

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

C.M., Appellant)

and)

U.S. POSTAL SERVICE, PORTLAND)
PERFORMANCE CLUSTER, Portland, OR,)
Employer)

**Docket No. 12-627
Issued: August 7, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On January 26, 2012 appellant filed a timely appeal from the December 5, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) concerning her entitlement to wage-loss compensation after January 20, 2011. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation effective January 20, 2011 on the grounds that she had no disability due to her work injuries after that date; and (2) whether appellant met her burden of proof, after the January 20, 2011 termination of her wage-loss compensation, to establish that she had disability after January 20, 2011 due to her work injuries.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On January 10, 2008 appellant, then a 47-year-old rural carrier associate, filed an occupational disease claim alleging that she sustained injury to her arms and hands due to a fall at work on November 24, 2006 and the repetitive use of her hands at work overtime. OWCP accepted that she sustained bilateral carpal tunnel syndrome and basilar arthritis of the carpometacarpal joint of her right hand. On May 16, 2008 appellant underwent OWCP-authorized exploration and decompression of her right median nerve. She has been off work since her surgery.

In a January 4, 2010 report, Dr. Chris Jackson, an attending Board-certified surgeon, stated that appellant had extremely mild carpal tunnel syndrome bilaterally and that the objective findings did not match her subjective response. He indicated that he would not recommend any additional surgery and noted that there was significant psychological overlay in her ongoing disability.

Due to the limited medical evidence in the record from attending physicians in the prior year, OWCP referred appellant in October 2010 to Dr. Aleksander Curcin, a Board-certified orthopedic surgeon, for an examination and opinion on her continuing work-related residuals.

In an October 22, 2010 report, Dr. Curcin detailed appellant's medical history and noted that she complained of pain in the base of her right thumb and numbness, paresthesias and dysesthesias in her right hand. He indicated that electrodiagnostic studies and multiple x-ray studies did not support any objective pathologic findings. Dr. Curcin noted that, upon examination, appellant avoided the use of the right hand, including declining to shake hands with the right hand. Range of motion of the wrists revealed pronation and supination to 90 degrees and palmar flexion to 30 degrees bilaterally. Dorsiflexion was to 60 degrees on the left and 40 degrees on the right. Dr. Curcin indicated that appellant had a well healed, almost imperceptible scar in the right wrist consistent with carpal tunnel release. He stated that she had two-point discrimination of six millimeters in the left median nerve, greater than eight millimeters in the left ulnar nerve and greater than eight millimeters in the right median and ulnar nerves. Dr. Curcin stated, "I see no reason why [appellant] would be restricted in work[-]related activities aside for symptomatic complaints."

Dr. Curcin completed a Form OWCP-5c (work capacity evaluation) on October 22, 2010 listing various work restrictions which he indicated were "primarily based on symptomatic complaints."

In a November 17, 2010 letter, Dr. Curcin indicated that he had been asked to clarify his October 22, 2010 Form OWCP-5c. He stated:

"At the time of my initial evaluation, the form was completed, taking into account the extensive subjective complaints that [appellant] presented with. The workers' compensation carrier has requested that the form be completed again, based simply on objective findings.

“Based on my objective findings and objective findings of diagnostic studies, the form has been completed today and will be sent back to the U.S. Department of Labor.”

On November 17, 2010 Dr. Curcin completed a new Form OWCP-5c and noted that “based on objective findings and diagnostic studies,” “the claimant has no limitations.”

In a December 13, 2010 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation on the grounds that she ceased to have disability due to her work injuries.² It indicated that the termination was based on the opinion of Dr. Curcin.

In a January 20, 2011 decision, OWCP terminated appellant’s wage-loss compensation effective January 20, 2011 on the grounds that she had no disability due to her work injuries after that date.

