

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

M.C., Appellant)	
)	
and)	Docket No. 09-1539
)	Issued: May 11, 2010
U.S. POSTAL SERVICE, POST OFFICE,)	
Jersey City, NJ, Employer)	
)	

Appearances:
Thomas R. Uliase, 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 May 29, 2009 appellant, through his representative, filed a timely appeal from the July 24, 2008 and February 25, 2009 merit decisions of the Office of Workers' Compensation Programs, which terminated his compensation for an accepted right wrist sprain or strain. 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 effective July 24, 2008 for the right wrist sprain or strain he sustained in the performance of duty on January 3, 2005.

FACTUAL HISTORY

On January 3, 2005 appellant, then a 53-year-old mail clerk, sustained an injury in the performance of duty when he felt a sharp pain in his right wrist while pushing a parcel. The Office accepted his claim for "sprains and strains, right wrist." Appellant received compensation for temporary total disability on the periodic rolls. The Office authorized surgery on the right wrist for carpal tunnel syndrome. It also authorized surgeries on the left wrist and left shoulder.

The Office referred appellant, together with a copy of the medical record and a statement of accepted facts, to Dr. Jeffrey Lakin, an orthopedic surgeon, who saw appellant on December 20, 2007. Dr. Lakin related the history of appellant's work injury and his current complaints. He reviewed appellant's medical record and described his findings on physical examination. Dr. Lakin explained that appellant sustained "just a sprain" to his right wrist on January 3, 2005, there was no other injury at that time. Appellant's current examination was unremarkable. He had excellent function of the right wrist with excellent strength and excellent motion. Appellant was nontender. Dr. Lakin concluded that appellant appeared to have resolved the right wrist sprain. He found no reason, from the injury sustained on January 3, 2005, that appellant could not return to his date-of-injury job as a mail clerk.

On June 2, 2008 the Office notified appellant that it proposed to terminate his compensation based on Dr. Lakin's evaluation. It found that Dr. Lakin's opinion constituted the weight of the medical evidence.

Dr. Mark A.P. Filippone, appellant's physiatrist, reported on April 18, 2008 that studies in May 2007 showed some further progression of appellant's bilateral carpal tunnel syndrome despite the right carpal tunnel surgical release performed in the interim. In his opinion, had the right carpal tunnel release not been performed, the electrical injury would have been even greater. Dr. Filippone stated that appellant was complaining of increasing stiffness in the right wrist. He stated that it was his opinion that the abnormalities in both wrists, both hands and left shoulder were directly and solely the result of the injury sustained at work on January 3, 2005.

On June 15, 2008 Dr. Filippone reported that he disagreed with Dr. Lakin's December 20, 2007 opinion that appellant had reached maximum medical improvement. He stated that Dr. Lakin failed to acknowledge appellant's actual injury, which was more than "just a sprain" to his wrists, as his surgeries indicated. Dr. Filippone stated that appellant continued to complain of bilateral hand pain, including pain in the dorsum of the right wrist and stiffness in the right hand when lifting more than five pounds. He stated that appellant needed x-rays of both wrists. Dr. Filippone repeated his opinion that the abnormalities in both wrists, both hands and left shoulder were directly and solely the result of the injury sustained at work on January 3, 2005.

In a decision dated July 24, 2008, the Office terminated appellant's compensation benefits effective that date. It found that Dr. Lakin's opinion constituted the weight of the medical evidence. The Office found that Dr. Filippone's opinion on causal relationship was unreasoned and unreasonable on its face considering the nature of the work incident, and was based on an unsubstantiated history. It noted that it authorized surgery on the right wrist but never accepted the claim for a right carpal tunnel condition.

On July 17, 2008 Dr. Teofilo A. Dauhajre, appellant's orthopedic surgeon, diagnosed impingement syndrome of the left shoulder, aggravation of preexisting degenerative joint disease of the acromioclavicular joint, and degenerative changes and edema at the acromioclavicular joint with a partial supraspinatus tear. He stated with a reasonable degree of medical probability that these conditions were causally related to the work duties that resulted in symptoms on January 3, 2005.

On February 25, 2009 following an oral hearing on December 2, 2008, an Office hearing representative issued a decision affirming the termination of appellant's compensation benefits.

The hearing representative found that Dr. Lakin's opinion represented the weight of the medical evidence.

