

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

DARLENE BURNETT, Appellant)	
)	
and)	Docket No. 04-711
)	Issued: November 30, 2004
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Southeastern, PA, Employer)	
)	
)	

Appearances: *Case Submitted on the Record*
Thomas R. Uliase, Esq., for the appellant
Office of the Solicitor, for the Director

DECISION AND ORDER

Before:
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On January 21, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated October 6, 2003, affirming a denial of a recurrence of disability on May 2, 2001 and termination of compensation effective October 23, 2001. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated compensation for wage-loss and medical benefits effective October 23, 2001; and (2) whether appellant established a recurrence of disability as of May 2, 2001.

FACTUAL HISTORY

On April 7, 1999 appellant, then a 47-year-old mail processor, filed a claim alleging that her carpal tunnel syndrome was causally related to repetitive motions required in her federal

employment. She indicated that she became aware of the condition on January 24, 1999. The Office accepted bilateral carpal tunnel syndrome and aggravation of cervical disc disease. Appellant returned to part-time light-duty work intermittently and filed claims for recurrences of disability. Her attending family practitioner, Dr. Marcia Dietrich, submitted reports indicating that appellant continued to have disabling residuals of the employment injury. Appellant continued to work part time and submit claims for intermittent periods of disability.

The Office referred appellant to Dr. Steven Valentino, an orthopedic surgeon, who submitted an August 24, 1999 report providing a history and results on examination. Dr. Valentino opined that appellant's carpal tunnel syndrome and aggravation of degenerative disc disease had resolved, stating that he found no evidence of any employment-related residual or need for medical care.

The Office determined that a conflict in the medical evidence was created and appellant was referred, together with medical records and a statement of accepted facts, to Dr. Perry Eagle, a Board-certified orthopedic surgeon. In a report dated April 10, 2000, Dr. Eagle provided a history and results on examination. He noted that a physician in February 2000 had diagnosed thoracic outlet syndrome, but Dr. Eagle opined that the diagnosis was speculative. Dr. Eagle also noted that a May 5, 1999 nerve conduction study was normal. He opined that appellant did not suffer any aggravation of cervical degenerative disc disease or bilateral carpal tunnel syndrome at that time. Dr. Eagle concluded that the effects of the work injury were not present at that time and appellant was not disabled due to the work injuries.

In a letter dated December 7, 2000, the Office notified appellant that it proposed to terminate her compensation benefits on the grounds that the weight of the evidence established that residuals of the employment injuries had ceased. The Office requested that appellant submit evidence within 30 days.

By report dated March 8, 2001, Dr. James Campbell, a neurologist, indicated that examination strongly suggested a thoracic outlet syndrome. In a report dated March 23, 2001, Dr. Amelia Tabuena, a specialist in rehabilitation medicine, reported that electrodiagnostic evidence indicated a moderate compression neuropathy of the medial nerve.

On May 23, 2001 appellant filed a notice of recurrence of disability (Form CA-2a) commencing May 2, 2001. The record indicates that appellant was off work until May 18, 2001.¹ She submitted a May 2, 2001 report from Dr. Scott Fried, an osteopath, who provided a history and results on examination. Dr. Fried stated that appellant had "repetitive strain injury cumulative trauma disorder secondary to work at [the employing establishment]." He also diagnosed median and radial neuropathy with ulnar neuritis, flexor tenosynovitis bilaterally, brachial plexopathy and moderate synthetic reactivity in the hands. Dr. Fried stated that he had asked appellant to be off work and that appellant was capable of working strict sedentary work.

The Office referred appellant for another examination by Dr. Eagle. In a report dated September 28, 2001, Dr. Eagle provided results on examination and reviewed results of prior

¹ The Office paid intermittent compensation beginning May 19, 2001.

diagnostic tests, including electrodiagnostic studies on March 23 and June 5, 2001. Dr. Eagle noted the disparity between the tests as the June 5, 2001 results did not discuss a median nerve neuropathy. He opined that there were no objective findings to indicate that the effects of the work injuries were still present. Dr. Eagle indicated that he did not feel that carpal tunnel syndrome and thoracic outlet syndrome could be attributed to the employment injury, as he was uncertain if either diagnosis was established.

By decision dated October 23, 2001, the Office terminated compensation for wage-loss and medical benefits on the grounds that the medical evidence established no continuing employment-related residuals. The Office also denied the claim for a recurrence of disability commencing May 2, 2001.

