United States Department of Labor
Employees' Compensation Appeals Board

W.F., Appellant	)	
and	)	**Docket No. 08-1790**
	)	**Issued: February 6, 2009**
DEPARTMENT OF THE AIR FORCE, WRIGHT-PATTERSON AIR FORCE BASE, Greene, OH, Employer	)	

Appearances:
William S. Shanahan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 2, 2008 appellant filed a timely appeal from a September 10, 2007 decision of the Office of Workers' Compensation Programs that denied her claim. 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 appellant established that she was totally disabled beginning March 4, 2004 due to her accepted bilateral upper extremity conditions; and (2) whether the Office met its burden of proof to terminate her medical benefits effective February 22, 2007.

FACTUAL HISTORY

On May 18, 1988 appellant, then a 34-year-old management analyst, sustained an employment-related fracture of the right wrist. She lost little time from work and returned to full duty within four months of the injury.[1] Appellant voluntarily retired on January 3, 2003 and

[1] In 1998 appellant's workstation was evaluated by occupational medicine and she was given an ergonomic chair.

received a retirement incentive of $25,000.00.[2] On May 24, 2004 she filed a Form CA-2, occupational disease claim, alleging that factors of her federal employment caused carpal tunnel and tendinitis in both wrists. On September 14, 2004 appellant filed a Form CA-7, claim for compensation, beginning March 4, 2004.

In a March 4, 2004 report, Dr. Tiina Luig, Board-certified in family medicine, noted appellant's complaints of right wrist and arm pain. She diagnosed de Quervain's tenosynovitis and history of long-standing carpal tunnel syndrome. In reports dated April 2 to July 13, 2004, Dr. Kenneth L. Corbin, Board-certified in family medicine, noted appellant's history that she had problems with her wrists beginning in 1992, that she retired in January 2003 and was working on her computer at home for one to two hours per day. Appellant complained of bilateral arm, hand, and thumb pain. Dr. Corbin diagnosed bilateral thumb pain, tenosynovitis of both thumbs with de Quervain's syndrome, extensor tendinitis of both wrists and mild carpal tunnel syndrome bilaterally. By report dated August 23, 2004, Dr. Jeffrey O. McGillicuddy, a Board-certified orthopedic surgeon, noted appellant's complaints of bilateral wrist, hand and thumb pain. He provided physical findings and diagnosed bilateral de Quervain's tenosynovitis.

On September 3, 2004 the Office accepted that appellant sustained bilateral carpal tunnel syndrome and right tennis elbow.

In reports dated October 19, 2004, Dr. Corbin reiterated his diagnoses, noted that appellant had limited motion of her left thumb and advised that appellant could perform nonrepetitive work with her hands for short duration only. He referred her to Dr. James T. Lin, Board-certified in plastic and hand surgery. By report dated November 30, 2004, Dr. Lin noted appellant's complaints of bilateral wrist, forearm and thumb pain and that her left thumb locked. Wrist compression and Phalen's tests were positive bilaterally. Dr. Lin diagnosed bilateral de Quervain's tenosynovitis, left greater than right; bilateral thumb tenosynovitis, left greater than right; left thumb stenosing tenosynovitis and bilateral carpal tunnel syndrome. He noted that appellant was retired and if she was to return to work, she should remain on light duty without repetitive wrist motion. A January 4, 2005 upper extremity electromyography (EMG) and nerve conduction study (NCS) was interpreted as abnormal with evidence of bilateral median neuropathy across the wrist consistent with bilateral mild carpal tunnel syndrome and evidence of de Quervain's tenosynovitis. On January 11, 2005 Dr. Lin advised that appellant should remain on light duty with no repetitive wrist motion.

On January 27, 2005 the Office accepted bilateral thumb tendinitis and bilateral de Quervain's wrist tendinitis.

On February 17, 2005 Dr. Lin provided left carpal tunnel release and left trigger thumb release. On June 29, 2005 the Office referred appellant to Dr. Aubrey A. Swartz, Board-certified in orthopedic surgery, for a second opinion evaluation. On August 2, 2005 Dr. Lin advised that appellant could type for four hours daily.

[2] In statements, appellant described her job duties up to her retirement and described her symptoms, noting that they worsened in February 2004.

