United States Department of Labor
Employees' Compensation Appeals Board

D.R., Appellant	)	
and	)	**Docket No. 11-1631**
	)	**Issued: March 12, 2012**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, New York, NY, Employer	)	

Appearances:
Thomas S. Harkins, 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 July 6, 2011 appellant's counsel timely appealed the April 26, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which affirmed the termination of her compensation benefits. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective April 13, 2010.

FACTUAL HISTORY

Appellant, a 55-year-old information technology (IT) specialist, has an accepted occupational disease claim for bilateral carpal tunnel syndrome (CTS), which arose on or about

[1] 5 U.S.C. §§ 8101-8193.

May 23, 1996. On April 10, 2006 Dr. Salvatore R. Lenzo, a Board-certified orthopedic surgeon, performed a left wrist flexor tenosynovectomy and carpal tunnel release. Appellant underwent a right wrist flexor tenosynovectomy on November 20, 2006, also performed by Dr. Lenzo. She subsequently returned to work. On July 13, 2007 appellant sustained a traumatic injury, which OWCP accepted for bilateral hand and wrist tenosynovitis (xxxxxx430). OWCP later combined appellant's two bilateral upper extremity claims under claim number xxxxxx396. With respect to her bilateral CTS claim, OWCP accepted a recurrence of disability beginning April 24, 2009. Appellant received wage-loss compensation, and effective August 30, 2009, OWCP placed her on the periodic compensation rolls.

On March 12, 2010 OWCP issued a notice of proposed termination of benefits based on the September 21, 2009 and February 5, 2010 reports of Dr. Maria A. DeJesus, a Board-certified neurologist and impartial medical examiner (IME), who was selected to resolve a conflict in medical opinion between appellant's surgeon, Dr. Lenzo, and Dr. Edward Welland, a Board-certified neurologist and OWCP second opinion referral physician.[2]

Dr. DeJesus examined appellant on September 21, 2009 and diagnosed status post bilateral carpal tunnel releases. Apart from her complaints of pain in both wrists on Tinel's and Phalen's testing, appellant's examination revealed no motor or sensory deficits and normal reflexes in the upper extremities. Additionally, examination of the cervical spine revealed normal range of motion, no complaint of pain and no spasm. Dr. DeJesus found no indication of neurological disability, and advised there was no need for neurological care or diagnostic testing, no need for household help, and no need for special transportation or durable medical supplies. She found that appellant could perform all of her usual daily activities and work duties without restriction. In a February 5, 2010 addendum, Dr. DeJesus reiterated that there was no neurological disability and appellant could perform all of her work duties without restriction. Appellant reached maximum medical improvement and there was no need for additional diagnostic testing or neurological care.

Following its March 12, 2010 notice of proposed termination of benefits, OWCP received a February 26, 2010 cervical magnetic resonance imaging (MRI) scan that revealed posterior disc herniations at C4-5, C5-6 and C6-7. Appellant also submitted a March 26, 2010 narrative report and a duty status report (Form CA-17) from Dr. Lenzo. He indicated that appellant had chronic pain and spasms in both hands and required permanent restrictions with regard to everyday life and job duties as an IT specialist. Dr. Lenzo also reported that for the past two years appellant experienced pain in her neck that radiated to her shoulders. Because of muscle spasm and severe pain in her fingers and hands, appellant was constantly homebound and had been incapacitated since April 24, 2009. Dr. Lenzo advised that appellant should not do any

[2] In a report dated May 13, 2009, Dr. Welland diagnosed tenosynovitis and status post bilateral carpal tunnel releases. He also noted that from time to time appellant complained of neck pain radiating into her shoulders. However, on physical examination there was full range of motion of the neck and both shoulders. Dr. Welland advised that appellant's accepted condition had totally resolved and she had reached maximum medical improvement. He provided a June 3, 2009 work capacity evaluation (Form OWCP 5c) that indicated appellant was able to perform her usual job. In a report dated August 27, 2009, Dr. Lenzo indicated that appellant had been unable to perform her duties as an IT specialist since April 2009 due to chronic pain in her hands. He also reported recurring muscle spasm in both hands. The pain was not only in appellant's hands, but also across her shoulders and neck. Dr. Lenzo related appellant's current symptoms to her employment injury.

keyboarding, no lifting of heavy objects, no pulling and/or pushing, and no twisting. He related appellant's current symptoms to her employment injury.

OWCP also received a November 30, 2009 report and an April 2, 2010 disability certificate from Dr. Douglas A. Schwartz, a Board-certified physiatrist. When he first examined appellant on November 30, 2009, Dr. Schwartz obtained a history of bilateral CTS with an onset of symptoms in 1996. He also noted appellant had undergone bilateral carpal tunnel releases in 2006 and subsequently experienced a recurrence of symptoms in April 2009. Dr. Schwartz reported that over the past two years appellant noted a slow development of neck pain on both sides as well as pain radiating to the trapezius muscles and the anterior aspects of both shoulders. Appellant believed her neck and shoulder symptoms developed as a consequence of her inability to use her wrists and hands. Dr. Schwartz diagnoses included: (1) bilateral CTS, status post releases; (2) cervical derangement with radiculopathy and possible underlying herniated discs -- consequential in nature due to overuse; and (3) bilateral shoulder derangement with underlying impingement -- consequential in nature due to overuse. He recommended additional electrodiagnostic studies and MRI scans of the neck and shoulders. Dr. Schwartz indicated that appellant was totally disabled from any and all work. His April 2, 2010 disability certificate included an additional diagnosis of posterior disc herniations at C4-5, C5-6 and C6-7 with thecal sac impingement. Dr. Schwartz reiterated that appellant remained totally disabled from any type of work.

