

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

C.L., Appellant)

and)

U.S. POSTAL SERVICE, PROCESSING &)
DELIVERY CENTER, Oakland, CA, Employer)

**Docket No. 11-1230
Issued: February 22, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 26, 2011 appellant filed a timely appeal from a February 10, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) affirming termination of her benefits effective October 8, 2010. 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 the case.

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective October 8, 2010.

FACTUAL HISTORY

On September 21, 1998 appellant, then a 32-year-old mail processing clerk, injured herself in the performance of her federal duties. She took mail in a dolly from the first floor and

¹ 20 C.F.R. §§ 8101-8193.

weighed it on a scale and, while performing these duties, her right hand and elbow hurt. OWCP accepted appellant's claim for sprain of the right wrist and right lateral epicondylitis. It paid wage-loss compensation and medical benefits. Appellant returned to limited-duty work.

Appellant received treatment from Dr. George Pugh, a Board-certified orthopedic surgeon with a Board-certified specialty in surgery of the hand, who submitted duty status reports. On July 29, 2009 Dr. Pugh advised that appellant's limitations included restrictions that limited lifting to 5 pounds continuously and 10 pounds intermittently. He also limited simple grasping to four hours a day.

OWCP referred appellant for a second opinion. In a report dated February 20, 2010, Dr. Philip Z. Wirganowicz, a Board-certified orthopedic surgeon, noted that she injured her neck, lower back and shoulders on May 13, 2008. He also noted that appellant had a work-related injury to her right arm on September 21, 1998 which was felt to be related to the repetitive nature of lifting and grasping of mail. Appellant was eventually diagnosed with right elbow epicondylitis and possible carpal tunnel syndrome. Dr. Wirganowicz diagnosed cervical spine strain, lumbar spine strain, trapezius strain, right lateral epicondylitis and right wrist strain. He opined that these conditions were work related. Dr. Wirganowicz noted that the right wrist strain appeared to have resolved. He found that appellant's residuals were subjective with continuing pain and that there were no objective findings to suggest ongoing residuals. With regard to employment, Dr. Wirganowicz determined that she was capable of performing sedentary work and, based on objective orthopedic findings, she should be able to perform her normal work duties.

OWCP found a conflict in medical opinion and referred appellant to an impartial medical examiner. In an opinion dated June 9, 2010, Dr. Terence J. McDonnell, a Board-certified orthopedic surgeon, noted that the diagnoses were cervical spine strain, lumbar spine strain, trapezius strain, right lateral epicondylitis and right wrist strain. He conducted a thorough physical examination and reviewed appellant's past medical history. Dr. McDonnell stated that the physical examination showed no objective findings. He stated that the accepted conditions, right lateral epicondyle and right wrist strain had ceased and that there were no longer any objective findings for these injuries. Dr. McDonnell's review of the medical records indicated that appellant had a significant psychiatric/psychological problem that could be the cause of her continued somatic complaints. He further opined that somatic complaints were probably more indicative of depression than any lingering physical problems.

In an August 18, 2010 report, Dr. Michael E. Hebrard, a Board-certified physiatrist, listed his diagnostic impressions as right lateral epicondylitis and right sprain of the wrist. He opined with reasonable medical certainty that appellant's ongoing condition was industrially-related secondary to repetitive grasping, pinching and fingering that were required by her job over a 12-year period of time. Dr. Hebrard noted considerable microtrauma which led to inflammatory changes along the tendons of the elbow and wrists. He stated that the injuries often do not resolve themselves entirely due to the repetitive nature of the job and the building up of scar tissue. Dr. Hebrard noted that this tissue is less receptive to recovery due to the chronic changes as opposed to acute injuries that do not have the chronic inflammatory changes. He stated that for this reason it was his opinion with a high degree of medical certainty that appellant's ongoing problems continued to linger and manifest themselves in a chronic undulating condition that

made it very difficult for her to maximize the functional use of her upper extremities in terms of grasping and pinching, pulling and lifting. Dr. Hebrard concluded that her prognosis was actually very good, provided that she was provided with structure, repetition and support that she would need to maximize her functional recovery. He recommended a 20-pound lifting restriction and limited overhead work with repetitive grasping, squeezing and pinching as tolerated.