Appellant submitted a June 6, 2011 report in which Dr. Paul Puziss, an attending Board-certified orthopedic surgeon, indicated that she clearly had chronic impairment post right carpal tunnel release with objective findings of loss of right wrist motion particularly and diminished right grip and pinch strength compared to the nondominant left side. There was also mild atrophy of the right dominant forearm. Dr. Puziss stated that appellant’s subjective complaints were borne out by objective findings with respect to strength and likely her pain. He noted that she could not return to her regular occupation or any other occupation requiring any grasping of the right hand or repetitive usage of the right wrist.

OWCP determined that there was a conflict in the medical opinion between Dr. Puziss and Dr. Curcin on the issue of whether appellant continued to have residuals of her employment injury. In order to resolve the conflict, it referred appellant, pursuant to section 8123(a) of FECA, to Dr. Mark R. Leadbetter, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.³

In a November 17, 2011 report, Dr. Leadbetter discussed appellant’s medical history, including findings on examination and diagnostic testing. He noted that she primarily complained of constant pain in the volar aspect of the right wrist, right thumb, right second digit and right third digit. Appellant complained of left-sided symptoms that were episodic. Dr. Leadbetter noted that postoperative nerve conduction studies had shown improvement with regard to the nerve conduction studies of appellant’s right wrist and hands. He diagnosed bilateral median nerve neuropathy as seen on nerve conduction studies, status post right carpal tunnel release and degenerative joint disease of the first carpometacarpal joint of the right hand as diagnosed by x-ray findings. Dr. Leadbetter stated that appellant had ongoing, marked complaints of right upper extremity and right hand pain, for which he had no reasonable medical diagnosis. Upon physical examination, muscle strength testing of the right upper extremity, particularly in the right hand and right wrist, was nonphysiologic in nature. Two-point discrimination testing of all digits of the right hand exceeded 15 millimeters, a finding which was

² OWCP advised appellant that she would continue to be entitled to medical benefits related to her work injuries.

³ See *supra* note 1 and accompanying text.

nonphysiologic. Dr. Leadbetter stated his belief that the decreased range of motion in appellant's right wrist was based on an unwillingness to perform the range of motion of the right wrist and stated that this circumstance could not be explained by any work-related condition. He determined that she was not suffering from residuals of any work-related conditions or accepted surgery. Dr. Leadbetter stated that appellant was capable of performing the job duties and requirements that would be required of a rural carrier associate.

In a December 5, 2011 decision, OWCP found that appellant did not meet her burden of proof, after the January 20, 2011 termination of her wage-loss compensation, to establish that she had disability after January 20, 2011 due to her work injuries. It indicated that the well-rationalized opinion of Dr. Leadbetter, the impartial medical specialist, showed that appellant did not have work-related disability after January 20, 2011.

LEGAL PRECEDENT -- ISSUE 1

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

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation effective January 20, 2011 on the grounds that she had no disability due to her work injuries after that date.⁷ OWCP properly found that the weight of the medical evidence with respect to appellant's continuing work-related disability was represented by the thorough, well-rationalized opinion of Dr. Curcin, a Board-certified orthopedic surgeon, who served as an OWCP referral physician. The October 22 and November 17, 2010 reports of Dr. Curcin established that appellant had no disability due to her accepted employment injury after January 20, 2011.

In an October 22, 2010 report, Dr. Curcin detailed appellant's medical history and noted that she complained of pain in the base of her right thumb and numbness, paresthesias and dysesthesias in her right hand. He indicated that electrodiagnostic studies and multiple x-ray studies did not support any objective pathologic findings. Dr. Curcin reported findings for range of motion of the wrists and for two-point discrimination testing of both arms and concluded, "I see no reason why [appellant] would be restricted in work-related activities aside for

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁷ OWCP accepted that appellant sustained bilateral carpal tunnel syndrome and basilar arthritis of the carpometacarpal joint of her right hand. On May 16, 2008 appellant underwent OWCP-authorized exploration and decompression of her right median nerve.

symptomatic complaints.” He initially completed a form report in which he listed work restrictions which were “primarily based on symptomatic complaints.” However, on November 17, 2010, Dr. Curcin clarified that he would provide an opinion on appellant’s work-related disability based only on objective findings, rather than on subjective findings. He then completed a new work restrictions form report in which he noted that “based on objective findings and diagnostic studies, the claimant has no limitations.”