In a decision dated April 13, 2010, OWCP terminated wage-loss compensation and medical benefits finding that appellant's accepted bilateral hand and wrist conditions had resolved.

Appellant twice requested reconsideration. With the assistance of counsel, she questioned OWCP's reliance on Dr. DeJesus' opinion as a basis for terminating her benefits. Appellant argued that OWCP should have accepted her multilevel cervical disc herniations as employment related.

OWCP received additional medical evidence, which included Dr. Schwartz's March 4 and April 2, 2010 follow-up reports. Dr. Schwartz's diagnoses and disability assessment were consistent with his previously submitted report and disability certificate. He reiterated his request for bilateral shoulder MRI scans and electrodiagnostic studies.

Counsel submitted additional reports and treatment notes from Dr. Lenzo dated April 30 to December 17, 2010. Dr. Lenzo referenced appellant's recent cervical MRI scan the revealed multilevel disc herniations. He indicated that appellant had chronic pain, which emanated from the cervical spine to her hands. Dr. Lenzo further noted that appellant still had tenderness and pain within her hands. He recommended continued treatment, including acupuncture and physical therapy, and advised that appellant remained totally disabled. In an April 30, 2010 narrative report, Dr. Lenzo characterized appellant's current condition as "double crush syndrome," which represented the combination of her bilateral CTS and her cervical disc herniations at C4 through C7. He noted that appellant still had muscle spasms and pain radiating from her cervical spine into the upper extremities causing numbness and pain and difficulty using both hands. Because of her double crush syndrome, appellant was unable to do any keyboarding, heavy lifting, pushing, pulling or twisting. Dr. Lenzo also indicated that

appellant's symptoms were "related to the date of accident and [were] chronic in nature." In follow up appellant still had tenderness in the paracervical area, numbness in the median nerve distribution of both hands and pain radiating down into the hands. The November 2, 2010 treatment notes provided similar information, except there was no mention of pain radiating down into the hands. Dr. Lenzo noted negative Tinel's signs.

In a December 17, 2010 narrative report, Dr. Lenzo summarized his treatment of appellant dating back to February 2003, including the two surgeries he performed in April and November 2006. He also described her duties as an IT specialist, which he characterized as involving a lot of repetitive-type hand movements and repetitive lifting, pushing and pulling of heavy equipment. Dr. Lenzo indicated that, despite surgical intervention, appellant continued to experience pain. He also noted that her cervical MRI scan revealed disc herniations at C4 through C7. Dr. Lenzo reiterated his diagnosis of double crush syndrome, and the previously reported muscle spasms and pain radiating from the cervical spine into the upper extremities ultimately affecting appellant's hands. He noted that when he last examined her on November 2, 2010 she had negative Tinel's signs at the level of the carpal tunnel, but still had pain emanating from the paracervical area radiating into the upper extremities. Dr. Lenzo also reported restrictions in wrist extension and flexion to 30 degrees, restricted cervical rotation to the right, and associated muscle spasms in the paracervical area. He recommended acupuncture to address appellant's current symptomatology. Dr. Lenzo attributed her condition to her federal employment and advised that she could not return to her prior duties. According to him, appellant had not yet reached maximum medical improvement. Dr. Lenzo indicated that her condition could improve with other treatment modalities, such as pain management and acupuncture.

OWCP denied modification by decisions dated August 5, 2010 and April 26, 2011. In both instances, it noted that a cervical condition had not been accepted, and the medical evidence failed to establish a causal relationship between appellant's cervical disc herniations and her employment.

On appeal, counsel reiterated his challenge to the opinion of Dr. DeJesus as a basis for terminating benefits. He also argued that appellant's cervical disc herniations should have been accepted as employment related.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[3] Having determined that an employee has a disability causally related to her federal employment, OWCP may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[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, OWCP must

[3] *Curtis Hall*, 45 ECAB 316 (1994).

[4] *Jason C. Armstrong*, 40 ECAB 907 (1989).

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

establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.[6]

FECA 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 who shall make an examination.[7] For a conflict to arise the opposing physicians' viewpoints must be of "virtually equal weight and rationale."[8] Where OWCP has referred the employee to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[9]

ANALYSIS

Appellant's accepted conditions include bilateral CTS and bilateral hand and wrist tenosynovitis. OWCP terminated compensation and medical benefits effective April 13, 2010 based on the IME's September 21, 2009 and February 5, 2010 reports. On appeal, counsel argued that OWCP should have expanded the claim to include appellant's cervical disc herniations. He also argued that the IME based her opinion on an inaccurate history of injury given she had not considered appellant's cervical condition as employment related. Lastly, counsel argued that Dr. Lenzo's December 17, 2010 report established that appellant had ongoing employment-related residuals/disability.

