United States Department of Labor
Employees' Compensation Appeals Board

V.L., Appellant	)	
	)	
and	)	**Docket No. 10-1224**
	)	**Issued: March 9, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Garden City, NY, Employer	)	

Appearances:
Paul Kalker, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 30, 2010 appellant, through her representative, timely appealed a March 11, 2010 merit decision of the Office of Workers' Compensation Programs terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation effective March 11, 2010 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries.

FACTUAL HISTORY

On June 20, 2007 appellant, then a 59-year-old mail handler, filed a traumatic injury claim alleging that she hurt her arms and legs and had body aches when she fell off a truck that pulled away from a platform, causing her to land on her buttocks. She stopped work June 20, 2007. The Office accepted the conditions of cervical sprain and right shoulder sprain

and paid compensation benefits. On April 16, 2008 appellant returned to part-time limited-duty work and eventually increased her work hours to six hours a day. On November 13, 2008 she underwent authorized right shoulder arthroscopic subacromial decompression surgery. Appellant returned to work full-time limited duty on April 21, 2009. She stopped work on August 7, 2009 and did not return. The Office accepted a recurrence of disability beginning August 7, 2009.

In an August 7, 2009 report, Dr. Mark G. Grossman, an attending Board-certified orthopedic surgeon, who performed appellant's shoulder surgery, advised that she had neck pain, bilateral shoulder pain and low back pain. He provided an impression of cervical sprain, bilateral shoulder impingement and low back pain and opined that she was totally disabled. Dr. Grossman stated that appellant's job was too repetitive and she could not perform such work after having shoulder surgery. He further opined that there was a causal connection between her right shoulder pain, cervical pain and her accident at work and explained there was no preexisting injury to his knowledge. In a September 18, 2009 report, Dr. Grossman continued to opine that appellant was disabled and that her job was too repetitive. He subsequently referred appellant to Dr. B. Rao Yadlapalli, a Board-certified neurologist.

In a September 25, 2009 report, Dr. Yadlapalli noted that on June 20, 2007 appellant fell five feet down onto concrete while at work. He noted findings on examination and provided an assessment of cervical sprain and possible cervical radiculopathy. On October 23, 2009 Dr. Yadlapalli performed an electromyography (EMG) and nerve conduction study (NCS) and provided an impression of mild bilateral median nerve neuropathy at the wrist. No evidence was found of cervical radiculopathy.

Dr. Grossman continued to opine that appellant was disabled and her job was too repetitive. In a September 15, 2009 report, he advised that she had permanent disability to the cervical spine and both shoulders. Dr. Grossman recommended a neurological consult as appellant's neck continued to be an issue. As for her shoulders, he indicated that appellant had limited range of motion (ROM). Dr. Grossman stated that appellant had flexion of 0 to 145 degrees on the operated shoulder, with normal being 0 to 160 degrees. He further stated that she always complained of her neck and bilateral shoulder conditions and that all three conditions arose from her June 20, 2007 work injury. Dr. Grossman further indicated that appellant's job was so repetitive that it caused permanent damage to those areas. In a November 30, 2009 report, he advised that, although the EMG was negative, he was still concerned about radiculopathy. Dr. Grossman recommended a cervical spine magnetic resonance imaging (MRI) scan to see if appellant's pain was coming from her neck.

To determine whether appellant continued to have residuals of her June 20, 2007 work injury and whether she was capable of working, the Office referred appellant to Dr. Peter Leo Varriale, a Board-certified orthopedic surgeon, for a second opinion evaluation.[1] In a December 9, 2009 report, Dr. Varriale referenced his previous examinations of her and advised

[1] The record indicates that Dr. Varriale previously examined appellant on November 29, 2007, March 10 and July 24, 2008 at the request of the Office. In his previous reports, he opined that her employment-related conditions had not resolved and, in his July 24, 2008 report, he recommended that she undergo surgery to repair her right rotator cuff.

