United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant	)	
and	)	**Docket No. 08-2390**
	)	**Issued: September 23, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Seattle, WA, Employer	)	

Appearances:
Brook L. Beesley, for the appellant
No appearance, for the Director

Oral Argument June 16, 2009

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 2, 2008 appellant filed a timely appeal from the May 30, 2008 merit decision of the Office of Workers' Compensation Programs terminating her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation effective March 1, 2006 on the grounds that she no longer had residuals of her employment injuries after that date.

FACTUAL HISTORY

This is the second appeal in this case. In a June 13, 2003 decision, the Board reversed a July 13, 2000 Office decision finding that it improperly terminated appellant's compensation

effective July 13, 2000.[1] The Board found that the termination was improper because there was a conflict in the medical evidence regarding whether appellant continued to have work-related residuals.[2] The facts and the circumstances of the case are set forth in the Board's prior decision and are incorporated herein by reference.

On January 29, 2004 Dr. Brian Wicks, an attending Board-certified orthopedic surgeon, performed right arm surgery, including carpal tunnel release, ulnar nerve decompression and epicondylectomy. The surgery was authorized by the Office.

On remand, the Office referred appellant and the case record to Dr. William T. Thieme, a Board-certified orthopedic surgeon, for an impartial medical examination and opinion regarding whether appellant continued to have residuals of her employment injuries.

On March 3, 2005 Dr. Thieme detailed appellant's medical history and the treatment of her neck and right upper extremity problems. Appellant reported intermittent aching pain involving primarily the right side of her neck, right shoulder and right upper arm and forearm. She reported continuous numbness and tingling in the right hand involving the whole hand except for the ulnar aspect of the little finger. On examination there was very mild tenderness to palpation over the distal right clavicle, the biceps tendon, the subscapularis and the supraspinatus. Examination of shoulder strength showed give-way weakness in abduction, flexion, extension and internal and external rotation. However, appellant did manifest normal intrinsic motor strength. Dr. Thieme stated that there was circumferential numbness to light touch in a forearm/glove distribution in the right hand and global hypesthesia of the right upper extremity to sharp touch from the shoulder down. There was no wasting in the hands. Tinel's sign was positive at the right wrist, negative at the left, positive at the right elbow and negative at the left elbow. Phalen's test was mildly positive on the right.

Dr. Thieme diagnosed work-related cervical sprain, resolved; work-related right shoulder sprain, resolved; work-related right carpal tunnel syndrome and release with mild residual right-hand numbness and a positive Tinel's at the wrist; work-related right lateral epicondylitis, resolved; right ulnar nerve entrapment, not work related with nonanatomic numbness in the left hand; and nonanatomic distribution of sensory impairment in the right upper extremity. He found that there was no evidence of cervical radiculopathy. Dr. Thieme indicated that appellant had no objective evidence of her work-related cervical sprain and right shoulder sprain and stated

[1] Docket No. 01-1714 (issued June 13, 2003). The Office accepted that on November 13, 1998 appellant, then a 40-year-old rural carrier associate, sustained an employment-related right cervical strain, right posterior shoulder girdle strain and right lateral epicondylitis when she pulled a mail tray, which was stuck on a seat. Appellant worked 12.36 hours per week at the time of her injury. In July 1999, the Office accepted that she sustained right carpal tunnel syndrome due to performing repetitious tasks with her upper extremities at work. Appellant last worked for the employing establishment on April 25, 1999. Between January and October 2001, she worked for a private employer on an intermittent basis as a laundry worker. The Office paid appellant compensation for wage loss after 2001.

[2] The conflict was between Dr. James A. Williams, an attending Board-certified family practitioner, and Dr. Alexander C. Miller, a Board-certified orthopedic surgeon, who served as an Office referral physician. In a December 10, 1999 report, Dr. Miller determined that appellant had no work restrictions related to her employment injuries and indicated that she could work eight hours per day with no restrictions. In contrast, Dr. Williams noted in several reports dated between late 1999 and mid 2000 that she was totally disabled and had employment-related cervical sprain, right shoulder strain/sprain, right lateral epicondylitis and right carpal tunnel syndrome.

that these conditions had completely resolved by the time she began to work as a laundry worker for a private employer in January 2001. Appellant did not have any objective residuals of a work-related condition that would prevent her from working as a rural carrier associate.

