000.² She did not stop work. The Office accepted that appellant sustained a recurrence of disability on January 7, 2000.

In a June 2, 2003 report, Dr. Carson advised that appellant developed a vasomotor abnormality in the upper extremity, which she was unable to control with home therapy. He indicated that this condition resulted from her employment injuries. Dr. Carson noted that a weekly visit with a therapist seemed to treat appellant's swelling to a point where she could function and continue to work. The physician advised that she continue physical therapy once a week.

In a July 7, 2003 memorandum, an Office medical adviser indicated that the Office should obtain a second opinion examination to determine whether physical therapy treatments were medically necessary.

By letter dated July 24, 2003, the Office advised Dr. Carson that his June 2, 2003 report offered no explanation as to why appellant could not manage with home therapy. It advised the physician that the recommended physical therapy treatments would not be approved or authorized at the present time and that appellant would be referred for a second opinion examination to determine the need for such treatments and the length and time of any treatments found necessary as a result of being related to residuals of the accepted work injuries.

By letter dated July 29, 2003, the Office referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Perry Eagle, a Board-certified orthopedic surgeon. In a September 15, 2003 report, he noted findings on physical examination and opined that appellant may have sustained a right wrist strain; however; there was no evidence of triangular fibrocartilage complex (TFCC) injury. Dr. Eagle advised that her physical examination was essentially normal, except for subjective complaints of pain. He opined that appellant's current complaints were related to the accepted injury by history only and there were no objective findings to link her complaints to the work injury. Dr. Eagle also advised that there were no objective findings to support that appellant's work duties aggravated her condition or that the recommended physical therapy was necessary. In a work capacity evaluation of the same date, he indicated that appellant could return to work with no restrictions.

¹ The record reflects that appellant was on light duty.

² In a subsequent statement, appellant indicated that she did not have an injury to her right wrist in October 2000, but explained that she inadvertently wrote the wrong date on her form. She explained that she only had two injuries to her right wrist. Appellant advised the first was on December 2, 1996 under claim No. 030223272 for bilateral carpal tunnel syndrome and the second was on October 28, 1999 under claim No. 030247019 for right wrist sprain.

On September 25, 2003 the Office determined that a conflict in medical opinion existed between Dr. Carson, appellant's physician, who continued to treat her for effects of her accepted injury and Dr. Eagle, the second opinion physician, who noted no objective findings of residuals to support the need for continued treatment.

By letters dated October 14, 2003, the Office referred appellant to Dr. Randy A. Cohen, an osteopath Board-certified in primary rehabilitation medicine by the American Osteopathic Association, for an impartial medical evaluation.

In an October 29, 2003 report, Dr. Cohen noted appellant's history of injury and treatment, which included bilateral carpal tunnel release on the right side in January 1996 and the left side in 1997. He noted that a magnetic resonance imaging (MRI) scan of the right wrist of February 26, 2002 showed that the triangular fibrocartilage was intact, with a small effusion in the radial ulnar joint. The physician noted that a bone scan of March 19, 2002 showed probable mild degenerative or old post-traumatic changes of the right third proximal interphalangeal joint, but no significant abnormalities of the right wrist. Regarding the upper extremities, appellant did not have any visible swelling with a full range of motion in the right wrist. Sensory examination was intact to sharp and dull, no muscle atrophy was noted and strength appeared symmetric at 5/5 in all major muscle groups in both upper extremities. The physician indicated that the Phalen's and Tinel's tests at the wrist were negative bilaterally and she was tender over the ulnar styloid on the right side. Dr. Cohen opined that appellant's right wrist strain had resolved as there was no objective evidence for TFCC injury and the MRI and bone scans were normal. He explained that a sprain or strain of the wrist should not have lasted more than two to three months as appellant did not have any significant trauma with her initial injury. Dr. Cohen opined that her current subjective symptoms were not related to her work injury and explained that, despite her subjective complaints of pain to her right wrist, there were no findings and no residuals from her October 1999 injury. He explained that appellant's work duties did not aggravate her employment-related injury of October 1999, which had resolved and there was no need for ongoing medical treatment. Regarding appellant's subjective complaints, the physician noted that she already had over two years or more of therapy and there was no need for any further physical therapy.

