United States Department of Labor
Employees' Compensation Appeals Board

E.W., Appellant	)	
and	)	**Docket No. 07-1828**
	)	**Issued: August 18, 2008**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Seattle, WA, Employer	)	

Appearances:
Norman R. McNulty, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 28, 2007 appellant filed a timely appeal from the September 25, 2006 merit decision of the Office of Workers' Compensation Programs, which terminated her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case. The Board also has jurisdiction to review the hearing representative's March 30, 2007 merit decision affirming the termination.

ISSUE

The issue is whether the Office properly terminated appellant's compensation benefits for right wrist tenosynovitis effective September 25, 2006.

FACTUAL HISTORY

On February 22, 2005 appellant, then a 57-year-old security screener, filed a claim alleging that she sustained a traumatic right wrist injury that day while lifting a piece of luggage

off a table just enough to slide it onto the belt of an x-ray machine.[1] The Office accepted her claim for right wrist tenosynovitis and paid compensation for temporary total disability.

A conflict in medical opinion arose between appellant's physicians, who diagnosed right wrist de Quervain's tenosynovitis, and an Office second opinion physician, who reported no objective findings to support appellant's subjective complaints of pain. To resolve the conflict, the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Donald D. Hubbard, a Board-certified orthopedic surgeon, for an impartial medical evaluation.

On February 10, 2006 Dr. Hubbard reviewed the nature of the conflict he was to resolve and the statement of accepted facts. He reviewed appellant's medical record, including the reports from her attending physicians. Dr. Hubbard related her chief complaints and symptoms and her history of present illness. He then described his findings on physical examination. Dr. Hubbard diagnosed "by history and original case file review" right wrist pain secondary to strain and tenosynovitis evolving into right thumb pain plus other symptoms and findings consistent with right de Quervain's tenosynovitis. But on physical examination he reported no objective evidence of tenosynovitis. Dr. Hubbard reported no objective evidence of brachial plexopathy, cervical radiculopathy, peripheral entrapment neuropathy, specific peripheral neuralgia, reflex sympathetic dystrophy/neurovascular instability, complex regional pain syndrome I and II or thoracic outlet syndrome.

Dr. Hubbard determined, based on his physical examination, that appellant's right wrist tenosynovitis had resolved:

> "By history, she continues to *suffer* residuals of pain and loss of function secondary to pain of the right wrist and thumb related to the February 22, 2005 accident. Clearly there is a disconnect between the objective findings and the subjective complaints. I find no evidence today of reflex sympathetic dystrophy (RSD); causalgia; or stenosing tenosynovitis of the first dorsal compartment (or de Quervain's disease). Right wrist and thumb pain of undocumented etiology continues to be the major problem related to her work accident of February 22, 2005."

Dr. Hubbard continued:

> "No underlying disease entity has been documented despite appropriate and necessary repeat clinical examinations and diagnostic tests including blood evaluation, radiographic imaging of the right wrist and electrodiagnostic testing of

[1] In a later claim, appellant alleged that she sustained a left hand and wrist injury as a result of her federal employment. The Office denied that claim. OWCP File No. 142043397. Appellant filed a separate appeal from a separate Office decision in that case, which the Board will review in a separate decision and order under Docket No. 07-1827.

the right upper extremity. Preexisting same and similar condition has also been denied emphatically by [appellant]."[2]

In a decision dated September 25, 2006, following appropriate notice, the Office terminated appellant's compensation for the accepted condition of right wrist tenosynovitis. It found that the weight of the medical opinion evidence rested with the impartial medical specialist, Dr. Hubbard, and established that the accepted condition had resolved.

Appellant requested an oral hearing before an Office hearing representative, which was held on January 17, 2007. In a decision dated March 30, 2007, the hearing representative affirmed the termination of her compensation. The hearing representative found that the weight of the medical evidence, represented by the opinion of the impartial medical specialist, established that the accepted condition of right wrist tenosynovitis had resolved.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[3] Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[4] 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.[5]

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] When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[7]

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[2] In supplemental reports dated May 29 and June 21, 2006, Dr. Hubbard stated that neither a nerve block nor spica cast was appropriate based on objective findings but could aid the treating physician in determining the source of pain and other associated causation and would perhaps avoid unnecessary surgery. He also stated that notwithstanding December 29, 2005 clinical findings supporting the probable existence of de Quervain's disease, his findings on examination remained the same.

[3] 5 U.S.C. § 8102(a).

[4] *Harold S. McGough*, 36 ECAB 332 (1984).

[5] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

[6] 5 U.S.C. § 8123(a).

[7] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

ANALYSIS

The Office accepted that appellant sustained an injury in the performance of duty on February 22, 2005. It accepted her claim for the condition of right wrist tenosynovitis and paid compensation benefits on that basis. To resolve the conflict that arose between appellant's physicians, who continued to diagnose de Quervain's tenosynovitis, and the Office second opinion physician, who reported no objective findings to support appellant's subjective complaints of pain, the Office properly referred appellant to an impartial medical specialist.

The Office provided Dr. Hubbard, a Board-certified orthopedic surgeon, with appellant's medical record and a statement of accepted facts so he could base his opinion on a proper medical and factual history. Dr. Hubbard reviewed the entire medical record, including the reports and findings of appellant's physicians. He reviewed appellant's current complaints and described his findings on examination. Although appellant reported subjective complaints of pain, on physical examination Dr. Hubbard could find no objective evidence of tenosynovitis. Dr. Hubbard found no evidence of de Quervain's disease or causalgia. He found no objective evidence of other possible physical explanations, including brachial plexopathy, cervical radiculopathy, peripheral entrapment neuropathy, specific peripheral neuralgia, reflex sympathetic dystrophy/neurovascular instability, complex regional pain syndrome I and II or thoracic outlet syndrome. Because Dr. Hubbard could document no underlying disease entity to account for appellant's subjective complaints, because his objective findings on physical examination were not diagnostic of right wrist tenosynovitis, he concluded that the accepted condition had resolved. In addition to a negative physical examination -- including a negative Finkelstein's test, a test that is diagnostic for de Quervain's tenosynovitis -- he noted that a recent injection for de Quervain's tenosynovitis did not help, not even temporarily. This is persuasive evidence that supports Dr. Hubbard's conclusion that appellant's presentation could not be explained on the basis of tenosynovitis.

The Board finds that the opinion of the impartial medical specialist is based on a proper history and is medically well reasoned. That opinion must be accorded special weight in resolving whether appellant has right wrist tenosynovitis. Because the weight of the medical opinion evidence establishes that the accepted condition has resolved, the Board finds that the Office has met its burden of proof to terminate compensation benefits for that condition. The Board will affirm the Office's September 25, 2006 and March 30, 2007 decisions.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits for right wrist tenosynovitis effective September 25, 2006.[8]

[8] The Office's termination of compensation benefits relates only to the accepted condition of right wrist tenosynovitis and does not prevent the Office from accepting any pain disorder that might be causally related to the February 22, 2005 work incident.

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2007 and September 25, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 18, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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