Appellant submitted a February 15, 2005 report from Dr. Michael S. McManus, an attending Board-certified internist, who stated that appellant had positive right shoulder impingement signs, a positive Tinel's sign over the ulnar notch of the right elbow and decreased sensation to pinprick in the right hand (greater in the median than the ulnar dermatome). Dr. McManus diagnosed chronic mild right C6 radiculopathy, work related; chronic mild impingement syndrome right shoulder, work related; status post right carpal tunnel release for carpal tunnel syndrome, work related; status post medial epicondylotomy and ulnar nerve decompression right elbow for cubital tunnel syndrome, work related; and chronic mild right lateral epicondylitis of right elbow, stable, work related.

In a May 18, 2005 letter, the Office advised appellant that it proposed to terminate her compensation for wage-loss and medical benefits on the grounds that she no longer had residuals of her employment injury. The weight of the medical evidence rested with the opinion of Dr. Thieme, the impartial medical specialist.

In an April 18, 2005 report, Dr. McManus reiterated the findings and diagnoses contained in his February 15, 2005 report. However, he did not provide any indication in this report that the diagnosed conditions were work related. In a June 17, 2005 report, Dr. McManus stated that he disagreed with the findings of Dr. Thieme. He stated:

> "Dr. Thieme states that [appellant] has no residual impairment or deficit as a result of the diagnoses accepted under the above claim. However, this is in contradiction to the impression of multiple prior medical providers and diagnostic studies. On serial examinations, [appellant] has evidence of a chronic right C6 deficit, impingement syndrome of the right shoulder, limited right elbow extension status post medial epicondylotomy and ulnar nerve decompression and a residual deficit in her right hand motor function with an associated sensory deficit involving both the median and ulnar nerves. In addition, Dr. Thieme feels [she] requires no work restrictions and can return to her full work duty. However, again this is in contradiction to the impression of multiple prior examiners…."

In a July 18, 2005 decision, the Office terminated appellant's compensation effective July 18, 2005 based on the opinion of Dr. Thieme. In an October 26, 2005 decision, it set aside the July 18, 2005 decision, as Dr. Thieme's opinion was in need of further clarification, particularly with regard to appellant's right carpal tunnel syndrome and epicondylitis.

The Office asked Dr. Thieme to answer additional questions about appellant's condition, including whether there were objective findings to show residuals of the work-related right carpal tunnel syndrome, right epicondylitis and January 29, 2004 surgery. In a January 11, 2006 report, Dr. Thieme stated that there was no clear objective evidence of residuals of either carpal tunnel syndrome or epicondylitis other than a positive Tinel's sign at the right wrist. He found that examination of appellant revealed right arm and hand pain in a nonanatomic distribution. The generalized weakness in appellant's right arm was not accompanied by measured muscle

wasting and therefore was "a reflection of pain behavior and symptom magnification, rather than objective abnormality." Dr. Thieme stated that his examination of appellant revealed no residuals, which would prevent her from performing her date-of-injury job as a rural mail carrier for 12.36 hours per week. He indicated that a September 2004 physical capacity evaluation showed that she was physically capable of performing a light/medium level of work for eight hours per day.[3]

In a March 1, 2006 decision, the Office terminated appellant's compensation effective March 1, 2006 on the grounds that she had no residuals of her employment injuries after that date. It determined that the weight of the medical evidence rested with the opinion of Dr. Thieme.

Appellant requested a hearing before an Office hearing representative. At the March 26, 2008 hearing, she contended that the reports of Dr. McManus showed that she continued to have work-related residuals. Appellant submitted reports of Dr. McManus, dated between March 2006 and May 2008, which were similar to those previously submitted.

