

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

BETTY M. BROWN, Appellant)
)
and)
)
DEPARTMENT OF THE TREASURY,)
COMPTROLLER OF CURRENCY,)
Oklahoma City, OK, Employer)

Docket No. 05-42
Issued: March 21, 2005

Appearances:
Daniel M. Goodkin, for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 28, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated May 19, 2004 terminating compensation. Under 20 C.F.R. §§ 501.2(c), 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden to terminate appellant's compensation benefits.

FACTUAL HISTORY

This is the fourth appeal of this case before the Board. Appellant, a 38-year-old logistics management specialist, filed a Form CA-2 claim for benefits, alleging that she developed pain in her right wrist and thumb caused by factors of her employment. By decision dated July 2, 1997, the Office accepted tenosynovitis of the right thumb and a ganglion cyst on the right wrist. The Office later accepted right rotator cuff syndrome. Appellant received benefits for total temporary

disability until she returned to work in March 1998. On September 2, 1998 she had a ganglion cyst removed from her right wrist and was placed in vocational rehabilitation on March 31, 1999. On July 19, 1999 appellant returned to work for the employing establishment as an associate national bank specialist. On September 28, 1999 the Office conducted a wage-earning capacity analysis and found that, based on appellant's earning or actual wages, the position fairly and reasonably represented her wage-earning capacity.

In a January 17, 2000 report, Dr. Michael Carl, an orthopedist, stated that appellant presented with recalcitrant neck and bilateral upper extremity discomfort radiating from the shoulders into her elbows. He noted that her symptoms were aggravated by repetitive activities at work including keyboard functioning seven to eight hours a day done in a poor ergonomic setting. Dr. Carl diagnosed myofascial pain syndrome and shoulder impingement syndrome. He restricted appellant to no lifting, carrying or pushing over 10 pounds and no reaching above the shoulders. Dr. Carl stated that appellant could continue her job provided that she had an ergonomically correct workstation and was able to take breaks frequently.

On March 9, 2000 appellant filed a recurrence claim alleging that her repetitive work activities caused her to sustain pain in her right hand resulting in her overuse of her left hand, which has caused additional pain in it as well. She was terminated from her bank specialist job on March 31, 2000. Appellant submitted a March 8, 2000 report from Dr. Carl, who stated that appellant was experiencing increasing levels of pain in her right upper extremity with numbness and tingling in the first and fourth digits of the right hand. On physical examination, he found that appellant had a full range of motion with generalized upper trapezius and cervical paraspinal discomfort. Dr. Carl stated that appellant was temporarily totally disabled.

On April 20, 1999 appellant filed an occupational disease claim for her left upper extremity that was accepted for left shoulder impingement and a left ganglion cyst that was removed on April 25, 2000. In support of her claim, appellant submitted an April 19, 2000 report from Dr. Douglas Brant, an attending Board-certified orthopedic surgeon, who stated that appellant presented with a severe pain in her left wrist and shoulder impingement resulting from repetitive typing and other clerical tasks performed in a poor ergonomic setting. He opined that appellant's condition was causally related to her employment and found appellant totally disabled. Appellant received benefits for total temporary disability.

In a November 2, 2000 report, Dr. Ralph Payne, an orthopedist and Office referral physician, stated that appellant presented with the chief complaint of pain in both shoulders. On physical examination, he noted that appellant had well-healed scars on her wrists and that her shoulders showed no muscle atrophy. Dr. Payne also stated that it was apparent that appellant was not cooperating when he examined her shoulders and opined that she had nearly full motion of both shoulders. He noted that a magnetic resonance imaging (MRI) scan of her right shoulder was normal except some bursal surface inflammation without a tear of the tendon or rotator cuff and tendinosis of the horizontal section of the biceps tendon. Dr. Payne stated that x-rays revealed increased sclerosis of the carpal metacarpal joint at the base of the thumbs consistent with early traumatic arthritis. Dr. Payne advised that appellant could work in a sedentary capacity with restrictions including no lifting or reaching above her shoulders and no lifting over 45 pounds. He stated that appellant could do full-time work as a bank specialist, including computer work and reaching for papers on her desk.

The Office found a conflict in the medical evidence and referred appellant for an impartial medical examination. In a December 12, 2000 report, Dr. Ghazi Rayan, a Board-certified orthopedic surgeon, related that appellant had mild pain in her wrists, hands and upper extremities including the shoulders. Dr. Rayan advised that appellant had full range of motion but some tenderness in her elbow, forearm, wrist and digital joint motion with minimal stiffness in her wrists. He stated that all provocative maneuvers for localized tendinopathies in both upper extremities to all nerves were negative or neutral. Dr. Rayan noted that he reviewed past x-rays and found them normal. He diagnosed muscle pain with no definite localized tendinopathy and weakness of the upper extremity. Dr. Rayan stated that appellant can continue to work full time in property management without restrictions. In a March 9, 2001 supplemental report, he opined that appellant had no recurrence of her cysts or hand conditions. Dr. Rayan stated that she had residual weakness but, stated that she could work as a bank employee.