On December 19, 2003 the Office proposed to terminate appellant's compensation benefits on the grounds that she no longer had any residuals of the accepted injury.

By letter dated January 16, 2004, appellant's representative indicated that he opposed the proposed termination. He provided additional medical evidence comprised of copies of reports previously reviewed by the Office.³ Additionally, treatment notes from Dr. Carson dated June 6, 18 and August 13, 2003 were received, in which he again recommended continued therapy.

By letter dated February 4, 2004, appellant's representative provided copies of previous treatment records and a January 30, 2004 report from Dr. Carson, who questioned Dr. Cohen's expertise. He also stated that it was unreasonable to apply a 2004 finding retroactively to circumstances prior to that time. Dr. Carson, noted that appellant had functional deficits and

³ The evidence included reports from appellant's physicians and a physical therapist.

objective findings of swelling in the extremity which precluded working at her normal duties and that she responded to therapy, as it resulted in decreased symptomatology and increased her functional capacity at work.

By decision dated February 9, 2004, the Office terminated appellant's compensation benefits effective that day, finding that the weight of the medical evidence established that her injury-related disability had ceased.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁵

Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "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."⁶ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁷

ANALYSIS

The Office found a conflict of medical opinion arose between the opinions of Dr. Carson, a Board-certified orthopedic surgeon, for appellant and Dr. Eagle, a Board-certified orthopedic surgeon and an Office second opinion physician.⁸ Dr. Carson stated that appellant required ongoing medical treatment for her employment injury while Dr. Eagle found that there were no objective findings to support residuals of a work-related condition. The Office properly referred appellant to Dr. Randy Cohen, Board-certified in physical medicine and rehabilitation as the impartial medical examiner.

The Board finds that the October 29, 2003 report of Dr. Cohen found that there were no objective findings to correspond with appellant's subjective complaints and there was no

⁴ *Mohamed Yunis*, 42 ECAB 325 (1991).

⁵ *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, 41 ECAB 361 (1990).

⁶ 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB ___ (Docket No. 01-1599, issued June 26, 2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁷ *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

⁸ As previously noted, appellant's treating physician, continued to indicate that appellant required treatment due to the effects of her work injury, while Dr. Eagle, the second opinion physician, indicated that appellant no longer had any residuals of the accepted work injury that would necessitate continued treatment.

evidence of any ongoing residuals. On examination Dr Cohen found no visible swelling of the extremities and a full range of motion. Appellant's strength was symmetrical in both upper extremities and the Phalen's and Tinel's tests were both negative. The physician determined that appellant's right wrist strain had resolved, as there were no objective findings and both the MRI and bone scans were normal. Dr. Cohen explained that a sprain or strain of the wrist would not last more than two to three months, noting there was no significant trauma in the initial injury. He opined that appellant's current subjective symptoms were not related to the accepted work injury and, despite appellant's subjective complaints of pain in her right wrist, there were no objective findings to suggest residuals due to the October 1999 injury. Dr. Cohen further explained that appellant's work duties did not aggravate the employment-related injury of October 1999, which had resolved and required no need for further medical treatment. The Board finds that Dr. Cohen's opinion is well rationalized and based upon a proper factual background. He conducted a full physical examination of appellant, reviewed her medical records and reported accurate medical and employment histories. The Office properly accorded determinative weight to Dr. Cohen's October 29, 2003 report.

Prior to the termination, appellant submitted a January 30, 2004 report from Dr. Carson, who repeated his opinion that she required therapy and questioned Dr. Cohen's expertise. Although he advised that appellant had functional deficits and objective findings, Dr. Cohen did not specify these findings in his report or indicate when they were observed on physical examination. The Board notes that Dr. Cohen's specialty, rehabilitation, is relevant to the question of appellant's continuing need for medical treatment due to residuals of the accepted employment injury. As Dr. Carson was on one side of the conflict of medical opinion which was referred to Dr. Cohen as the impartial medical specialist, his subsequent report reiterating his prior opinion is insufficient to outweigh or create a new conflict with that of Dr. Cohen.⁹

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's medical benefits effective February 9, 2004.

⁹ See *Dorothy Sidwell*, 41 ECAB 857 (1990).

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 15, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member