

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

D.F., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Denver, CO, Employer)

Docket No. 06-1775
Issued: September 11, 2007

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 28, 2006 appellant filed a timely appeal from a June 22, 2006 decision of the Office of Workers' Compensation Programs that terminated her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation benefits effective June 22, 2006.

FACTUAL HISTORY

On August 15, 1995 appellant, then a 36-year-old dental assistant, sustained a traumatic injury to her right wrist, fingers and forearm. The Office accepted the claim for right wrist sprain, right radial styloid tenosynovitis and right carpal tunnel syndrome. Appellant stopped work on August 2, 1995 and returned to a light-duty position on August 22, 1995. On September 5, 1995 she filed a claim for a left wrist injury, which occurred on August 25, 1995.

The Office accepted appellant's claim for left wrist sprain and left hand and wrist tenosynovitis. These claims were administratively joined under the same file number. She stopped work on August 31, 1996.

Appellant came under the care of Dr. Eric Britton, a Board-certified family practitioner, on September 11, 1995. In reports dated September 11, 1995 to August 28, 1996, Dr. Britton noted that appellant presented with bilateral complaints of wrist pain radiating into the forearm that began on August 15, 1995 after two weeks of engraving materials with a motorized tool at work. He diagnosed mild bilateral carpal tunnel syndrome, bilateral forearm overuse syndrome and bilateral forearm tendinitis. On March 25, 1996 Dr. Britton opined that appellant reached maximum medical improvement and could return to work subject to lifting restrictions.

In a September 9, 1998 report, Dr. Suzanne Bralliar, an osteopath, noted a history of injury and diagnosed bilateral upper extremity rapid repetitive use syndrome, chronic cervicothoracic strain and chronic pain syndrome and anxiety disorder. She advised that appellant was involved in two unrelated automobile accidents and was treated for upper neck and back injuries. In reports dated September 6 to October 15, 2001, Dr. Bralliar noted appellant's treatment for work-related bilateral sprain and strain of wrist and hand, radial styloid tenosynovitis, carpal tunnel syndrome and neurotic disorders. Appellant was also treated by Dr. Carolyn R. Stoloff, a clinical psychologist. In February 16, 1998 and February 19, 1999 reports, appellant was seen for panic disorder, dysthymic depression secondary to her wrist injury and a learning disability. She submitted electromyograms (EMG) dated July 10 and 17, 1998, which revealed no abnormalities.

On November 14 and December 18, 2002 Dr. Christopher B. Ryan, an attending Board-certified physiatrist, treated appellant for work-related injuries as well as injuries sustained in an automobile accident in July 1998. He noted findings upon physical examination of the upper extremities revealed no focal atrophy, minimal musculature, no actively inflamed joints, no limited range of motion and no focal neurological findings. Dr. Ryan diagnosed overuse upper extremity dysfunction and chronic pain syndrome.

On February 4, 2003 the Office issued a notice of proposed termination of compensation benefits on the grounds that Dr. Ryan's report established no residuals of the accepted injuries.

By decision dated March 7, 2003, the Office terminated appellant's compensation benefits effective March 22, 2003 finding that the weight of the medical evidence established that she had no continuing residuals of her accepted conditions.

On March 21, 2003 appellant requested reconsideration and asserted that her representative was not properly notified of the pretermination letter or termination decision and was not provided with a full 30 days to respond. In a May 16, 2003 decision, the Office set aside the March 7, 2003 decision, finding that appellant's authorized representative was not properly notified of the proposed termination. It noted that appellant would be provided with an additional 30 days to provide additional evidence or arguments.

On June 16, 2003 appellant objected to the proposed termination and alleged that her claim was accepted for neurotic disorders.¹ In a June 9, 2003 report, Dr. Margaret M. Reiland, a licensed clinical psychologist, noted a history of appellant's chronic pain associated with her work-related repetitive motion injuries. She diagnosed major depressive disorder, single episode, moderate chronic, anxiety disorder, pain disorder associated with both psychological factors and medical condition, bilateral carpal tunnel syndrome, bilateral flexor tendon tendinitis in the fingers, hands wrists and forearms, fibromyalgia and chronic fatigue syndrome. The psychologist opined that appellant's conditions were caused by her work-related injuries and that she was totally disabled.

On July 18, 2003 the Office referred appellant to Dr. Michael Shrift, a Board-certified psychiatrist, for a second opinion evaluation. The Office requested that Dr. Shrift address whether appellant's diagnosed psychiatric condition was a result of her accepted injuries. In an August 8, 2003 report, Dr. Shrift discussed appellant's work history. He noted findings upon physical examination of no attention or concentration deficits, slight short and long-term deficits and her memory was intact. Dr. Shrift diagnosed major depressive disorder, single episode, in partial remission, learning disorder, personality disorder and multiple medical problems. He opined that the condition of major depression was work related; however, there was evidence that appellant had a preexisting depression, anxiety, personality disorder and learning disorder. Dr. Shrift indicated that appellant's depression was not disabling and she could work four hours per day.

