United States Department of Labor
Employees' Compensation Appeals Board

P.T., Appellant	)	
and	)	**Docket No. 12-855**
	)	**Issued: October 23, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 7, 2012 appellant filed a timely appeal from the October 20, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her compensation benefits effective October 5, 2011. 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.[2]

ISSUE

The issue is whether OWCP properly terminated appellant's compensation and medical benefits effective October 5, 2011.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record also contains a November 30, 2011 overpayment decision. However, appellant does not indicate that she is appealing this decision.

FACTUAL HISTORY

On May 6, 2010 appellant, then a 41-year-old receiving clerk, filed a traumatic injury claim alleging that on that date she became nauseous with severe pain in her left forearm due to repetitive work. She stopped work on May 6, 2010. On June 23, 2010 OWCP accepted appellant's claim for medial epicondylitis and muscle spasm of the left arm. Appellant was placed on the periodic rolls and received monetary compensation and benefits.

In a May 26, 2010 report, Dr. Anthony S. Horvath, an orthopedic surgeon, noted that appellant had "no orthopedic complaints." He stated that the only complaints she had were "twitching and numbness and tingling of her left forearm, which is up to the mid area of her left arm. [Appellant] also complains of painful range of motion of the left elbow." Dr. Horvath examined the left arm and found there was no swelling, deformity, erythema, or atrophy of the forearm muscles and biceps. There was no tenderness along the epicondyle this time. Dr. Horvath diagnosed peripheral neuropathy left upper extremity and opined that appellant needed no further orthopedic treatment. He noted that appellant was going to be evaluated by the neurologist who would advise as to the treatment plan.

In a June 14, 2010 report, Dr. David Steiner, a neurologist, noted that appellant had numbness in the left finger and elbow that occurred on her break at work on May 6, 2010 due to work activities which included pulling out mail with her left hand and scanning with her right arm. He identified pain in her left arm and elbow with numbness in her left finger. Dr. Steiner diagnosed: ulnar neuropathy, mononeuritis of upper limb and polyneuropathy. He advised that appellant was totally disabled and unable to work. Dr. Steiner continued to treat appellant. In a January 31, 2011 report, he noted that she had started using weights and had cramping that bothered her intermittently. Appellant related that she had trouble using her left arm and that any repetitive work was painful. Dr. Steiner noted that she was able to drive with difficulty. He advised that appellant was unable to work in any capacity due to her pain.

By letters dated January 26, 2011, OWCP referred appellant for a second opinion, together with a statement of accepted facts, a list of questions and the medical record to Dr. Edward Weiland, a Board-certified neurologist, and Dr. P. Leo Varriale, a Board-certified orthopedic surgeon.

In a February 7, 2011 report, Dr. Varriale reviewed appellant's history of injury and medical treatment. He examined the left elbow and found mild tenderness over the ulnar nerve, with tenderness and spasm in the anterior forearm. Range of motion was normal. Dr. Varriale advised that appellant had good strength of the biceps and triceps and diagnosed ulnar nerve neuropathy of the left elbow and a forearm strain. He explained that she had exhausted the benefit of physical therapy although he believed that pain management should be considered to resolve her ulnar radiculopathy. Dr. Varriale found no need for transportation assistance, household help, durable medical equipments or future diagnostic testing. He stated that appellant "still has residuals as a result of the medial epicondylitis and muscle spasm of the left arm. This is supported by tenderness and spasm of the forearm. [Appellant] cannot return to full duty at this time." Appellant had neuropathy of the ulnar nerve of elbow which should be included with her diagnosis as the objective evidence supported that it was work related. Dr. Varriale found that appellant could work limited duty for six hours a day with no repetitive

left arm use and no lifting of more than 30 pounds. He opined that the condition was temporary and should resolve in approximately two months. Dr. Varriale indicated that surgery was not warranted and her condition should resolve with pain management.

In a February 16, 2011 report, Dr. Weiland set forth appellant's history of injury and treatment. His findings included a detailed neurologic examination. Dr. Weiland determined the cognitive functions were intact; there was full range of motion of the neck, both shoulders and the lumbar spine region; and no vertebral body percussion, tenderness or paraspinous muscle spasm was appreciated. He found that sensation was intact to all primary and cortical modality testing, that there was no reproducible dermatomal or peripheral nerve sensory loss and no hypertrophic neuropathic changes in the distal aspects of the left upper extremity. Dr. Weiland concluded that appellant had a normal neurologic examination and opined that there was no reason why appellant was unable to work based upon his neurologic examination. He found no need for household help, durable medical equipment or special transportation services. Dr. Weiland opined that appellant reached maximum medical improvement.

Dr. Steiner continued to treat appellant and keep her off work. In his June 27, 2011 attending physician's report, he indicated that appellant had a good response to physical therapy which was helping to decrease her pain. Dr. Steiner indicated that appellant could not work.

On July 21, 2011 OWCP referred appellant for a second opinion medical examination with Dr. Leon Sultan, a Board-certified orthopedic surgeon.[3] In an August 11, 2011, report, Dr. Sultan described her history and examined appellant. He examined the left elbow and determined that there was no localized swelling, deformity or discolorization. There were no complaints on palpation medially or laterally, both upper arms measured 12 inches in circumference, the left elbow measured 10.25 inches in circumference and the left forearm measured 10.25 as opposed to the right arm measuring 10.5 in circumference. Dr. Sultan measured range of motion and provided findings to include: left elbow extension at 0 degrees; flexion to 150 degrees; and intact pronation and supination. Range of motion for the head and neck was normal. Dr. Sultan advised that his examination of appellant's left elbow did not confirm any residual epicondylitis or muscle spasm. The examination of the left elbow and cervical spine revealed normal findings without any neurological deficit. Dr. Sultan opined that appellant's accepted condition had resolved, there was no ongoing disability, no further treatment was warranted and she had reached maximum medical improvement with the capacity to perform full-time regular duty. He explained that the conditions of ulnar neuropathy, mononeuritis of the upper limb and polyneuropathy of the left hand were not present in his examination.