In an April 24, 2001 decision, the Office terminated appellant's compensation based on the opinions of Drs. Payne and Rayan. By decision dated June 12, 2001, the Office denied modification. Appellant requested reconsideration and submitted a June 4, 2001 report from Dr. Andrew John, an attending Board-certified orthopedic surgeon, who stated that appellant's employment as a bank specialist caused inflammation of the tendons to a sufficient degree that she developed ganglion cysts that resulted in a painful condition but also weakened her tendons causing early fatigue which impaired her ability to perform her job. He noted that the repetitive nature of appellant's work, such as typing and handling files, caused her conditions of bilateral tenosynovitis, ganglion cysts, rotator cuff inflammation, carpal tunnel syndrome and reflex sympathetic dystrophy. Dr. John noted that appellant was accommodated in many ways for the job as a bank specialist, yet the symptoms returned establishing that she could not perform her job. In an October 11, 2001 decision, the Office denied modification and, in a January 16, 2002 decision, the Office denied reconsideration. In a July 2, 2002 decision, the Board remanded the case to consolidate the two case records, reconstruct the file and issue a new decision based on the entire record.¹ Subsequent to the consolidation and in an October 16, 2002 decision, the Office terminated appellant's wage loss again relying on Dr. Rayan as the impartial medical specialist.

Appellant requested reconsideration. In December 17, 2002 report, Dr. Houshand Seradge, an attending Board-certified orthopedic surgeon, stated that appellant underwent a functional capacity evaluation and the results showed that she was capable of working an eight-hour day in a sedentary position. Dr. Seradge stated that he was familiar with appellant's work duties as a bank specialist. He stated that appellant's repetitive movement test was normal with average speed and no range test. Dr. Seradge noted that appellant's movement pattern did not correlate with her pain rating. He added that when distracted her movement patterns improved significantly suggesting that her movement ability is greater than she demonstrated. Dr. Seradge added that appellant could bend, squat and climb frequently and her repetitive fine hand movement suggested that she has excellent fine motor skills and is qualified for assembly

¹ Docket No. 02-899 (issued July 30, 2002).

tasks of pieces in the one- to four-millimeter range or larger. He found that appellant had a permanent impairment of 13 percent in her left upper extremity.²

In an April 22, 2003 decision, the Board set aside the October 16, 2002 decision due to an incomplete record and again remanded the case for proper assemblage of the record and a *de novo* decision.³ In an August 21, 2003 decision, the Office terminated appellant's compensation effective May 20, 2001 relying on the special weight given to the report of Dr. Rayan as the impartial medical specialist. In a February 27, 2004 decision,⁴ the Board reversed the Office's decision. The Board found that Dr. Rayan's reports were not sufficient to resolve the conflict in medical evidence regarding whether appellant was disabled for performing the job of a bank specialist, as his opinion was not well rationalized and ambiguous. The complete facts of this case are set forth in the Board's February 27, 2004 decision and are herein incorporated by reference. Appellant's entitlement to disability compensation was restored.

In a one-sentence report dated March 29, 2004, Dr. Rayan stated:

"After review of clinical records, [appellant] can engage in gainful employment as a bank specialist."

By decision dated May 19, 2004, the Office terminated appellant's compensation, finding that Dr. Rayan's impartial opinion was sufficient to resolve the conflict in medical evidence and represented the weight of the medical evidence.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened to order to justify termination or modification of compensation benefits.⁵ 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.⁶

When conflicts in medical opinion arise, 5 U.S.C. § 8123(a) requires the Office to appoint a third or "referee" physician, also known as an "impartial medical specialist."⁷ Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the

² Appellant received schedule awards of 10, 9 and 4 percent for her left upper extremity in 1998, 1999 and 2002 and a schedule award of 22 percent for a permanent impairment for her right upper extremity in 1997.

³ Docket No. 03-679 (issued April 22, 1999).

⁴ Docket No. 04-230 (issued February 27, 2004).

⁵ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁶ *Id.*

⁷ Section 8123(a) of the Federal Employees' Compensation Act provides in pertinent part, "(i)f there is a 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." See *Dallas E. Mopps*, 44 ECAB 454 (1993).

purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.

ANALYSIS

In the instant case, the Board finds that Dr. Rayan's opinion was not sufficient to resolve the conflict in medical evidence, as his opinion is not well rationalized and he did not clarify or elaborate on the specific background upon which he based his opinion. Dr. Rayan's opinion consisted of a one-sentence, declarative statement that he believed appellant was capable of engaging in gainful employment as a bank specialist. As the Board stated in its February 27, 2004 decision, the Office must determine whether appellant can perform the position of bank specialist. The Board noted that Dr. Rayan's December 12, 2000 report did not discuss that position and or indicate that he reviewed a job description for that position. In a March 9, 2001 supplemental report, Dr. Rayan stated that appellant can "engage in gainful employment at a bank." The Board determined that the statement was too general to serve as a basis to terminate appellant's compensation, because it was not clear what specific employment activities appellant could perform. Similarly, the statement "[a]fter review of clinical records, [appellant] can engage in gainful employment as a bank specialist," which constitutes the extent of Dr. Rayan's March 29, 2004 report, is similarly too general for the Office to rely on to terminate compensation.

Accordingly, for these reasons, the Office has not resolved the conflict in the medical evidence regarding appellant's employment-related residuals. Given the continuing conflict on this matter, it has not met its burden of proof to terminate appellant's compensation.

CONCLUSION

The Board finds that the Office improperly terminated appellant's compensation effective June 12, 2004.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2004 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 21, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member