The Board has carefully reviewed the opinion of Dr. Curcin 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. Curcin provided a thorough factual and medical history and accurately summarized the relevant medical evidence.⁸ He provided medical rationale for his opinion by explaining that there were no objective findings to show that appellant had disability due to her work injuries. Prior to the termination of compensation, appellant did not submit any medical evidence showing that she sustained disability after January 20, 2011 due to her work injuries and OWCP properly terminated her compensation effective January 20, 2011.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.⁹

Section 8123(a) of FECA 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.”¹⁰ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.¹¹ 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.¹²

⁸ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

⁹ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

¹⁰ 5 U.S.C. § 8123(a).

¹¹ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

¹² *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

ANALYSIS -- ISSUE 2

For the reasons described above, OWCP properly terminated appellant's compensation effective January 20, 2011 based on the opinion of Dr. Curcin. After this proper termination, the burden shifted to her to establish that she was entitled to compensation after that date.

After the January 20, 2011 termination, appellant submitted a June 6, 2011 report of Dr. Puziss, an attending Board-certified orthopedic surgeon, and OWCP properly determined that there was a conflict in the medical opinion between Dr. Puziss and Dr. Curcin, OWCP's referral physician, on the issue of whether she continued to have residuals of her employment injury.¹³ In order to resolve the conflict, OWCP properly referred her, pursuant to section 8123(a) of FECA, to Dr. Leadbetter, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.¹⁴

The Board finds that the weight of the medical evidence regarding appellant's disability after January 20, 2011 rests with the well-rationalized opinion of Dr. Leadbetter. The November 17, 2011 report of Dr. Leadbetter shows that appellant did not have work-related disability after January 20, 2011.

In his November 17, 2011 report, in response to the questions posed by OWCP, Dr. Leadbetter listed the accepted diagnosed conditions of bilateral median nerve neuropathy as seen on nerve conduction studies, status post right carpal tunnel release and degenerative joint disease of the first carpometacarpal joint of the right hand as diagnosed by x-ray findings. He noted, however, that appellant had ongoing, marked complaints of right upper extremity and right hand pain for which he had no reasonable medical diagnosis. On examination, muscle strength testing of the right arm, particularly in the right hand and right wrist, was nonphysiologic in nature. The results of two-point discrimination testing also were nonphysiologic and he believed that appellant self-limited her right wrist motion. Dr. Leadbetter determined that appellant was not suffering from residuals of any work-related conditions or accepted surgery. He stated that she was capable of performing the job duties and requirements that would be required of a rural carrier associate.

Appellant did not meet her burden of proof to show that she had work-related disability after January 29, 2011 and OWCP properly denied her claim for wage-loss compensation after that date.¹⁵

¹³ Dr. Puziss indicated that appellant clearly had chronic impairment post right carpal tunnel release with objective findings of loss of right wrist motion particularly and diminished right grip and pinch strength compared to the nondominant left side. He noted that she could not return to her regular occupation or any other occupation requiring any grasping of the right hand or repetitive usage of the right wrist.

¹⁴ See *supra* notes 10 and 11.

¹⁵ On appeal, appellant suggested that the opinion of Dr. Puziss established her claim. However, Dr. Puziss' opinion only created a conflict in the medical evidence which was resolved by the opinion of Dr. Leadbetter.

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 that OWCP met its burden of proof to terminate appellant's wage-loss compensation effective January 20, 2011. The Board further finds that appellant did not meet her burden of proof to establish, after the January 20, 2011 termination of her wage-loss compensation, that she had disability after January 20, 2011 due to her work injuries.

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 7, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board