On July 16, 2004 Dr. Reiland opined that appellant's major depressive disorder was related to her work injuries. She advised that appellant was unable to work due to her psychological condition and the unresolved nature of her arm injuries and the limitations they imposed.

The Office found a conflict of medical opinion between Dr. Reiland, appellant's treating physician, who found that appellant was totally disabled from work due to her work-related major depressive disorder, and Dr. Shrift, an Office referral physician, who determined that appellant's major depression was work related but not totally disabling and that she could work four hours per day.

The Office referred appellant to a referee physician, Dr. Burt S. Furmansky, a Board-certified psychiatrist. In a report dated May 20, 2005, Dr. Furmansky reviewed the record and examined appellant. He noted a history of appellant's work-related injuries. Dr. Furmansky noted findings upon mental examination of intact immediate, short-term and remote memory, no hallucinations or paranoid delusions. He diagnosed somatization disorder, not work related, possible malingering, preexisting learning disorder, personality disorder, bilateral upper extremity tendinitis, myofascial pain syndrome of neck, upper and lower back, chronic fatigue syndrome and whiplash injuries due to automobile accidents. Dr. Furmansky noted significant preexisting psychological and personality factors impairing appellant's ability to function. He opined that appellant's psychiatric diagnoses were not caused by work factors but were instead due to preexisting developmental and psychological factors causally related to the development

¹ The record does not reveal that appellant's claim was accepted for neurotic disorders.

of her somatization disorder and preexisting personality disorder. Dr. Furmansky opined that appellant was not capable of returning to work for eight hours per day because she had been off work for about nine years and had developed an ego deficit. He recommended that appellant return to work for four hours per day and increase up to eight hours per day within one year with work hardening and vocational rehabilitation as viable options. Dr. Furmansky indicated that appellant's restrictions due to her tendinitis precluded her from returning to her previous job.

On June 22, 2005 the Office found that a conflict of medical opinion arose between Dr. Reiland, who stated that appellant was totally disabled from work due to her work-related major depressive disorder, Dr. Shrift, who determined that appellant's major depression was work related but was not totally disabling, and Dr. Furmansky, the impartial medical examiner.

The Office referred appellant Dr. Jeffrey J. Sabin, a Board-certified orthopedic surgeon. In a report dated August 12, 2005, he reviewed the records provided to him and examined appellant. Dr. Sabin noted a history of appellant's work-related injuries. He noted findings upon physical examination of no atrophy, her skin, pulses and sensation were intact, mild Tinel signs bilaterally, Phalen sign was not specific for median nerve, no thenar wasting and tenderness over the forearm musculature and medial condyles bilaterally. Elbow, wrist and finger range of motion was normal, muscle strength was normal in flexion and extension of the elbow and the shoulders, mild grip strength, bilaterally and sensation normal in the upper extremities. Dr. Sabin advised that he found no objective evidence of any carpal tunnel syndrome in the upper extremities. He noted that appellant had symptomology throughout her entire body not limited to her upper extremities and opined that, with sundry complaints and no objective findings that fit any known diagnoses, her focus was on psychological difficulties. Dr. Sabin indicated that there was no medical rationale based on commonly accepted orthopedic musculoskeletal knowledge that appellant could not perform her date-of-injury position as a dental technician. Rather, the reason appellant could not perform her job was psychological in nature. Dr. Sabin noted on a work-capacity evaluation that there was no orthopedic reason for appellant not to return to full-time work. He concurred with Dr. Furmansky's opinion that appellant could return to work for four hours per day and gradually increase over a one-year period to full-time work with a restriction on lifting limited to 10 pounds.

Appellant submitted a report from Dr. Reiland dated October 11, 2005. Dr. Reiland disagreed with the reports of Drs. Furmansky and Sabin and opined that appellant was still physically symptomatic. She indicated that Dr. Furmansky provided no rationale for his opinion that appellant's current psychological condition was the result of preexisting developmental factors or an underlying personality disorder.

On April 5, 2006 the Office issued a notice of proposed termination of compensation benefits on the grounds that Drs. Furmansky and Sabin established no continuing residuals of the work-related employment injury.

On May 1, 2006 appellant disagreed with the proposed termination of benefits. She noted that the statement of accepted facts failed to note that the Office had accepted her claim for neurotic disorders. Appellant contended that Dr. Sabin's report was not well rationalized. She further noted that the Office failed to provide her appointed representative with a copy of the statement of accepted facts prior to referring her for the medical examination.

In a June 22, 2006 decision, the Office terminated appellant's compensation benefits effective that date, on the grounds that the weight of the medical evidence established that she had no continuing disability resulting from her accepted employment injury.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² 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.³

ANALYSIS

The Office accepted appellant's claims for left wrist sprain, left hand and wrist tenosynovitis, right wrist sprain, right radial styloid tenosynovitis and right carpal tunnel syndrome.⁴ The Office determined that a conflict in medical opinion arose between appellant's attending physician, Dr. Reiland, a licensed clinical psychologist, who indicated that appellant was totally disabled due to a work-related major depressive disorder, and Dr. Shrift, an Office referral physician, who determined that appellant's major depression was work related but was not totally disabling and she could work four hours per day. The Office referred appellant to Dr. Furmansky to resolve the conflict.⁵ The Board finds that the opinion of Dr. Furmansky is sufficiently well rationalized and based upon a proper factual background. It is entitled to special weight and establishes that appellant did not develop a work-related emotional condition. Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the 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.⁶

