

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

LaDONNA M. ANDREWS, Appellant)
and) Docket No. 03-1573
U.S. POSTAL SERVICE, POST OFFICE,) Issued: January 30, 2004
Oak Park, MI, Employer)

)

Appearances:
LaDonna M. Andrews, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 3, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 2, 2003 terminating her compensation and 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 is whether the Office met its burden of proof to terminate appellant's compensation and medical benefits.

FACTUAL HISTORY

On May 5, 1999 appellant then a 51-year-old letter carrier, filed an occupational disease claim alleging that she sustained de Quervain's disease¹ of the left hand beginning on May 1,

¹ *Dorland's Illustrated Dictionary* at 484 (27th ed. 1988) describes de Quervain's disease as "painful tenosynovitis due to relative narrowness of the common tendon sheath of the abductor pollicis longus and the extensor pollicis brevis [muscles]."

1997 due to grasping and holding bundles of mail. On July 9, 1999 the Office accepted her claim for left de Quervain's tendinitis.

In notes dated August 24, 2000, Dr. Kasturi B. Puri, appellant's attending Board-certified physiatrist, provided findings on examination and diagnosed tenosynovitis and de Quervain's disease.

In a report dated October 11, 2000, Dr. Jerry A. Matlen, a Board-certified orthopedic surgeon and an Office referral physician, provided findings on examination and stated that there was no specific significant tendinitis noted in appellant's first dorsal compartment at the area consistent with de Quervain's disease. He stated:

"[Appellant] has nothing to suggest an active [de] Quervain's on today's evaluation. [She] does not demonstrate residual findings secondary to the May 1, 1997 injury and [she] has reached maximum medical improvement relative to that condition.

"It is my opinion that her working diagnosis, based on her x-ray reports, bone scan reports and her clinical examination is symptomatic carpal metacarpal arthritis of her left hand. Typically arthritis is not an employment[-]related condition. In that regard, I feel that she does require restrictions relative to her left hand and those would be to avoid repetitive grasping and significant lifting in regards to that hand."

On November 16, 2000 Dr. Puri indicated that perhaps appellant was not having swelling in her left hand on the day that she was examined by Dr. Matlen and that is why he did not find evidence of active de Quervain's disease.

The Office determined that there was a conflict in the medical opinion evidence between Dr. Puri and Dr. Matlen, as to whether appellant had any residual disability or medical condition causally related to her work-related de Quervain's disease. The Office referred appellant, together with a statement of accepted facts and the entire case file, to Dr. Robert S. Barbosa, a specialist in orthopedic surgery and Board-certified by the American Osteopathic Association, for an independent medical examination in order to resolve the conflict. The Office provided Dr. Barbosa with a statement of accepted facts and the entire case file.

In a report dated October 16, 2001, Dr. Barbosa provided a history of appellant's condition, findings on examination and the results of x-rays. He diagnosed bilateral carpometacarpal joint osteoarthritis and pain in the cervical dorsal bilateral shoulder girdle. Dr. Barbosa opined that appellant could perform her regular work without physical restrictions.

In a supplemental report dated December 11, 2001, Dr. Barbosa stated that when he examined appellant on October 16, 2001 there were no subjective or objective findings of de Quervain's disease.

By letter dated February 20, 2002, the Office advised appellant of its proposed termination of her compensation and medical benefits on the grounds that the weight of the

medical evidence, as represented by the report of the impartial medical specialist, Dr. Barbosa, established that appellant had no residuals from her de Quervain's disease.

By decision dated March 29, 2002, the Office terminated appellant's compensation and medical benefits.

Appellant requested an oral hearing that was held on September 24, 2002. By decision dated January 17, 2003, the Office hearing representative affirmed the Office's March 29, 2002 decision.

By letter dated January 28, 2003, appellant requested reconsideration. By decision dated April 2, 2003, the Office denied modification of its January 17, 2003 decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.²

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."³ 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.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

ANALYSIS

In this case, Dr. Puri, appellant's attending Board-certified physiatrist, opined that appellant's accepted employment injury, de Quervain's disease had not resolved.

In a report dated October 11, 2000, Dr. Matlen, a Board-certified orthopedic surgeon and an Office referral physician, found no evidence of de Quervain's disease. He diagnosed carpal metacarpal arthritis of her left hand and indicated that this condition was not work related.

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

³ 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).

⁴ See *Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

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

On November 16, 2000 Dr. Puri indicated that perhaps appellant was not having swelling in her left hand on the day that she was examined by Dr. Matlen and that is why he did not find evidence of active de Quervain's disease.

To resolve the conflict in the medical opinion evidence as to whether appellant's accepted de Quervain's disease had resolved, the Office properly referred appellant, pursuant to section 8123(a) of the Act, for an impartial medical examination and opinion on her continuing employment-related disability. The Board finds, however, that the Office improperly terminated appellant's compensation and medical benefits based on the reports of Dr. Barbosa.

The selection of an impartial medical specialist is detailed in the Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4. At the time the Office selected Dr. Barbosa to serve as an impartial medical specialist, the Office procedure manual provided that "unlike the selection of second opinion examining physicians, the selection of referee physicians is made by a strict rotational system using appropriate medical directories" and specifically stated that "the Physicians' Directory System (PDS) should be used for this purpose."⁶ The Office procedure manual explains that the "PDS is a set of stand-alone software programs designed to support the scheduling of second opinion and referee examinations" and states that "the database of physicians for referee examinations was obtained from the MARQUIS Directory of Medical Specialists."⁷

In this case, Dr. Barbosa is Board-certified in orthopedic surgery by the American Osteopathic Association (AOA). The MARQUIS Directory does not list the AOA in its list of approved Boards and further does not list Dr. Barbosa in its list of Board-certified physicians.⁸ Therefore, at the time of his October 16 and December 11, 2001 reports, Dr. Barbosa does not appear to be a Board-certified physician, within the definition set forth by the Office in its procedure manual. Accordingly, Dr. Barbosa's opinion cannot be accorded the special weight given to an impartial medical specialist and, therefore, the Office did not meet its burden of proof in terminating appellant's compensation and medical benefits based on Dr. Barbosa's reports.⁹

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4b (March 1994).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.7a (March 1994).

⁸ See *The Official American Board of Medical Specialties (ABMS) Directory of Board-certified Medical Specialists* (30th ed. 1998). Dr. Barbosa's name does not appear in the MARQUIS electronic database, or in the electronic database of Board-certified physicians maintained by the American Medical Association.

⁹ See *Fred Simpson*, 53 ECAB ____ (Docket No. 02-802, issued August 27, 2002); *Albert Cremato*, 50 ECAB 550 (1999). The Board notes that on May 23, 2003 the Office issued Transmittal No. 03-05, which modified Chapter 3.500.4b and 3.500.7a of its procedure manual to reflect that all qualified Board-certified specialists, including those certified by the AOA and the ABMS of the American Medical Association are to be used as impartial medical specialists. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.7a (May 2003). However, the Office's acceptance of physicians Board-certified by the AOA to serve as impartial medical specialists was not in effect at the time that the Office selected Dr. Barbosa to serve as an impartial medical specialist.

CONCLUSION

The Board finds that the Office improperly terminated appellant's compensation and medical benefits based on the reports of Dr. Barbosa because he was not qualified to serve as an impartial medical specialist and his opinion was not entitled to be accorded the special weight given to an impartial medical specialist.

ORDER

IT IS HEREBY ORDERED THAT the April 2 and January 17, 2003 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: January 30, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member