that she currently presented with complaints of bilateral shoulder pain, minimal neck pain and mild low back pain. He noted reviewing the history of injury, medical records and a statement of accepted facts. Examination of the cervical spine revealed no tenderness or spasm, full ROM and no atrophy of the paraspinal muscles, forearms or upper arms. Appellant had full strength and no sensory deficit. The right shoulder had normal ROM, no tenderness and no atrophy. The shoulder had full strength with no evidence of instability or impingement. Left shoulder examination was also normal as was the examination of the lumbar spine. Dr. Varriale diagnosed resolved cervical and lumbosacral strain; resolved surgery to the right shoulder and resolved strain to the left shoulder. He opined that, while the diagnosed conditions were caused by the June 20, 2007 work injury, the conditions had resolved. Dr. Varriale opined that appellant could perform all the activities of daily living including her date-of-injury job without restrictions. In an accompanying December 11, 2009 work restriction evaluation, he reiterated that her conditions had resolved and that she could return to work without restriction.

A December 17, 2009 MRI scan of the cervical spine noted degenerative disc disease at C3-4 through C6-7. Central herniation at C6-7 was found with multilevel encroachment of foramina right greater than left.

In a January 5, 2010 Form CA-20, Dr. Grossman noted the history of injury as well as the MRI scan results of the cervical spine and diagnosed right shoulder bursitis/tendinitis and cervical stenosis -- disc herniation. He opined, with a checkmark "yes," that such conditions were caused by appellant's employment activity. Dr. Grossman further stated that she was disabled from August 7, 2009 to the present and requested physical therapy and copies of her physical therapy referrals and physical therapy notes were of record.

On February 9, 2010 the Office proposed to terminate appellant's wage-loss and medical benefits, finding that the weight of the medical evidence established that the accepted medical conditions had resolved. It accorded determinative weight to the opinion of Dr. Varriale, the second opinion specialist.

In response to the proposed termination of benefits, counsel submitted two statements. In both his February 7 and 17, 2010 letters, he requested the Office to expand appellant's claim to include right shoulder rotator cuff tear, cervical radiculopathy and left shoulder impingement. In his February 17, 2010 letter, counsel argued that the Office failed to refer her to an impartial medical examiner prior to terminating benefits.

In a January 7, 2010 report, Dr. Nomaan Ashraf, a treating orthopedic surgeon, noted appellant sustained an injury while at work several years ago when she fell. He noted that she had been having neck pain and right shoulder pain radiating symptoms into her hands. Dr. Ashraf noted that the results of the physical and neurological examination were normal and his review of the cervical spine MRI scan. He provided an impression of: "This is a 61-year-old female postwork injury with multilevel cervical degenerative disc disease and neuroforaminal narrowing on the right side."

In a January 25, 2010 report, Dr. Grossman indicated that appellant originally injured her shoulder and neck when she fell off a truck. He noted that a subacromial decompression had helped, but she was far from perfect. Dr. Grossman indicated that her neck showed herniations

and she had carpal tunnel from her repetitive work. He noted that the results of his physical examination and provided an impression of bilateral shoulder tendinitis status post right subacromial decompression, cervical herniations and bilateral carpal tunnel. Dr. Grossman opined that all appellant's conditions were caused by her chronic position at work and that she was totally disabled. He also continued to prescribe physical therapy and provided physical therapy reports.

By decision dated March 11, 2010, the Office terminated appellant's compensation benefits effective that date finding that her accepted conditions had resolved.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[2] It may not terminate compensation without establishing that disability ceased or that it was no longer related to the employment.[3] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[5] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which requires further medical treatment.[6]

ANALYSIS

The Office accepted that appellant sustained cervical sprain and right shoulder sprain and authorized her right shoulder surgery. It terminated her compensation benefits effective March 11, 2010 on the grounds that the accepted conditions had resolved without residuals. The Board finds the Office properly terminated appellant's benefits.

Dr. Grossman opined that appellant was totally disabled and needed physical therapy. As noted above, the accepted conditions were cervical sprain and right shoulder sprain. Although appellant submitted a number of reports from Dr. Grossman, they contained additional diagnoses which included bilateral shoulder impingement, low back pain, right shoulder bursitis/tendinitis and cervical stenosis -- disc herniation, and bilateral carpal tunnel. Before any resulting disability is compensable, the evidence must establish that the diagnosed conditions are employment related. She has the burden to establish that a specific condition is causally related

[2] *Jorge E. Sotomayor*, 52 ECAB 105, 106 (2000).

