United States Department of Labor
Employees' Compensation Appeals Board

C.P., Appellant	)	
and	)	**Docket No. 11-884**
	)	**Issued: March 8, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Charlotte, NC, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 22, 2011 appellant, through her attorney, filed a timely appeal of an August 20, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision terminating her benefits.[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c)(1) and 501.3, the Board has jurisdiction to consider the merits of the case.

[1] Under the Board's *Rules of Procedure*, the 180-day time period for determining jurisdiction is computed beginning on the day following the date of OWCP's decision. *See* 20 C.F.R. § 501.3(f)(2). As OWCP's merit decision was issued on August 20, 2010, the 180-day computation begins on August 21, 2010. One hundred and eighty days from August 21, 2010 was February 16, 2011. Since using February 22, 2011, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is February 15, 2011, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

On May 19, 1999 appellant, then a 42-year-old distribution clerk, filed a traumatic injury claim alleging that she injured her right hand and arm casing mail on April 29, 1999. OWCP accepted her claim for carpal tunnel syndrome of the right wrist on September 22, 1999. Appellant returned to light-duty work. She filed a notice of recurrence of disability on May 25, 2000. Appellant underwent surgery for right carpal tunnel release on June 21, 2000. OWCP authorized left carpal tunnel release on September 21, 2000. Appellant underwent left carpal tunnel release on November 10, 2000. OWCP accepted bilateral carpal tunnel syndrome and bilateral synovitis of the wrists with bilateral carpal tunnel release. Dr. James E. Lowe, Jr., a Board-certified surgeon, completed a work capacity evaluation and opined that due to persistent synovitis appellant could not work eight hours a day. He indicated that appellant could work four hours a day with restrictions. In a report dated May 23, 2002, Dr. Lowe diagnosed de Quervain's syndrome bilaterally and recommended a surgical release.

Dr. Eddie N. Powell, an attending physician specializing in geriatric medicine, completed a work capacity evaluation on October 5, 2007. He opined that appellant was disabled from her usual position due to carpal tunnel syndrome with neurogenic edema, claudication of the right leg, polyneuropathy, parathesia and asthma.

OWCP referred appellant for a second opinion evaluation with Dr. Edward Mulcahy, a Board-certified orthopedic surgeon, on September 4, 2009.[3]

On October 13, 2009 Dr. Mulcahy reviewed appellant's factual and medical history. He noted that appellant had a normal nerve conduction test in 2006, and a functional capacity examination in 2009 which found low voluntary effort and inconsistent findings. Dr. Mulcahy found normal range of motion of appellant's wrists, decreased grip strength in both hands but little conscious effort to grasp with the right hand. He noted that appellant had no sensory loss or atrophy in either hand. Dr. Mulcahy listed his only positive finding as tenderness to any pressure or palpation about her distal forearm or wrist. He opined that appellant was over-reactive to the examination and displayed symptom magnification. Dr. Mulcahy stated that based on his examination as well as multiple negative nerve conduction studies there were no objective physical findings that would prohibit appellant from performing her date-of-injury position. He recommended a rheumatologic evaluation for arthritis or fibromyalgia and a psychological evaluation to explain her symptomatology.

OWCP referred appellant for an impartial medical examination with Dr. Robert Elkins, a Board-certified orthopedic surgeon, based on a conflict between Drs. Powell and Mulcahy

[3] Appellant underwent a functional capacity evaluation on September 23, 2009. This testing revealed poor or voluntarily submaximal effort as well as nonorganic signs and concluded that appellant could perform sedentary or light-duty positions.

regarding appellant's continuing employment-related condition and her ability to work on December 15, 2009. In a report dated January 20, 2010, Dr. Elkins noted appellant's history of injury and reviewed the statement of accepted facts. He also considered appellant's medical records noting that her nerve conduction velocity testing in 2002 was normal. Dr. Elkins performed a physical examination finding tenderness in the lateral forearm and wrist, but a negative Tinel's sign. He found that appellant's tenderness was nonphysiologic in nature as there was no real tenderness in her neck, shoulder, scapula, arm, forearm or trigger points. Dr. Elkins also determined that her complaints of dullness in the right arm were nonphysiologic. He found that appellant's motor strength was invalid. Dr. Elkins opined that appellant's bilateral carpal tunnel syndrome had resolved and diagnosed moderate symptom magnification and pain accentuation. He stated that appellant could return to her date-of-injury position with no restrictions. Dr. Elkins completed a work capacity evaluation on January 20, 2010 and again opined that the work-related condition of carpal tunnel syndrome had resolved and that appellant could return to work with no restrictions.