Appellant requested a hearing, which was held on March 12, 2002. Appellant submitted a May 8, 2002 report from Dr. Fried, who again stated that appellant had repetitive strain injury cumulative trauma disorder secondary to work. By decision dated August 12, 2002, an Office hearing representative affirmed the October 23, 2001 decision. In a decision dated November 21, 2002, the Office denied a request for reconsideration without merit review of the claim.

In a letter dated February 21, 2003, appellant requested reconsideration of her claim. Appellant submitted a February 14, 2003 report from Dr. Richard Zamarin, an orthopedic surgeon, who reported that appellant had been injured at work on January 24, 1999 and he reviewed medical evidence. He stated that he believed, based upon a reasonable degree of medical certainty, as a result of the work-related injury appellant had bilateral carpal tunnel syndrome and myofascial pain syndrome. Dr. Zamarin opined that the myofascial syndrome had evolved from the repetitive strain injury, appellant's condition was permanent and she could not return to full duties of a clerk position.

By decision dated October 6, 2003, the Office denied modification of the prior decision. The Office found that Dr. Zamarin's report was not sufficient to create a conflict in the medical evidence.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.² 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 appellant no longer has residuals of an employment-related condition which require further medical treatment.³

² *Patricia A. Keller*, 45 ECAB 278 (1993).

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

ANALYSIS -- ISSUE 1

The Office found a conflict in the medical evidence between appellant's attending physician, Dr. Dietrich, and a second opinion physician, Dr. Valentino. Dr. Dietrich found that appellant continued to have employment-related residuals, while Dr. Valentino opined that employment-related residuals had ceased. Section 8123(a) of the Federal Employees' Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.⁴ When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.⁵

The Office referred appellant to Dr. Eagle as an impartial medical specialist, and he provided reports dated April 10, 2000 and September 28, 2001. Dr. Eagle provided results on examination, reviewed the evidence, and opined that the accepted conditions, bilateral carpal tunnel syndrome and aggravation of cervical degenerative disc disease, had resolved. He noted the lack of objective findings and provided a reasoned opinion that residuals of the accepted injuries had ceased. It is well established that when 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.⁶ The Board finds that the reports of Dr. Eagle are entitled to special weight and represent the weight of the evidence in this case. It is the Office's burden of proof, and the Board finds that the Office met its burden to terminate compensation for wage-loss and medical benefits on October 23, 2001.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability which continued after termination of compensation benefits.⁷ In the present case, the medical evidence submitted by appellant after the termination decision included the February 14, 2003 report of Dr. Zamarin. This report is not of sufficient probative value to establish a continuing employment-related disability. Dr. Zamarin did not provide a detailed history of the employment injury; he noted an injury on January 24, 1999 but did not provide additional explanation or discuss the occupational nature of the injury. He diagnosed carpal tunnel syndrome, without providing a reasoned opinion as to why he believed it was related to the specific work factors alleged in this claim. Dr. Zamarin did not, for example, discuss a May 5, 1999 nerve conduction study noted by Dr. Eagle that reported a normal study of both arms.

⁴ *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

⁵ *William C. Bush*, 40 ECAB 1064 (1989).

⁶ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁷ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

The Board finds that appellant did not submit a medical report with a reasoned medical opinion, based on a complete background that establishes an employment-related condition or disability after October 23, 2001. Appellant therefore did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.⁸

ANALYSIS -- ISSUE 2

The issue with respect to the May 2, 2001 recurrence of disability appears to be limited to a period of total disability from May 2 to 18, 2001, as the record indicated that appellant returned to work on May 19, 2001 and received compensation for partial disability. As noted in the above discussion, Dr. Fried submitted a May 2, 2001 report in which he indicated that appellant would be off work. To meet her burden of proof, however, appellant must show a change in the nature and extent of the injury-related condition.⁹ Dr. Fried provided results on examination and he noted puffiness in the hands, but he did not indicate that the examination revealed a change in the nature and extent of appellant's condition. He did not diagnose either carpal tunnel syndrome or aggravation of cervical degenerative disc disease; the diagnosis was "repetitive strain injury cumulative trauma disorder" and the statement that the diagnosis was secondary to work is not accompanied by medical rationale.

The Board finds that the evidence of record is not sufficient to establish a recurrence of total disability causally related to the accepted injuries as of May 2, 2001. It is appellant's burden of proof and the evidence is not sufficient to meet that burden.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate compensation for wage-loss and medical benefits as of October 23, 2001 based on the reports of the impartial medical specialist, Dr. Eagle. It is further found that appellant did not meet her burden of proof to establish a recurrence of disability commencing May 2, 2001 because the record does not contain a reasoned medical opinion on the issue.

⁸ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁹ Appellant did not allege a change in the light-duty job.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 6, 2003 is affirmed.

Issued: November 30, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member