In an August 3, 2005 report, Dr. Swartz noted his review of the statement of accepted facts and medical record, appellant's complaint of left wrist, shoulder, elbow, hand and thumb pain, and right elbow, wrist and hand pain, and her report that she spent two hours daily on her home computer. Phalen's test was negative bilaterally. Dr. Swartz advised that appellant had mild, employment-related carpal tunnel syndrome on the left with no residuals and no evidence of carpal tunnel syndrome on the right. He stated that her activities of daily living, including computer work at home, hypothyroid condition and obesity were aggravating factors. Dr. Swartz found that the effects of the repetitive duties at work subsided within one year of her retirement on January 3, 2004. He advised that appellant could repetitively use her hands for 30 minutes each hour, and that she would no longer have been disabled within three months after her left carpal tunnel and thumb surgery. Dr. Swartz concluded that any work-related residual for the neck, shoulders, left elbow, de Quervain's tendinitis of the left wrist or any symptoms in the right upper extremity would no longer be considered work related as of January 3, 2004. In an attached work capacity evaluation, he advised that appellant could work eight hours daily with permanent restrictions of six hours reaching, four hours reaching above the shoulder, six hours operating a motor vehicle, four to five hours repetitively moving her wrists and elbows, four hours of pushing, pulling and lifting with a 10-pound weight restriction.

By report dated September 3, 2005, Dr. Corbin noted that he had not seen appellant for one year and that she had surgery on her left wrist and thumb in the interim. He listed physical findings and diagnosed bilateral carpal tunnel syndrome, both improved substantially, negative bilateral epicondylitis, bilateral thumb de Quervain's syndrome, persistent but improved, and bilateral wrist extension tendinitis. Dr. Corbin noted his disagreement with Dr. Swartz's conclusion that appellant's current condition was no longer employment related. He advised that the thumb tendinitis, de Quervain's syndrome and wrist tendinitis were an ongoing work-related disability that had not resolved and opined that her current employment was limited due to lack of ability for repetitive hand use. In a supplementary report dated October 3, 2005, Dr. Swartz advised that appellant still had a work-related component to her condition of about 50 percent and that she could work with repetitive hand use restricted to 30 minutes per hour.

On September 13 and October 31, 2005 Dr. Lin advised that appellant could work modified duty of two hours typing and six hours of not typing. On December 5, 2005 he noted that appellant had retired in January 2003. Dr. Lin stated:

> "[Appellant] had left carpal tunnel release and trigger thumb release on February 17, 2005. Postoperatively, her hand was stiff that she required aggressive range of motion exercise. After extensive therapy [appellant's] left hand had improved. Since [she] wanted to go back to work, I requested her to go back to work with four hours of computer usage and four hours of no computer usage. It appears that [appellant's] workplace could not find this kind of modification that she did not go back to work. She however had been practicing data entry skill at home to see how her hand could tolerate the restriction. There is a note from September 13, 2005 stating that [appellant] had been typing four

> hours a day at home and it makes her hands swollen. My recommendation was to decrease her job restriction to two hours of typing and six hours and no typing."

Dr. Lin disagreed with Dr. Swartz's analysis that appellant's tenosynovitis was not work related, noting that she had it on November 30, 2004 when he initially examined her. In reports dated December 5, 2005, January 9, February 14, March 28, 2006 and May 16, 2006, he advised that appellant was temporarily totally disabled and was awaiting authorization for surgery.

On March 13, 2006 the employing establishment informed the Office that appellant had voluntarily retired with an incentive of $25,000.00, that she was on full duty at the time of retirement and her position was not in jeopardy of a reduction-in-force. By decision dated April 7, 2006, the Office denied appellant's claim for wage-loss compensation for the period beginning March 4, 2004 and continuing, with the exception of the period February 17 to May 17, 2005 following her left upper extremity surgery. On April 24, 2006 appellant requested a hearing.

The Office found that a conflict in medical opinion arose between Dr. Swartz and Dr. Lin regarding whether appellant had residuals of her employment injuries and was totally disabled. On July 10, 2006 it referred her to Dr. John W. Batcheller, a Board-certified orthopedic surgeon, for an impartial evaluation.

In a report dated August 7, 2006, Dr. Batcheller reviewed the record and appellant's complaint of triggering in both thumbs, constant bilateral radial wrist pain, and vague numbness of the radial wrist and thumb with morning numbness in all fingers. Physical examination of the shoulders and upper extremities demonstrated normal mechanics of motion with no evidence of wasting or limb asymmetry. Motor function and strength were normal and equal bilaterally, and sensory and vascular function were within normal limits. Tinel's and Phalen's tests were negative. Range of motion in all joints except the left thumb at the level of the interphalangeal (IP) joint were normal. The left thumb IP joint flexed to 45 degrees compared to 90 degrees on the left. Extension was full in all joints of both hands and fingers. Dr. Batcheller's impression was multiple upper extremity complaints with past diagnoses of bilateral carpal tunnel syndrome, bilateral de Quervain's tenosynovitis, bilateral tenosynovitis of the thumbs (trigger thumb left), status postoperative left carpal tunnel release and left trigger thumb release, hypothyroidism and obesity. He advised that appellant did not present with a typical clinical picture of carpal tunnel syndrome, found no evidence of de Quervain's tenosynovitis, and noted that appellant had no lateral epicondylar complaints of either elbow at the time of his examination. Dr. Batcheller noted that the surgery on appellant's left thumb was not successful and would have to be repeated but that the flare-up of her symptoms after she had retired brought into question the relationship of her complaints to work activities which were semi-sedentary at best. He opined that office work, whether it involved the use of a computer or not, should not have produced her long-standing symptoms, and that her hypothyroidism could be a contributing, if not causative, factor in all her upper extremity complaints. As appellant's symptoms had persisted and flared up after she retired, a rheumatology consultation was recommended. Her current complaints were not consistent with a work-related injury and any work-related aggravation ceased following her retirement in January 2003. Dr. Batcheller concluded that appellant had no periods of work-related temporary disability following her retirement and that she was capable of performing the work activities of her previous employment with the only restriction that she not