On September 14, 2011 OWCP proposed to terminate appellant's benefits based on the report of Dr. Sultan, which established that the residuals of the work injury of May 6, 2010 had ceased. Appellant was given 30 days to submit additional evidence or argument.

In a September 23, 2011 report, Dr. Steiner noted that appellant had received consistent physical therapy and medication therapy. He stated that she was diagnosed with bilateral carpal tunnel syndrome and cervical radiculopathy. Dr. Steiner explained that he was currently treating

[3] OWCP indicated that Dr. Varriale was not available for a follow up examination.

appellant and had seen improvement in her case such that she was able to return to work. He opined that "this patient is ready to go back to work but must continue her medication and also continue her therapy as well. The pain [appellant] is having is getting better as the time goes on but she will need to continue her therapy and medication." In a September 26, 2011 progress note and an attending physician's report of the same date, Dr. Steiner noted diagnoses that included ulnar neuropathy and medial epicondylitis. On the attending physician's report, he checked a box "yes" that appellant's condition was work related and also advised that appellant could return to regular duty on October 3, 2011.

In an October 3, 2011 telephone call memorandum, appellant indicated that she was ready to return to work and that she would contact OWCP to stop her compensation payments when she returned to work. On October 18, 2011 the employing establishment advised OWCP that appellant returned to full-time work on October 4, 2011.

By decision dated October 20, 2011, OWCP terminated appellant's compensation benefits effective October 5, 2011, the date appellant returned to full duty on the grounds that appellant had no continuing residuals of her employment injury.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden to justify modification or termination of benefits.[4] 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 has ceased or that it is no longer related to the employment.[5] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation 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]

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value, and its convincing quality. The opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given each individual report.[8]

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

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

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

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

[8] *See Connie Johns,* 44 ECAB 560 (1993).

ANALYSIS

OWCP accepted that appellant sustained medial epicondylitis and muscle spasm of the left arm. Appellant received monetary and medical benefits. She was referred to Drs. Weiland and Varriale and Sultan for second opinion evaluations. The Board finds that the weight of the medical evidence rested with the Board-certified neurologist, Dr. Weiland and the Board-certified orthopedic surgeon, Dr. Sultan. The Board notes that they provided thorough medical opinions based upon a complete and accurate factual and medical history. They performed a complete examination, reviewed the record and advised that appellant had no residuals of the accepted conditions or disability. Appellant was found capable of performing her usual employment and further medical treatment was not warranted.

The Board notes that appellant was initially referred to Dr. Varriale, a Board-certified orthopedic surgeon, on February 7, 2011. Dr. Varriale determined that appellant "still has residuals as a result of the medial epicondylitis and muscle spasm of the left arm" and that she could not return to full duty at that time. He advised that appellant's condition was temporary and should resolve in about two months. OWCP attempted to follow up with Dr. Varriale to clarify his opinion a few months later but he was unable. It then referred appellant to Dr. Leon Sultan, a Board-certified orthopedic surgeon.

In a August 11, 2011, report, Dr. Sultan described her history and examined appellant. He noted normal left elbow and cervical spine examination findings without any neurological deficit. These findings confirmed that appellant did not have any residual left arm epicondylitis or muscle spasm. Dr. Sultan also determined that his examination of the left elbow and cervical spine revealed normal examination findings without any neurological deficit. He opined that appellant's accepted condition had healed, that there was no ongoing disability, that no further treatment was warranted, and that she could perform full-time regular duty. Dr. Sultan explained that the conditions of ulnar neuropathy, mononeuritis of the upper limb and polyneuropathy of the left hand were not present in his examination.

In a February 16, 2011 report, Dr. Weiland noted appellant's history of injury and treatment and performed a detailed neurologic examination. He determined that she had a normal neurologic examination and opined that there was no reason why appellant was unable to work based upon his neurologic examination. Dr. Weiland opined that appellant reached maximum medical improvement.

Dr. Sultan and Dr. Wieland, both received appellant's history of injury and medical treatment. Their findings included a normal orthopedic and neurologic examination. Dr. Sultan and Dr. Wieland both determined that the work-related conditions had resolved and no further treatment was warranted. They provided rationalized medical opinion finding that appellant's accepted conditions had resolved and that she could return to regular full-time work. Dr. Sultan and Dr. Wieland's opinions constitute the weight of the medical evidence.

The Board notes that appellant's treating physician, Dr. Steiner advised in his September 23 and 26, 2011 reports that appellant could return to work. He checked a box "yes" in his September 26, 2011 attending physician's report that appellant's diagnosed conditions were work related. Dr. Steiner's opinion is of diminished probative value as he did not provide

sufficient rationale in support of his opinion on causal relationship. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value.[9]

On appeal, appellant generally disagrees with the decision on the basis that she believes further medical treatment in the form of therapy is warranted. However, as noted above, the medical evidence establishes that she no longer has any work-related residuals or disability.

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 in terminating appellant's compensation benefits effective October 5, 2011.

ORDER

IT IS HEREBY ORDERED THAT the October 20, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

[9] *Alberta S. Williamson*, 47 ECAB 569 (1996).