On May 20, 2005 Dr. Furmansky reviewed appellant's history, reported findings and noted that appellant exhibited no objective complaints or definite work-related abnormality. He noted findings upon mental examination and reported diagnoses of emotional and physical conditions that included somatization disorder, possible malingering, preexisting learning disorder and myofascial pain syndrome of neck, upper and lower back. Dr. Furmansky noted significant preexisting psychological and personality factors impairing appellant's ability to function. He opined that appellant's psychiatric diagnoses were not caused by her work factors and were instead due to preexisting developmental and psychological factors causally related to

² *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

³ *Mary A. Lowe*, 52 ECAB 223 (2001).

⁴ Appellant has alleged that her claim was accepted for neurotic disorders; however, the record is void of any evidence to suggest that the Office accepted an emotional condition as work related. As noted, the record does reveal that the Office further developed appellant's claim for an emotional condition and determined that the condition was not work related.

⁵ *See* 5 U.S.C. § 8123(a).

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

the development of her somatization disorder and preexisting personality disorder. Dr. Furmansky opined that appellant was not capable of returning to work for eight hours per day because she had not worked for about nine years. He recommended that appellant return to work for four hours per day and increase up to eight hours per day within one year.

The Board finds that Dr. Furmansky had full knowledge of the relevant facts and evaluated the course of appellant's emotional condition. He is a specialist in the appropriate field. At the time benefits were terminated Dr. Furmansky opined that appellant had no work-related psychiatric reason for disability. His opinion as set forth in his report of May 20, 2005 is found to be probative evidence and reliable. The Board finds that Dr. Furmansky's opinion constitutes the weight of the medical evidence and is sufficient to establish that appellant does not have a work-related emotional condition.⁷

Thereafter, the Office found a medical conflict between Dr. Reiland, Dr. Shrift and Dr. Furmansky and referred appellant to Dr. Sabin, a Board-certified orthopedic surgeon. The Board notes, however, that Dr. Sabin is not an impartial medical specialist because there was no conflict of medical opinion at the time of the Office's referral to Dr. Sabin. Drs. Reiland and Shrift did not specifically address appellant's orthopedic conditions, therefore, cannot be the basis of a conflict with regard to appellant's orthopedic condition. Although Dr. Furmansky noted that appellant's tendinitis precluded her from returning to her date-of-injury position, his opinion was obtained based on the conflict of medical opinion as to appellant's mental status.

Even though the report of Dr. Sabin is thus not entitled to the special weight afforded an impartial medical specialist, his report may still be considered for its own intrinsic value.⁸ He found no objective evidence of any carpal tunnel syndrome in the upper extremities. Dr. Sabin noted that appellant had symptomology throughout her entire body not limited to her upper extremities and opined that, with sundry complaints and no objective findings that fit any known diagnoses, her diagnoses centered on psychological difficulties. He indicated that there was no medical basis, in view of commonly accepted orthopedic musculoskeletal knowledge, that appellant could not perform her date-of-injury position as a dental technician. Rather, Dr. Sabin opined that the evidence suggests that the reason appellant could not perform her job was psychological in nature. Dr. Sabin noted on a work-capacity evaluation that there was no orthopedic reason for appellant not to return to work full time.

Appellant contended that the statement of accepted facts failed to note that the Office accepted neurotic disorder on April 29, 1996. The Board has reviewed the record and notes that appellant's condition was never accepted for a neurotic disorder. Therefore, it was properly omitted from statement of accepted facts. The Board finds this argument to be without merit.

⁷ In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁸ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996). See *Leanne E. Maynard*, 43 ECAB 482 (1992) (the Board found that a physician's "opinion is probative even though he was not an impartial medical examiner" and that the opinion of this physician and another physician were sufficient to establish causal relation); *Rosa Whitfield Swain*, 38 ECAB 368 (1987) (the Board found that a physician was improperly designated as an impartial medical specialist, but that his opinion nonetheless constituted the weight of the medical evidence).

Appellant further indicated that Dr. Sabin's report was not well rationalized. The Board has reviewed Dr. Sabin's report and notes that he reviewed appellant's history, addressed the accepted conditions, provided findings on examination and provided a reasoned opinion that appellant no longer experienced residuals of the accepted conditions.

The Board finds that Dr. Sabin had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field and his was well reasoned and based upon a proper factual background. At the time benefits were terminated Dr. Sabin clearly opined that appellant's work-related right wrist sprain, right radial styloid tenosynovitis and right carpal tunnel syndrome had resolved and that she could return to her regular duties. His opinion as set forth in his report of August 12, 2005 is found to be probative evidence and reliable. The Board finds that Dr. Sabin's opinion constitutes the weight of the medical evidence with regard to appellant's physical conditions.

In view of this, the Board finds that the Office met its burden of proof in terminating appellant's compensation benefits.

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective June 22, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 22, 2006 is affirmed.

Issued: September 11, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board