Dr. Powell treated appellant on April 9, 2010 and diagnosed chronic carpal tunnel syndrome. He opined that appellant was totally disabled and could not lift or carry.

In a letter dated July 16, 2010, OWCP proposed to terminate appellant's compensation benefits based on Dr. Elkin's January 20, 2010 report.

On August 5, 2010 appellant disagreed with Dr. Elkins description of her symptoms, noting that she continued to experience pain, numbness and weakness as a result of her accepted employment injury. Dr. Powell completed a progress note on July 30, 2010 and included appellant's statement that she continued to drop things. He diagnosed chronic carpal tunnel syndrome with polyneuropathy. Dr. Powell stated that appellant had carpal tunnel syndrome findings present. On August 3, 2010 Dr. Powell opined that appellant was totally and permanently disabled due to chronic bilateral carpal tunnel syndrome with decreased left grip strength and bilateral median nerve tenderness resulting in the dropping of objects and the need for wrist splints.

By decision dated August 20, 2001, OWCP terminated appellant's medical and wage-loss compensation benefits effective August 29, 2010. It found that the weight of medical opinion was represented by Dr. Elkins, the impartial specialist.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[4] After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[5] The right to medical benefits for an accepted

[4] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[5] *Id.*

condition is not limited to the period of entitlement for disability.[6] 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.[7]

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, 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 and resolve the conflict of medical evidence.[8] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[9] In situations where there are 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 on a proper factual background, must be given special weight.[10]

ANALYSIS

Appellant's attending physician, Dr. Powell found that she was totally disabled due to her accepted condition of bilateral carpal tunnel syndrome. The referral physician, Dr. Mulcahy, reviewed the statement of accepted facts and examined appellant. He found that she had no disability or medical residuals as a result of her accepted condition. Due to the conflict of medical opinion evidence, OWCP properly referred appellant to Dr. Elkins to resolve the conflict.

In a report dated January 20, 2010, Dr. Elkins provided an accurate factual and medical history based on the statement of accepted facts and a review of the medical record. He found that appellant's physical examination lacked objective finding with a negative Tinel's sign. Dr. Elkins attributed appellant's arm symptoms to nonphysiological causes and also that her motor strength testing was invalid. He concluded that appellant's accepted condition of bilateral carpal tunnel syndrome had resolved and diagnosed moderate symptom magnification and pain accentuation. Dr. Elkins found that appellant could return to her date-of-injury position with no restrictions.

The Board finds that Dr. Elkins' report was based on an accurate factual and medical background. Dr. Elkins provided physical findings in support of his conclusions that appellant's disability and medical residuals had ended by noting that appellant had no objective findings such as positive nerve conduction studies or positive Tinel's sign. He attributed appellant's current symptoms to symptom magnification and pain accentuation. As Dr. Elkins described

[6] *Furman G. Peake,* 41 ECAB 361, 364 (1990).

[7] *Id.*

[8] 5 U.S.C. §§ 8101-8193, 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006).

[9] *R.C.*, 58 ECAB 238 (2006).

[10] *Nathan L. Harrell,* 41 ECAB 401, 407 (1990).

appellant's lack of objective physical findings, he has provided a basis for his conclusions that appellant has no continuing medical residuals or disability as a result of her accepted employment injury. The Board finds that this report is entitled to special weight.

Following Dr. Elkin's report, appellant submitted additional medical evidence from Dr. Powell, who repeated the diagnosis of chronic carpal tunnel syndrome. He reiterated that appellant was totally disabled and could not lift or carry. Dr. Powell included appellant's statement that she continued to drop things, had decreased left grip strength and bilateral median nerve tenderness. The Board finds that Dr. Powell's reports are not sufficient to overcome the special weight attributed to Dr. Elkin's report. Dr. Powell did not provide a narrative report with a history of injury or that detailed physical findings. His notes rely on appellant's assertions of her tendency to drop objects and do not address the negative nerve conduction results, provide test result or address the findings of the functional capacity evaluation. Dr. Powell did not set forth physical findings or medical reasoning in support of his opinion. Moreover, he was on one side of the conflict that Dr. Elkins was selected to resolve. The additional reports from Dr. Powell are insufficient to overcome the weight accorded Dr. Elkins's report as the impartial medical specialist or to create a new conflict with it.[11]

The Board finds that the special weight of the medical evidence as represented by Dr. Elkins' well-reasoned report establishes that appellant's disability and medical residuals as a result of her accepted bilateral carpal tunnel syndrome have resolved. Dr. Elkin's report is sufficient to meet OWCP's burden of proof to terminate appellant's compensation and medical benefits.

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 and medical benefits effective August 29, 2010.

[11] *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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