

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

M.H., Appellant)	
)	
and)	Docket No. 11-784
)	Issued: April 3, 2012
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Burbank, CA, Employer)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 8, 2011 appellant, through her attorney, filed a timely appeal from a January 11, 2011 merit decision by the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether OWCP has met its burden of proof to terminate appellant's compensation and medical benefits.

On appeal, appellant, through her attorney, contends that OWCP's decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has been on appeal previously. On July 18, 2003 appellant, then a 49-year-old transportation security screener, alleged that she sustained a traumatic injury to her right arm. She later indicated that the injury had been progressive over a period of months and was caused by excessive lifting and overexertion of her right arm and shoulder which gradually worked up to her neck. Appellant stopped working on July 18, 2003 and did not return. On December 10, 2003 OWCP accepted her claim for right elbow lateral epicondylitis and right forearm strain. It paid wage-loss compensation and medical benefits. OWCP terminated appellant's benefits effective July 8, 2008; however, in its decision dated December 14, 2009, the Board reversed the termination of benefits. The Board found that there was a conflict between the opinions of appellant's treating osteopath, Dr. Mark Bernhard, and Board-certified orthopedic surgeon to whom OWCP referred appellant for a second opinion, Dr. Bunsrie T. Sophon. The Board determined that, due to the unresolved conflict in the medical evidence, OWCP improperly terminated appellant's benefits.² The facts and the circumstances surrounding the Board's previous decision are incorporated herein by reference.

Upon return of the case to OWCP, on March 17, 2010 it referred appellant to Dr. Kenneth Sabbag, a Board-certified orthopedic surgeon with a subspecialty in surgery of the hand, to resolve the conflict between Drs. Bernard and Sophon regarding whether appellant had residuals from her accepted employment injury. Dr. Sabbag reviewed appellant's medical record and work history, conducted a physical examination and listed appellant's diagnoses as right de Quervain's tenosynovitis and right flexor carpi radialis (FCR) tendinitis. He stated that there was currently no clinical signs of lateral epicondylitis and that this accepted condition had resolved. Dr. Sabbag noted that this was the typical medical outcome for lateral epicondylitis, noting that lateral epicondylitis was typically a self-limited disease process and was amenable to treatment. He also noted that appellant did not report pain in her elbow but rather reported pain in her wrist, which radiated from her wrist up to her forearm. Dr. Sabbag found that pain to be emanating from tendinitis at her wrist. He further noted that the right wrist tendinitis at the first dorsal compartment of the Volar Distal Radioulnar tendon was first documented about nine months after appellant stopped working for the employing establishment. Dr. Sabbag opined that appellant's right wrist tendinitis nonindustrial and stated that appellant's nonindustrial wrist tendinitis prevented her from returning to work for the employing establishment.

On June 11, 2010 OWCP proposed terminating appellant's compensation and medical benefits. Appellant did not submit new evidence.

By decision dated July 19, 2010, OWCP terminated appellant's compensation and medical benefits.

On July 30, 2010 appellant, through her attorney, requested an oral hearing before an OWCP hearing representative. At the hearing held on November 4, 2010, appellant testified that she is right-handed, that it was difficult for her to pick things up and that her wrists would swell with the weather or when she overworked them. She stated that she last worked for the employing establishment in July 2003. Appellant stated that since 2003 she had no other injuries

² Docket No. 09-815 (issued December 14, 2009).

to her right wrist nor had she done any sort of repetitive work or movement that would cause a new or different problem with her right wrist. She stated that her right wrist had not improved since July 2003.

In a decision dated January 11, 2011, the hearing representative affirmed the termination of benefits based on the opinion of the impartial medical examiner, Dr. Sabbag.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or was no longer related to the employment.³ OWCP's burden of proof in terminating compensation 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 for disability compensation.⁵ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁶

Section 8123(a) provides that, if there is a 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.⁷ 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 such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

ANALYSIS

OWCP accepted appellant's claim for right elbow lateral epicondylitis and right forearm strain, and paid appropriate benefits. On the prior appeal, the Board reversed OWCP's prior termination of appellant's benefits because it found that there remained an unresolved conflict between the opinion of appellant's treating physician, Dr. Bernhard, and the second opinion physician, Dr. Sophon, with regard to whether appellant had any continuing residuals or disability related to her accepted work injury.

³ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001); see also *C.B.*, Docket No. 1623 (issued April 11, 2011).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁵ *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁶ *Id.*

⁷ 5 U.S.C. § 8123(a).

⁸ *R.C.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, *supra* note 5.

On remand, OWCP properly referred appellant to Dr. Sabbag for an impartial medical examination. Dr. Sabbag conducted a thorough physical examination and reviewed appellant's history. He then concluded that there was no current clinical sign of appellant's accepted bilateral epicondylitis and that this condition had resolved. Dr. Sabbag noted that appellant no longer had pain in her elbow. Although he noted that appellant has considerable issues with right wrist tendinitis at the first dorsal compartment of the FCR tendon, he stated that the condition was nonindustrial, noting that this condition was first documented nine months after appellant ceased to work for the employing establishment. Dr. Sabbag concluded that it was the nonemployment-related tendinitis of the wrist which precluded appellant from working. Because he resolved the existing conflict in medical opinion evidence, the Board finds that OWCP properly gave special weight to the well-rationalized opinion of Dr. Sabbag, the impartial medical examiner, and terminated appellant's compensation for wage-loss and medical benefits.

CONCLUSION

The Board finds that OWCP has met its burden of proof to terminate appellant's compensation and medical benefits.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 11, 2011 is affirmed.

Issued: April 3, 2012
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