On appeal, appellant's representative argues that appellant has presented substantial medical evidence to establish that he still suffers from residuals of his right wrist condition. He points to medical reports verifying that appellant still suffers from the right wrist condition. Appellant's representative notes an imaging study showing a linear tear of the triangular fibrocartilage, among other things and he adds that the Office approved left carpal tunnel surgery and had itself verified that appellant's upper extremity conditions were work related. Dr. Dauhajre, he points out, verified that appellant's upper extremity conditions were related to his job as a mail clerk. Appellant's representative further argues that Dr. Lakin made conclusory statements and speculated about appellant's recovery. He suggested that, at the very minimum, a conflict in medical evidence existed between Dr. Lakin and appellant's attending physicians.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of his duty.¹ Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his 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

When appellant filed his claim for compensation, he stated that on January 3, 2005 he felt a sharp pain in his right wrist while pushing a parcel at work. He described the nature of the injury as an injury to his right wrist. The Office accepted this claim and paid compensation benefits for "sprains and strains, right wrist," and having thus accepted the claim, it now bears the burden to justify its termination of compensation for the accepted medical condition.

The Office does not have the burden of proof with respect to appellant's left wrist or left shoulder, or for any condition other than a sprain or strain of the right wrist. It approved surgeries for both wrists and the left shoulder, and thereby agreed to pay for the medical services provided, but it did not accept as compensable any additional medical diagnosis.⁴

The issue raised by the Office's July 24, 2008 and February 25, 2009 decisions is not whether appellant has a residual carpal tunnel syndrome on the right or left, or a linear tear of the

¹ 5 U.S.C. § 8102(a).

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.0300.2.b (September 1996) (authorization by the Office for medical examination or treatment creates a contractual agreement to pay for the services regardless of whether a compensable injury or condition exists).

triangular fibrocartilage complex, or a left shoulder condition that requires surgery. The issue is whether he continues to have residuals from the accepted sprains and strains of the right wrist.

The Office provided Dr. Lakin, the orthopedic surgeon and second opinion physician, a statement of accepted facts and the medical record so he could base his opinion on a proper factual and medical background. Dr. Lakin's physical examination of the right wrist was unremarkable, with excellent function of the right wrist, excellent strength, excellent motion and no tenderness. He addressed the accepted wrist sprain which he found resolved without any residuals or need for work restrictions. Dr. Lakin found that appellant had the capacity to return to his regular dates as a mail clerk and that no further medical care was necessary. The Board is not persuaded that the physician's opinion is conclusory or speculative in the issue of whether appellant's accepted condition had resolved.⁵

Dr. Filippone, appellant's physiatrist, reported that appellant sustained more than just a sprain on January 3, 2005. He believed the abnormalities currently found in both wrists, both hands and the left shoulder were directly and solely the result of the injury sustained at work on January 3, 2005. Dr. Dauhajre, appellant's orthopedic surgeon, diagnosed impingement syndrome of the left shoulder, aggravation of preexisting degenerative joint disease of the acromioclavicular joint, and degenerative changes and edema at the acromioclavicular joint with a partial supraspinatus tear, all of which he causally related to appellant's duties at work.

Appellant bears the burden of proof to establish that medical conditions other than right wrist sprain or strain are causally related to the January 3, 2005 incident at work or to the duties he performed as a mail clerk.⁶ As for the termination of compensation for his accepted injury, neither Dr. Filippone nor Dr. Dauhajre directly addressed the matter. Neither physician diagnosed the accepted medical condition and neither offered sound medical reasoning to explain how appellant still suffered from the accepted medical condition years after the January 3, 2005 work incident. For these reasons, the Board finds that their opinions are of little probative value on the issue raised by the Office's termination of compensation and are insufficient to create a conflict in medical opinion with Dr. Lakin warranting further development.⁷

The Board finds that Dr. Lakin's opinion represents the weight of the medical evidence on whether appellant has recovered from his accepted employment injury.⁸ Dr. Lakin's opinion is based on a proper background and is sufficiently well reasoned to justify the Office's termination of compensation benefits for sprains and strains for the right wrist. The Board will affirm the Office decisions.

On appeal, appellant's representative argues that appellant has presented substantial medical evidence to establish that he still suffers from residuals of a right wrist condition. Only the accepted right wrist sprain or strain is at issue. Approval of surgery for carpal tunnel

⁵ *Robert P. Bourgeois*, 45 ECAB 745 (1994).

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ See 5 U.S.C. § 8123(a) (providing referral to an impartial medical specialist to resolve conflicts between attending and Office referral physicians).

⁸ See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

syndrome, while it creates a contractual obligation to pay for the services, does not equate to fact of injury, acceptance or compensability. The Board has already addressed the representative's contentions that Dr. Lakin's opinion was speculative or there is a conflict in the medical evidence warranting further development.

CONCLUSION

The Board finds that the Office met its burden of proof to justify the termination of appellant's compensation for the right wrist sprain or strain he sustained on January 3, 2005 when he pushed a parcel at work. The opinion of the Office referral physician directly addresses the accepted condition and carries the weight of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2009 and July 24, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 11, 2010
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