OWCP properly found a conflict in medical opinion based on the opposing views of appellant's orthopedic surgeon, Dr. Lenzo, and Dr. Welland, a neurologist and OWCP referral physician. Based on this conflict in medical opinion, OWCP referred appellant to Dr. DeJesus to resolve the question of whether appellant had any ongoing injury-related residuals. Dr. DeJesus examined appellant on September 21, 2009 and diagnosed status post bilateral carpal tunnel releases. Apart from complaints of pain in both wrists, Dr. DeJesus' examination revealed normal reflexes in the upper extremities and no motor or sensory deficits. She found no evidence of neurological disability. Dr. DeJesus concluded that appellant did not require further medical treatment and that she could perform all of her work duties without restriction.

Counsel questioned Dr. DeJesus' opinion because she did not account for appellant's multilevel cervical disc herniations. As noted, OWCP has not accepted any cervical disc herniations as employment related. When Dr. DeJesus examined appellant on September 21, 2009, she noted normal range of motion of the cervical spine, no complaint of pain and no muscle spasm. Appellant did not receive a formal diagnosis of multilevel disc herniations until her February 26, 2010 cervical MRI scan, which was five months after examination by Dr. DeJesus.

[6] *Calvin S. Mays*, 39 ECAB 993 (1988).

[7] 5 U.S.C. § 8123(a); *see* 20 C.F.R. § 10.321; *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

[8] *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

[9] *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

Dr. DeJesus, the IME, provided a well-reasoned report based on a proper factual and medical history. She accurately summarized the relevant medical evidence, and relied on the latest statement of accepted facts, which included a description of appellant's duties as an IT specialist. Dr. DeJesus also provided detailed examination findings and medical rationale supporting her opinion. As such, her opinion as an IME was entitled to determinative weight.[10]

Dr. Schwartz and Dr. Lenzo both examined appellant after Dr. DeJesus. Their subsequent reports focused primarily on appellant's neck and shoulder complaints. Dr. Lenzo characterized appellant's cervical disc herniations and her bilateral CTS as a double crush syndrome. Although both physicians found appellant totally disabled, neither physician clearly delineated the effects of appellant's cervical disc herniations from the purported ongoing residuals of her accepted bilateral hand/wrist condition. Moreover, subsequent reports from a physician who was on one side of a medical conflict that has since been resolved would generally be insufficient to overcome the weight accorded the impartial medical examiner's report and/or insufficient to create a new medical conflict.[11] As a party to the original conflict, Dr. Lenzo's subsequent treatment notes and reports dated March 26, April 30, September 16, November 2 and December 17, 2010 are insufficient to overcome the weight properly accorded Dr. DeJesus' opinion. These additional reports are also insufficient to create a new conflict in medical opinion. The Board finds that OWCP properly terminated compensation and medical benefits on the basis of the weight of the evidence, as represented by the IME's September 21, 2009 and February 5, 2010 reports.

Where an employee claims that a condition not accepted or approved by OWCP was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.[12]

Dr. Lenzo and Dr. Schwartz both believed that appellant's cervical condition was employment related. However, neither physician clearly explained how appellant's multilevel cervical disc herniations were causally related to her accepted bilateral upper extremity hand/wrist condition or the employment factors/incidents that gave rise to those accepted conditions. Dr. Schwartz characterized appellant's cervical and bilateral shoulder condition as consequential in nature due to overuse. He appears to have relied exclusively on appellant's stated belief that her neck and shoulder symptoms developed as a consequence of her inability to use her wrists and hands as she once could.

Dr. Lenzo indicated in a January 10, 2007 treatment note that she had been seeing a "Dr. Kim who [did not] feel there [were] any significant findings with regard to the neck." This was less than two months after Dr. Lenzo had operated on appellant's right wrist with respect to her accepted bilateral CTS. If appellant did not have any significant cervical findings after her diagnosis of CTS and her related surgeries, it is highly unlikely that her previous repetitive work duties and/or her bilateral CTS caused or contributed to her current cervical condition.

[10] *Id.*

[11] *I.J.*, 59 ECAB 408, 414 (2008).

[12] *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

Dr. Lenzo did not address how the July 13, 2007 employment incident that gave rise to appellant's bilateral hand and wrist tenosynovitis similarly caused or contributed to the development of her multilevel cervical disc herniations. Based on Dr. Kim's findings, Dr. Lenzo continued to believe at the time that the predominate symptoms emanated from appellant's hands and not her neck. While there appears to have been a temporal relationship between appellant's accepted bilateral upper extremity conditions and her increased cervical and bilateral shoulder complaints, this does not establish that the conditions are causally related. Accordingly, appellant has failed to establish that her cervical condition is causally related to her accepted bilateral upper extremity condition.

CONCLUSION

OWCP properly terminated appellant's wage-loss compensation and medical benefits effective April 13, 2010.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 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