frequently pinch. In an attached work capacity evaluation, he advised that she could work eight hours a day with reaching and operating a motor vehicle restricted to six hours daily, repetitive movements of the wrists and elbows restricted to four to five hours daily, and pushing, pulling and lifting restricted to 10 pounds, four hours daily.

A telephonic hearing was held on August 28, 2006. Appellant testified that she disagreed with the April 7, 2006 decision that she had not worked since she retired, and described her current medical condition and need for right wrist and thumb surgery.[3]

By decision dated November 14, 2006, an Office hearing representative affirmed the April 7, 2006 decision, as modified, to find that appellant was entitled to wage-loss compensation for the period February 17 to July 15, 2005 following her left upper extremity surgery.

In a supplementary report dated December 18, 2006, Dr. Batcheller advised that the only objective finding in appellant's examination was the limitation of flexion of the IP joint of the left thumb which he did not consider to be a significant restriction since the thumb is rarely used in the position of 90 degrees of flexion. He concluded that appellant's complaints were not work related.

By letter dated January 22, 2007, the Office proposed to terminate appellant's compensation benefits based on the opinion of Dr. Batcheller that appellant had no disability or residuals of her work-related conditions.

Appellant submitted a form report dated February 13, 2007 in which Dr. Lin disagreed with Dr. Batcheller's conclusions and advised that appellant was temporarily totally disabled.

In a February 22, 2007 decision, the Office terminated appellant's compensation benefits.

In statements dated February 17 and 21, 2007, received by the Office on February 26 and 27, 2007 respectively, appellant disagreed with the termination. On March 14, 2007 she requested a hearing. A telephonic hearing was held on July 11, 2007. Appellant testified that she had not seen a doctor in three or four months and still required surgery. By decision dated September 10, 2007, an Office hearing representative affirmed the February 22, 2007 decision.

LEGAL PRECEDENT -- ISSUE 1

Under the Act[4] the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[5] Disability is

[3] Appellant declined benefits under the Federal Employees' Compensation Act and remained on Office of Personnel Management retirement. An injured employee must make an election between compensation for disability and retirement pay. *Michael A. Grossman*, 51 ECAB 673 (2000). A claimant may not concurrently receive separation "buy-out" pay and payment for total disability. Separation pay should be applied to the amount of wage-loss compensation on a dollar-for-dollar basis. *Willard S. Moger, Jr.*, 51 ECAB 550 (2000).

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Robert A. Flint*, 57 ECAB 369 (2006).

thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act,[6] and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[7] Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the probative and reliable medical evidence.[8]

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[9] It is well established that medical conclusions unsupported by rationale are of limited probative value,[10] and when a claimant stops working at the employing establishment for reasons unrelated to his or her employment-related physical condition, the claimant has no disability with the meaning of the Act.[11]

When there are 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 on a proper factual background, must be given special weight.[12]

ANALYSIS -- ISSUE 1

When appellant retired on January 3, 2003, there was no evidence to show that she stopped work due to an employment-related condition.[13] Appellant has the burden of proof to establish that her claimed disability beginning in March 2004 is related to her employment injuries. The Board finds that she did not submit sufficient medical evidence to meet her burden of proof.

The Office determined that a conflict in medical opinion arose between Dr. Lin, appellant's attending physician, and Dr. Swartz, who provided a second opinion evaluation for the Office. It properly referred appellant to Dr. Batcheller, Board-certified in orthopedic surgery,

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[6] *D.M.*, 59 ECAB ___ (Docket No. 07-1230, issued November 13, 2007).

[7] *Carol A. Lyles*, 57 ECAB 265 (2005).

[8] *Amelia S. Jefferson*, 57 ECAB 183 (2005).

