United States Department of Labor
Employees' Compensation Appeals Board

J.P., Appellant	)	
and	)	**Docket No. 09-1100**
	)	**Issued: December 18, 2009**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Van Nuys, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 17, 2009 appellant filed a timely appeal from the March 6, 2009 merit decision of the Office of Workers' Compensation Programs, which terminated all compensation for her 1990 work injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation benefits.

FACTUAL HISTORY

On December 17, 1990 appellant, then a 59-year-old aviation clerk, sustained a traumatic injury to her right wrist when she tripped over telephone wires and fell. The Office accepted her

claim for right wrist sprain.[1] Appellant received compensation for temporary total disability on the periodic rolls. She also received a schedule award for an 11 percent impairment of her right upper extremity.

In 2007 appellant informed the Office that she had not seen a doctor in 10 years. She asked to see Dr. Mark J. Rosen, a Board-certified orthopedic surgeon, which the Office authorized. On March 27, 2007 Dr. Rosen examined appellant. He related her 1990 injury and her current complaints. Dr. Rosen found appellant's right wrist somewhat tender over the dorsal aspect, with no atrophy and a lack of about 10 degrees dorsiflexion. X-rays showed no obvious bony abnormality, arthritis or ligamentous instability. Based on the available diagnostic tests, Dr. Rosen reported no objective basis for any diagnosis other than chronic wrist sprain. "This is simply from the description of her symptoms and not on any physiologic abnormality nor injury." He felt this could be attributed only to her 1990 injury, but he did not recommend any treatment. Dr. Rosen did not believe appellant's wrist condition should keep her from doing any type of duty that would be available to a 76-year-old woman.

On January 15, 2009 Dr. Rosen examined appellant again. Appellant was still having chronic intermittent right wrist pain, which prevented her from writing. She had full range of motion, slight tenderness over the dorsal aspect and some atrophy of the thenar eminence symmetric to the left side. Dr. Rosen diagnosed chronic wrist sprain, but he again reported that there was no diagnosis to support appellant's symptoms. Numerous diagnostic tests in the past showed nothing that would account for a continued chronic wrist sprain. "In view of this, the claimant's condition of wrist sprain should be considered as having ceased." Dr. Rosen added that appellant should have no restrictions based upon any injury suffered at work. "She does not appear to be suffering from any diagnosis that would be responsible for her continued wrist symptoms."

On February 3, 2009 the Office issued a notice of proposed termination based on Dr. Rosen's January 15, 2009 report. Appellant replied that early diagnostic tests showed carpal tunnel syndrome and tennis elbow. She stated that she still had limitations on gripping and grasping and repetitive use of her right wrist and arm. Appellant noted that Dr. Rimoldi had reported in 1996 that she would have continued permanent symptoms due to her 1990 injury and

[1] A March 5, 1991 electromyogram of the right upper extremity was normal, as were motor latencies on nerve conduction studies. A sensory latency was detected in the median and ulnar nerves, consistent with a distal sensory neuropathy. Dr. Luigi Gentile, appellant's orthopedist, expressed concern about the discrepancy between appellant's subjective symptoms and the objective findings as early as March 21, 1991. Dr. Benjamin Broukhim, a second-opinion orthopedist, reported on August 13, 1991 that a repeat electromyogram and nerve conduction study of both upper extremities, to establish a definite diagnosis, was negative for carpal tunnel syndrome but positive for moderate chronic irritation of the C8 nerve root without acute abnormality or denervation, secondary to preexisting cervical radiculopathy. He found no work restrictions or limitations. On September 16, 1994 the Office advised Dr. Gentile that appellant's claim was accepted only for right wrist sprain and that it was not sufficient for him to report disability due to a repetitive stress condition. Appellant told Dr. Reynold L. Rimoldi, her new orthopedic surgeon, that all the physicians -- Office consultants and second opinion physicians -- concurred with Dr. Gentile's diagnosis of carpal tunnel syndrome and tennis elbow. She also told him that two electromyograms and nerve conduction studies revealed carpal tunnel syndrome. On January 31, 1995 Dr. Rimoldi reported diffuse tenderness about the right arm, full range of wrist motion, complaints of decreased sensation in a nondermatologic pattern in the right fingers, and negative Tinel's and Phalen's signs. The only objective factor of disability he cited was: "By report, nerve conduction studies and EMG's [electromyograms] show a right carpal tunnel syndrome."

that he did not expect a full recovery. Appellant added that Dr. Rosen saw her for only 10 to 15 minutes, and he never mentioned her carpal tunnel syndrome.