In a May 30, 2008 decision, the Office hearing representative affirmed the March 1, 2006 decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,[4] once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[5] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[6] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[7]

Section 8123(a) of the Act provides in pertinent part: "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."[8] In situations where 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

[3] Appellant submitted June 17 and October 17, 2005 reports in which Dr. McManus provided findings and diagnoses that were similar to those contained in his February 15, 2005 report.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[6] *Id.*

[7] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[8] 5 U.S.C. § 8123(a).

such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[9]

ANALYSIS

The Office accepted that on November 13, 1998 appellant sustained an employment-related right cervical strain, right posterior shoulder girdle strain and right lateral epicondylitis when she pulled a mail tray which was stuck on a seat. Appellant worked 12.36 hours per week at the time of her injury. In July 1999, the Office accepted that she sustained right carpal tunnel syndrome due to performing repetitious tasks with her upper extremities at work. Appellant last worked for the employing establishment on April 25, 1999. Between January and October 2001, she worked for a private employer on an intermittent basis as a laundry worker. On January 29, 2004 Dr. Wicks, an attending Board-certified orthopedic surgeon, performed right arm surgery, including carpal tunnel release, ulnar nerve decompression and epicondylectomy. The surgery was authorized by the Office.

In a prior appeal, the Board found a conflict in the medical opinion between Dr. Williams, an attending Board-certified family practitioner, and Dr. Miller, a Board-certified orthopedic surgeon serving as an Office referral physician, regarding whether appellant continued to have residuals of her employment injuries. On remand, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Thieme, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.

Dr. Thieme found on examination that appellant exhibited very mild tenderness to palpation over the distal right clavicle, the biceps tendon, the subscapularis and the supraspinatus. Examination of shoulder strength showed give-way weakness in abduction, flexion, extension and internal and external rotation. However, appellant did manifest normal intrinsic motor strength. Dr. Thieme stated that there was circumferential numbness to light touch in a forearm/glove distribution in the right hand and global hypesthesia of the right upper extremity to sharp touch from the shoulder down. There was no wasting in the hands. Dr. Thieme indicated that appellant had no objective evidence of her work-related cervical strain and right shoulder strain and stated that these conditions had completely resolved by the time she began to work as a laundry worker for a private employer in January 2001. He also indicated that her work-related right carpal tunnel syndrome and epicondylitis had resolved and found that she did not have any objective residuals of a work-related condition that would prevent her from performing her date-of-injury job, rural carrier associate.

The Board has reviewed the opinion of Dr. Thieme and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Thieme's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.[10] He provided medical rationale for his opinion by explaining that appellant had very limited

[9] *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

[10] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

findings on examination. Dr. Thieme noted that examination of appellant revealed right arm and hand pain in a nonanatomic distribution. The generalized weakness in appellant's right arm was not accompanied by measured muscle wasting and therefore was "a reflection of pain behavior and symptom magnification, rather than objective abnormality."

At oral argument, appellant's representative contended that the reports of Dr. McManus, an attending Board-certified internist, showed that appellant continued to have work-related residuals. Dr. McManus stated that appellant had several work-related conditions. In a June 17, 2005 report, he noted that he disagreed with the findings of Dr. Thieme. Dr. McManus noted, "On serial examinations, [appellant] has evidence of a chronic right C6 deficit, impingement syndrome of the right shoulder, limited right elbow extension status post medial epicondylotomy and ulnar nerve decompression and a residual deficit in her right hand motor function with an associated sensory deficit involving both the median and ulnar nerves." He advised that appellant continued to be totally disabled.

The Board finds that Dr. McManus' reports are of diminished probative value, as he did not provide adequate medical rationale in support of his conclusion on causal relationship.[11] Dr. McManus did not explain why appellant's continuing symptoms were work related. Such medical rationale is especially necessary in the present case as appellant had not worked for the employing establishment since 1999. Dr. McManus did not explain why appellant's continuing complaints were not due to some nonwork-related condition. His reports are insufficient to overcome the special weight accorded Dr. Thieme as an impairment specialist. For these reasons, the Office properly found that the weight of the medical evidence with respect to continuing residuals of the accepted employment injuries rested with the opinion of Dr. Thieme.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective March 1, 2006 on the grounds that she no longer had residuals of her employment injuries after that date.

[11] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 30, 2008 decision is affirmed.

Issued: September 23, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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