[9] *Id.*

[10] *See T.F.*, 58 ECAB ____ (Docket No. 06-1186, issued October 19, 2006).

[11] *See Richard A. Neidert*, 57 ECAB 474 (2006).

[12] *Darlene R. Kennedy*, 57 ECAB 414 (2006).

[13] *See Richard A. Neidert, supra* note 11.

for an impartial evaluation.[14] The Board finds that the well-rationalized opinion of Dr. Batcheller is entitled to special weight. On August 7, 2006 Dr. Batcheller reviewed the medical record and appellant's complaints. He performed physical examination of the shoulders and upper extremities and diagnosed multiple upper extremities complaints with past diagnoses of bilateral carpal tunnel syndrome, bilateral de Quervain's tenosynovitis, bilateral tenosynovitis of the thumbs (trigger thumb left), status postoperative left carpal tunnel release and left trigger thumb release, hypothyroidism and obesity. Dr. Batcheller advised that appellant did not present with a typical clinical picture of carpal tunnel syndrome. He found no evidence of de Quervain's tenosynovitis, noted that appellant had no lateral epicondylar complaints upon examination of either elbow, and advised that, as the surgery on appellant's left thumb was not successful, it would have to be repeated. Dr. Batcheller opined that the relationship between appellant's complaints and her previous work was questionable because her symptoms flared after she had retired and her previous work activities were semi-sedentary at best. He opined that office work, whether it involved the use of a computer or not, should not have produced her long-standing symptoms and her current complaints were not consistent with a work-related injury. Dr. Batcheller concluded that any work-related aggravation would have ceased following her retirement in January 2003 and that she was capable of performing the work activities of her previous employment for eight hours daily with restrictions that she not frequently pinch, limit repetitive movements of the wrists and elbows to four to five hours daily, and pushing, pulling and lifting to 10 pounds, four hours daily. In a December 18, 2006 report, Dr. Batcheller advised that the only objective finding in appellant's examination was the limitation of flexion of the IP joint of the left thumb and her complaints were not work related.

Dr. Batcheller provided a comprehensive, well-rationalized evaluation in which he found that appellant had no periods of work-related disability following her retirement in January 2003 and was capable of performing the work activities of her previous employment. His opinion is therefore entitled to the special weight accorded an impartial examiner and constitutes the weight of the medical evidence that appellant had no employment-related disability after March 4, 2004.[15] While Dr. Lin disagreed with Dr. Batcheller's findings and conclusions in a February 13, 2007 report, a subsequently submitted report of a physician on one side of a resolved conflict of medical opinion is generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.[16] The Board finds that Dr. Lin's February 13, 2007 report is insufficient to overcome the weight accorded Dr. Batcheller as an impartial medical specialist.

LEGAL PRECEDENT -- ISSUE 2

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

[14] *Id.*

[15] *See Sharyn D. Bannick*, 54 ECAB 537 (2003).

[16] *Richard O'Brien*, 53 ECAB 234 (2001).

has ceased or that it is no longer related to the employment. The right to medical benefits for an accepted condition is not limited to the period of entitlement 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.[17]

ANALYSIS -- ISSUE 2

The Board finds that, with the exception of appellant's left thumb, based on Dr. Batcheller's referee opinion, the Office met its burden of proof to establish that the residuals of appellant's work-related conditions had ceased. In reports dated August 7 and December 18, 2006, Dr. Batcheller advised that the only objective finding of appellant's on physical examination was in regard to her left thumb, discussed below. He specifically advised that appellant did not present with a typical clinical picture of carpal tunnel syndrome, found no evidence of de Quervain's tenosynovitis, and noted that appellant had no lateral epicondylar complaints at the time of his examination of either elbow and that her current complaints were not consistent with a work-related injury and that any work-related aggravation would have ceased following her retirement in January 2003. Dr. Batcheller concluded that appellant's complaints were not work related. His opinion is therefore sufficiently rationalized to establish that appellant's bilateral carpal tunnel syndrome, right tennis elbow, right thumb tendinitis and bilateral de Quervain's wrist tendinitis had ceased.[18]

Dr. Batcheller noted, however, that appellant continued to have a limitation in motion of the IP joint of the left thumb. Thus, appellant is entitled to continuing medical treatment for her left thumb condition and the Office did not meet its burden of proof to terminate medical benefits for this condition.

CONCLUSION

The Board finds that appellant did not establish that she was totally disabled beginning March 4, 2004 due to her accepted bilateral upper extremity conditions. The Office did not meet its burden of proof to terminate appellant's medical benefits effective February 22, 2007 for her left thumb condition.

[17] *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[18] *See Darlene R. Kennedy*, *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 10, 2007 be affirmed in part and reversed in part.

Issued: February 6, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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