On August 31, 2010 OWCP issued a notice to terminate appellant's compensation benefits as the medical evidence established that she no longer had any residuals or disability due to her accepted work injury.

In a September 22, 2010 report, Dr. Joel Weddington, an orthopedic surgeon, diagnosed chronic right lateral epicondylitis and right hand sprain and ulnar neuropathy. He went over exercises with appellant.

By decision dated October 8, 2010, OWCP terminated appellant's compensation benefits effective that date.

On October 12, 2010 appellant requested an oral hearing before an OWCP hearing representative. At the hearing held on February 22, 2011, she testified that, as she had not worked since December 2009, her pain decreased. Appellant could not get treatment since benefits were stopped and, without physical therapy, she experienced shoulder and back pain.

By decision dated April 28, 2011, an OWCP hearing representative affirmed the termination of compensation benefits.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing either that the disability had ceased or that it is no longer related to the employment.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ 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.⁵

FECA⁶ provides that, if there is disagreement between the physician making the examination for OWCP and the employee's physician, OWCP shall appoint a third physician

² *Curtis Hall*, 45 ECAB 316 (1994).

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁵ *Calvin S. Mays*, 3 ECAB 993 (198).

⁶ 5 U.S.C. §§ 8101-8193, 8123(a).

who shall make an examination.⁷ An impartial medical specialist's report is entitled to greater weight than other evidence of record as long as the conclusion is not vague, speculative or equivocal and is supported by substantial medical reasoning.⁸

ANALYSIS

OWCP accepted appellant's claim for sprain of the right wrist and right lateral epicondylitis. However, it terminated her medical benefits and wage-loss compensation benefits effective October 8, 2010.

Appellant's treating physician, Dr. Pugh, opined that appellant still had residuals from her accepted injury and was still disabled. The second opinion physician, Dr. Wirganowicz, opined that she was capable of performing her normal work duties and that her right wrist strain had resolved. To resolve the conflict between appellant's treating physician and the second opinion physician, OWCP referred appellant to Dr. McDonnell for an impartial medical opinion, pursuant to 5 U.S.C. § 8123(a). Dr. McDonnell conducted a thorough physical examination and reviewed her medical history. He noted that appellant had no objective symptoms of disability, opined that her work-related condition had ceased and indicated that she had no further residuals. Dr. McDonnell attributed her condition to a nonemployment-related psychiatric condition. The Board finds that his opinion is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight as he was appointed the impartial medical examiner.

Appellant submitted medical evidence subsequent to the report of Dr. McDonnell. Dr. Hebrard, in a report dated August 18, 2010, indicated that her ongoing problems with right lateral epicondylitis and right sprain of the wrist continued to linger and affect the functional use of her upper extremities. He reached this conclusion in large part based on appellant's statements and tests that indicated her responses to tests of motion and motor strength. However, Dr. McDonnell also noted her continued somatic complaints, but opined that these results were attributable to depression, a condition not accepted as employment related, rather than any lingering physical problems. Dr. Weddington indicated that appellant had chronic right lateral epicondylitis and right hand sprain and ulnar neuropathy and that he reviewed exercises with her. His report has limited probative value as he does not provide a medical opinion addressing whether the diagnosed conditions of chronic right lateral epicondylitis and right hand sprain and ulnar neuropathy were causally related to her employment injury.⁹ Accordingly, the reports of Drs. Hebrard and Weddington are not sufficient to overcome the special weight given to the opinion of Dr. McDonnell, the impartial medical examiner.

The Board finds that Dr. McDonnell had full knowledge of the relevant facts and accepted conditions and evaluated the course of appellant's condition. As a Board-certified orthopedic surgeon, Dr. McDonnell is a specialist in the appropriate field. He clearly opined that

⁷ *Id.* at § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁸ *J.W.*, Docket No. 11-1017 (issued December 14, 2011).

⁹ *E.K.*, Docket No. 10-1920 (issued August 19, 2011).

appellant accepted conditions of cervical spine strain and lumbar spine strain, trapezius strain and right lateral epicondyle and wrist strain had ceased, noting that there were no longer any objective findings for these injuries. The Board finds that the opinion of impartial medical specialist Dr. McDonnell constitutes the special weight of the medical evidence and is sufficient to justify OWCP's termination of benefits.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation and medical benefits effective October 8, 2010.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 10, 2011 is affirmed.

Issued: February 22, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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