United States Department of Labor
Employees' Compensation Appeals Board

S.A., Appellant	)	
and	)	**Docket No. 11-286**
	)	**Issued: August 16, 2011**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On November 16, 2010 appellant, through her representative, filed a timely appeal from a September 14, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate compensation for wage-loss and medical benefits effective April 29, 2010.

FACTUAL HISTORY

The case was before the Board on a prior appeal. By decision dated April 5, 2010, the Board found that the medical evidence required clarification on the issue of termination of

[1] 5 U.S.C. § 8101 *et seq.*

compensation.[2] The Board noted that the accepted conditions, according to the statement of accepted facts provided to the second opinion and referee physicians, were bilateral wrist extensor tendinitis and right hand dorsal ganglion cyst. The April 15, 2008 pretermination letter, however, included as accepted conditions a right exostosis (site unspecified) and enthesopathy of the right wrist and carpus. The case was remanded to determine whether Dr. Michael Vender, the referee orthopedic surgeon, was provided with an accurate background. The history of the case as reported in the Board's prior decision is incorporated herein by reference.

In a memorandum dated April 13, 2010, OWCP stated that the only accepted conditions were the bilateral wrist tendinitis (international classification of diseases, ninth revision No. 727.05) and the right ganglion cyst (ICD9 727.41). According to OWCP, it had also entered the ICD9 codes for 726.91 (exostosis) and 726.4 (enthesopathy of wrist and carpus) to "facilitate the payment of bills" for the two accepted conditions.

By decision dated April 29, 2010, OWCP terminated compensation for wage-loss and medical benefits. It stated that Dr. Vender was provided an accurate background and it had mistakenly referred to exostosis and enthesopathy as accepted conditions.

Appellant requested a telephonic hearing before OWCP's hearing representative, which was held on July 26, 2010. At the hearing she argued that, if the added conditions were included in the claim to pay the bills, this would at least imply that they were accepted conditions.

By decision dated September 14, 2010, OWCP's hearing representative affirmed the April 29, 2010 OWCP decision. OWCP's hearing representative found the weight of the evidence rested with Dr. Vender.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, it may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[3]

It is well established that, when a case is referred to a referee specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[4]

ANALYSIS

As the Board noted in its prior decision, there was confusion as to the accepted conditions in this case that required clarification. If the conditions of ecstasies and enthesopathy were accepted conditions, then clearly referee physician, Dr. Vender, did not have an accurate

[2] *S.A.*, Docket No. 09-1627 (issued April 5, 2010).

[3] *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

[4] *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

background for an opinion as to whether the accepted employment-related conditions had resolved. Dr. Vender had been advised that only the conditions of bilateral wrist tendinitis and the right ganglion cyst were employment related.

In this regard, OWCP stated that the accepted conditions were bilateral wrist tendinitis and right wrist ganglion cyst. The exostosis (ICD9 726.91) and enthesopathy (726.4) codes were listed in the "ICD9" heading of the case record, but were not accepted conditions. The Board notes that there was no reference prior to the April 15, 2008 pretermination letter to the conditions of exostosis or enthesopathy as accepted conditions. In addition, there was no probative evidence establishing that the conditions were employment related. The attending physician, Dr. John McClellan, referred to "carpal bossing" in an April 14, 2004 report and in subsequent reports he diagnosed ICD9 code 726.91, which he described as "carpal bossing second carpal metacarpal joint". He did not provide a rationalized opinion on causal relationship with employment. It is also noted that Dr. McClellan did not discuss an enthesopathy condition.

The Board accordingly finds that OWCP properly found that exostosis and enthesopathy were not accepted employment-related conditions. The ICD9 codes for these conditions had been entered into the case record, but the conditions were not established as accepted employment injuries. Even if OWCP had authorized payment for these conditions, this does not itself establish that the conditions are employment related.[5]

Therefore the statement of accepted facts provided to Dr. Vender accurately noted that the accepted conditions were bilateral wrist tendinitis and right hand ganglion cyst. In his September 5, 2007 report, Dr. Vender stated that electrodiagnostic studies did not demonstrate "any significant neuropathy to explain appellant's complaints of numbness and tingling or explain her other subjective complaints. [Appellant's] physical examination was also very unremarkable. There were no significant objective findings to substantiate her subjective complaints. The cover letter for today's evaluation indicates acceptance of the claim for bilateral wrist extensor tendinitis and a dorsal ganglion cyst of the right hand. Any complaints and problems related to these diagnoses appear to have treated and resolved satisfactorily." Dr. Vender stated that he did not believe appellant's current complaints regarding the shoulder were related to the employment activities and she could return to work as a machine operator. In a February 7, 2008 report, he opined that he did not believe there is any on-going activity of the accepted conditions causing disability. Dr. Vender stated that he did not believe appellant has any significant residuals from the work-related injury, as recovery after that type of surgical procedure would be essentially complete within two to three months postoperative. He concluded, "I do not believe [she] continues to suffer from upper extremity work-related conditions dating back to [October 2003]."

As noted above, a rationalized opinion from a referee physician is entitled to special weight. The Board finds that Dr. Vender provided a rationalized opinion that the accepted employment-related conditions had resolved. Dr. Vender's opinion constituted the weight of the medical evidence in this case. OWCP met its burden of proof to terminate compensation as of April 29, 2010.

[5] *See Glen E. Shriner*, 53 ECAB 165, 169 (2001).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds OWCP met its burden of proof to terminate compensation effective April 29, 2010.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 14, 2010 is affirmed.

Issued: August 16, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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