[3] *Mary A. Lowe*, 52 ECAB 223, 224 (2001).

[4] *See Del K. Ryker*t, 40 ECAB 284 (1988).

[5] *T.P.*, 58 ECAB 524 (2007).

[6] *I.J.*, 59 ECAB 408 (2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

to the employment injury.[7] In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background[8] and must be supported by medical rationale.[9]

Dr. Grossman did not provide a reasoned opinion on causal relationship between any diagnosed condition and the employment injury. In his initial and most recent reports, he attributes appellant's conditions to her job being too repetitive; however, the employment injury in this claim related to the traumatic incident of June 20, 2007. In his September 15, 2009 report, Dr. Grossman advised that she had permanent disability to her cervical spine and bilateral shoulders, noting there was a limited ROM and lack of preexisting symptoms. However, the Office only accepted a right shoulder strain, not a bilateral shoulder condition. Dr. Grossman did not provide any medical rationale as to how or why the limited ROM to appellant's right shoulder was causally related to the work injury. Additionally, the lack of symptoms prior to the employment incident does not provide rationalized support of a causal relationship between a condition and employment.[10] Also without any additional explanation Dr. Grossman's January 5, 2010 duty status report is of little probative value on the issue of causal relationship.[11]

Dr. Ashraf opined that the work injury caused multilevel cervical degenerative disc disease and neuroforaminal narrowing on the right side. The Office did not accept the conditions of cervical degenerative disc disease and neuroforaminal narrowing and Dr. Ashraf failed to provide a rationalized medical explanation as to how those conditions were causally related to the June 20, 2007 work injury.[12]

The remaining medical evidence of record is insufficient to establish appellant's claim. Dr. Yadlapalli's report lacks an opinion on causal relation. Therefore, it is of limited probative value. Reports of EMG's, MRI scans, NCS's and other test results are of diminished probative value as they do not contain an opinion on causal relationship. Appellant also submitted several reports from a physical therapist. These reports, however, are of no probative value, as physical therapists are not considered physicians under the Federal Employees' Compensation Act and, as a result, they are not competent to provide a medical opinion.[13]

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[7] *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[9] *Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *See, e.g., Walter J. Neumann, Sr.*, 32 ECAB 69, 72 (1980).

[11] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989) (the checking of a box is of little probative value on causal relationship without additional explanation).

[12] *See T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009) (for conditions not accepted or approved by the Office as being due to an employment injury, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

[13] *Barbara J. Williams*, *supra* note 11; *A.C.*, 60 ECAB __ (Docket No. 08-1453, issued November 18, 2008); 5 U.S.C. § 8101(2).

The Board finds that Dr. Varriale's second opinion report is sufficiently rationalized to establish that appellant's employment-related conditions have resolved.[14] Dr. Varriale's comprehensive 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. He also provided medical rationale for his opinion. Dr. Varriale reported normal findings on examination, found that there were no continuing residuals of the authorized right shoulder surgery and thus opined that the accepted conditions had resolved. He additionally opined that appellant could perform all the activities of daily living including her date-of-injury job without restrictions. Dr. Varriale found no basis on which to attribute any continuing condition to the June 20, 2007 work injury. There is no medical evidence showing any continuing residuals or disability due to appellant's accepted conditions. Thus, the Office met its burden of proof to terminate her benefits as the weight of the medical evidence indicates that residuals of the employment-related conditions had ceased effective March 11, 2010. While counsel contended both before the Office and on appeal that the Office should expand the claim to include appellant's other diagnosed conditions, as noted above, the medical reports of record do not establish causal relationship. Additionally, as the current medical evidence provides support that the accepted conditions have resolved, the attorney's argument that a referral to an impartial medical specialist is necessary lacks merit. A referral to an impartial medical specialist is only necessary when there exist opposing medical reports of virtually equal weight and rationale.[15]

CONCLUSION

The Board finds that the Office properly terminated appellant's wage-loss and medical benefits effective March 11, 2010.

[14] *Michael S. Mina*, 57 ECAB 379 (2006) (in assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality; the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts, which determine the weight to be given to each individual report).

[15] 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 11, 2010 is affirmed.

Issued: March 9, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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