In a decision dated March 6, 2009, the Office terminated appellant's compensation benefits. It found that current medical evidence from appellant's treating physician established that she no longer had any residuals or any medically diagnosable condition related to her 1990 work injury.

On appeal, appellant argues that her wrist pain is still residual to her 1990 work injury. She repeated Dr. Rimoldi's 1996 medical opinion that she had continued permanent symptoms due to the work injury with no recovery expected. Appellant urges the Board to overturn the termination and states that she needs the compensation benefits and deserves them.

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.[2] The United States shall also furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree of the period of any disability or aid in lessening the amount of any monthly compensation.[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 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]

ANALYSIS

Appellant sprained her right wrist in the performance of duty on December 17, 1990. It is the Office's burden to justify terminating benefits.

The justification comes from appellant's own physician, Dr. Rosen, who is a Board-certified orthopedic surgeon, a physician who is competent and qualified to address a wrist sprain. When Dr. Rosen saw appellant for the first time on March 27, 2007, he could find no objective basis for any diagnosis of the wrist. He was willing to offer a diagnosis of a chronic wrist sprain based solely on her description of symptoms -- not on any physiologic abnormality or injury -- but he recommended no treatment and found no disability for work.

[2] 5 U.S.C. § 8102(a).

[3] *Id*. at § 8103(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).

When Dr. Rosen saw appellant on January 15, 2009, he again reported no diagnosis to support her symptoms. In view of the numerous diagnostic tests that turned up nothing to account for her symptoms, he concluded that the wrist sprain from 1990 should be considered as having ceased. Dr. Rosen's opinion appears consistent with his findings on physical examination, including full range of motion, slight tenderness over the dorsal aspect, and a thenar eminence symmetric with the uninjured side. It also appears consistent with the lack of any positive diagnostic testing and the passage of time. Further, there is no current medical evidence to the contrary.

The Board finds that the Office has met its burden of proof. The weight of the medical evidence rests with appellant's attending physician and establishes that she no longer suffers from the wrist sprain she sustained in 1990. The Board will therefore affirm the Office's March 6, 2009 decision to terminate benefits for wage loss and continuing medical treatment.

Appellant argues Dr. Rimoldi's opinion in 1996. His opinion carries very little weight. First, that evidence has become stale over the years. Dr. Rimoldi could not reliably predict what appellant's clinical findings or diagnostic testing would show many years into the future. Current medical documentation is much more persuasive evidence of appellant's current medical condition.

Second, Dr. Rimoldi based his opinion on misinformation. Appellant misinformed her doctor that all of the physicians who had examined her agreed with Dr. Gentile's diagnosis of carpal tunnel syndrome and tennis elbow. She misinformed her doctor that multiple electromyograms and nerve conduction studies showed carpal tunnel syndrome. That misinformation was the only reason he was willing to diagnose right carpal tunnel syndrome, because "by report," appellant's report, the diagnosis was unquestionably established. The Board has carefully reviewed the record in this regard. Dr. Broukhim, the second-opinion orthopedist who examined appellant in 1991, found that the initial study showing a sensory latency in the median and ulnar nerves was not sufficient to establish a definite diagnosis. He ordered a repeat electromyogram and nerve conduction study of both upper extremities, which was completely negative for carpal tunnel syndrome.

The Office did not formally accept any diagnosis of carpal tunnel syndrome or tennis elbow. It accepted only a right wrist sprain, as it explained to Dr. Gentile in 1994. The Office's burden of proof, therefore, was to justify the termination of benefits for a sprain that occurred in 1990. Dr. Rosen, appellant's treating orthopedic surgeon, could find nothing objectively wrong with the right wrist, sprain or otherwise, in 2007 or 2009.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation.

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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