United States Department of Labor
Employees' Compensation Appeals Board

G.L., Appellant	)	
and	)	
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, NATIONAL OFFICE, IRS WORKERS' COMPENSATION CENTER, Richmond, VA, Employer	)	**Docket No. 13-19** **Issued: April 2, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 3, 3012 appellant filed a timely appeal from the August 30, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 on appeal is whether OWCP properly terminated appellant's compensation and medical benefits effective September 23, 2012.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 8, 1997 appellant, then a 30-year-old data transcriber, filed an occupational disease claim alleging that she experienced pain in her right upper extremity as a result of repetitive keying while in the performance of duty. OWCP accepted her claim for bilateral carpal tunnel syndrome and right lateral epicondylitis.[2] Appellant underwent a right carpal tunnel release on October 22, 1998 and a left carpal tunnel release on July 22, 1999. Effective August 17, 2004, she was reemployed in the private sector as a preschool teacher and continues to work as a preschool teacher.

By decision dated December 13, 2004, OWCP advised appellant that her entitlement to compensation had been reduced, effective August 17, 2004, based upon her actual earnings as a preschool teacher, which fairly and reasonably represented her wage-earning capacity.

In an August 17, 2005 report, Dr. James Billys, a Board-certified orthopedic surgeon, and treating physician, noted that appellant was followed for overuse syndrome involving the right hand and had increased right arm pain. He noted objectives that included soft tissue swelling of the wrist and hands and decreased sensation of the median nerve distribution and tenderness over the elbow and wrist. Dr. Billys provided appellant with a Medrol dose pack she would be referred to another physician as he was leaving the area.

By letters dated April 3, 2009, March 24, September 1 and 26, 2010, OWCP asked appellant to submit a report from her physician regarding her accepted conditions. No new evidence was received.

On April 2, 2012 OWCP referred appellant to Dr. Michael Bronshvag, a Board-certified neurologist, for a second opinion regarding appellant's current status and work ability.

In an April 15, 2012 report, Dr. Bronshvag noted appellant's history and conducted a physical examination. He found that her elbows were normal, the wrists showed slight discomfort, and mid and low back, hips, knees, legs and feet were unremarkable with no gross sensory or motor neurological deficits noted. Tinel's neuroma sign was not grossly present at either wrist, but the patient had discomfort on palpation of the arms and hands (the right more than the left). Dr. Bronshvag indicated that the electrodiagnostic studies were unremarkable. He explained that carpal tunnel syndrome and ulnar neuropathy were not demonstrated. Dr. Bronshvag indicated that physical findings were minimal and nonspecific and they did not definitely correlate with the continuing condition. He opined that appellant had other conditions which were uncertain and would likely be demonstrated after further work up. Dr. Bronshvag advised that he would conduct further testing.

In a May 14, 2012 supplemental report, Dr. Bronshvag explained that appellant did not demonstrate carpal tunnel difficulties. He indicated that the alternate possibilities included that her difficulties were inflammatory or represented cervical disc disease. Dr. Bronshvag advised that a magnetic resonance imaging (MRI) scan of the neck was normal. He indicated that he was awaiting the results of the bone scan and would report his findings. In a supplemental report

[2] On March 17, 1998 OWCP also accepted appellant's claim for a recurrence.

dated June 16 and 17, 2012, Dr. Bronshvag noted that his findings included that appellant's cervical MRI scan and electrodiagnostic studies were normal. He advised that her bone scans did not show any pertinent abnormalities of the arms or hands. Dr. Bronshvag opined that he did "not find a clinical-objective correlate for difficulty that the patient perceives. He advised that he currently identified no diagnosis or set of limitations related to appellant's described symptoms from 1997 to 2000.

On August 21, 2009 OWCP issued a notice of proposed termination of compensation. It proposed to terminate appellant's compensation on the basis that the weight of the medical evidence, as represented by the report of Dr. Bronshvag, established that the residuals of the work injury of August 22, 1997 had ceased.

On August 28, 2012 appellant indicated that she disagreed with Dr. Bronshvag's findings as she continued to suffer from her work-related disability. She requested a new second opinion examination.

In an August 30, 2012 decision, OWCP terminated appellant's compensation benefits effective September 23, 2012.

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 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.[4]

The Board has held that once a loss of wage-earning capacity is determined, it remains in place unless modified. *See Katherine T. Kreger,* 55 ECAB 633 (2004). In certain situations, if the medical evidence is sufficient to meet OWCP's burden of proof to terminate benefits, the same evidence may also negate a loss of wage-earning capacity such that a separate evaluation of the existing wage-earning capacity determination is unnecessary. OWCP's burden to demonstrate no further disability is effectively the same, irrespective of whether there is an existing determination in place finding loss of earning capacity. Case law may suggest that a threshold evaluation of the wage-earning capacity needs to be performed before there is a termination of benefits. The Board finds, however, that the burden is often substantially the same, the evidence is the same and the process of terminating benefits need only be done once. While a claimant may still have unrelated medical conditions or impairments, the medical evidence must establish that the employment-related disability and medical conditions no longer exist. *A.P.*, Docket No. 08-1822 (issued August 5, 2009).

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

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

ANALYSIS

In the instant case, OWCP accepted that appellant sustained bilateral carpal tunnel syndrome and right lateral epicondylitis. Appellant underwent a right carpal tunnel release on October 22, 1998 and a left carpal tunnel release on July 22, 1999.

The Board notes that OWCP requested medical evidence from appellant regarding her accepted conditions in letters dated April 3, 2009, March 24, September 1 and 26, 2010. No new medical evidence was received. On April 2, 2012 OWCP referred appellant for a second opinion examination with Dr. Bronshvag, a Board-certified neurologist.

In an April 15, 2012 report, Dr. Bronshvag provided examination findings which included that appellant's elbows were normal and the wrists showed slight discomfort. Dr. Bronshvag advised that the electrodiagnostic studies were unremarkable. He determined that carpal tunnel syndrome and ulnar neuropathy were not demonstrated and that physical findings were minimal, nonspecific and did not definitely correlate with the continuing condition. Dr. Bronshvag pursued additional testing to identify appellant's condition. In a May 14, 2012 supplemental report, he explained that appellant "did not demonstrate carpal tunnel difficulties." Dr. Bronshvag found her MRI scan of the neck was normal and that her bone scans did not show any pertinent abnormalities of the arms and/or hands. Dr. Bronshvag opined that he did "not find a clinical-objective correlate for difficulty that the patient perceives. " The Board notes that his findings support that appellant did not have residuals from the employment injury and that her accepted conditions had resolved.

The Board finds that Dr. Bronshvag's opinion is well rationalized and represents the weight of the medical evidence regarding appellant's accepted conditions. The Board also notes that there are no current reports from a treating physician supporting any continuing residuals of the accepted conditions. Because appellant no longer has residuals or disability related to her accepted employment conditions, OWCP properly terminated entitlement to wage-loss compensation and medical benefits effective September 23, 2012. Accordingly, OWCP's decision to terminate appellant's compensation and medical benefits shall be affirmed.

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 benefits effective September 23, 2012.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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