United States Department of Labor
Employees' Compensation Appeals Board

T.L., Appellant	)	
and	)	**Docket No. 13-97**
	)	**Issued: April 25, 2013**
U.S. POSTAL SERVICE, PADUCAH PROCESSING & DISTRIBUTION FACILITY, Paducah, KY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 18, 2012 appellant, through her attorney, filed a timely appeal from the September 24, 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.

ISSUES

The issues on appeal are: (1) whether OWCP properly terminated appellant's wage-loss compensation effective August 17, 2011; and (2) whether appellant's claim should be expanded to include the condition of lateral epicondylitis.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been on appeal before the Board.[2] In an April 20, 2010 decision, the Board found that the case was not in posture for decision regarding whether appellant established that she sustained an injury in the performance of duty. The Board found that the evidence established that she had de Quervain's syndrome in the left hand and that she engaged in repetitive activities at work using her hands. The Board also found that there was no dispute concerning the duties she performed as a casual employee, which involved lifting and hand movement throughout each workday, including loading and sweeping mail. The Board remanded the case for further medical development. The facts and history contained in the prior appeal are incorporated by reference.

In a July 15, 2010 report, Dr. James M. Donley, a Board-certified orthopedic surgeon and OWCP referral physician, diagnosed left de Quervain's disease and opined that it could be related to appellant's work. On August 5, 2010 OWCP accepted her claim for left de Quervain's syndrome. An authorized left wrist de Quervain's release was performed on September 3, 2010 by Dr. Daniel M. Tkach, a treating Board-certified surgeon. Appellant received compensation benefits.

In a January 27, 2011 report, Dr. Tkach noted that appellant returned for follow up as she still had pain in her left forearm. He advised that it seemed to involve mostly the proximal forearm but radiated up her arm and down towards her wrist. Dr. Tkach related that appellant reported that some of the pain in her left wrist had resolved but she still had trouble working due to pain in her forearm. He examined appellant and determined that there was no tenderness at the wrist, her Finkelstein test was negative and sensory function to the finger tips was intact. Dr. Tkach indicated that she had tenderness at the proximal lateral aspect of the left forearm just distal to the lateral humeral epicondyle, increased tenderness with resisted pressure on the middle finger and some with resisted pressure at the index finger. He indicated that there was no numbness of the forearm. Dr. Tkach opined that it appeared that appellant "probably has a lateral humeral epicondylitis (tennis elbow). A compression of the radial nerve proximally in the forearm is also a probability, though it is difficult at this juncture to distinguish between two problems. In either case, the focus of the problem can be fairly well localized with one finger tip, suggesting that steroid injections into this one are just distal to the lateral humeral epicondyle may give her some relief from the inflammatory problem in that area."

In a February 10, 2011 work capacity evaluation, Dr. Tkach indicated that appellant reached maximum medical improvement. He indicated that she did not have any restrictions from de Quervain's syndrome. However, Dr. Tkach indicated that appellant had symptoms of lateral humeral epicondylitis.

On July 11, 2011 OWCP issued a notice of proposed termination of compensation. It proposed to terminate appellant's compensation benefits on the basis that medical evidence, as represented by the report of Dr. Tkach, established that her accepted left de Quervain's syndrome

[2] Docket No. 09-1474 (issued April 20, 2010).

had resolved. Appellant was given 30 days to submit additional evidence. No additional evidence was received.

By decision dated August 16, 2011, OWCP terminated appellant's wage-loss compensation effective August 17, 2011.

In a report dated August 29, 2011, Dr. Tkach noted that he and appellant discussed her concerns regarding her claim. Appellant related to Dr. Tkach that she continued with complaints of pain in her upper extremity which radiated throughout her arm. Dr. Tkach noted that she was "very upset that I had reported that the de Quervain's syndrome was resolved and that [appellant] could return to work because she still has pain of her arm." Appellant denied that she ever got any improvement but when she described her pain it was focused toward the proximal forearm and she wore a tennis elbow brace on her forearm. Dr. Tkach explained that she had two problems; de Quervain's syndrome "which has been treated and resolved as demonstrated by a negative Finkelstein test"; and "the tennis elbow problem" which was "a separate issue which may or may not have been brought about as a result of [appellant's] injury at work. I could not give her a definite answer as to whether it was caused by her work but I pointed out that repetitive wrist and elbow motions are the overall cause of tennis elbow syndrome." He noted that appellant had a problem with lateral humeral epicondylitis and recommended steroid injections. Dr. Tkach opined that he could not say with confidence that an acute injury brought about the tennis elbow problem. He noted that the injury that appellant described" might be a contributing or inciting factor." Dr. Tkach advised that she "remained quite upset because she has been under the impression that no one believes that she is in pain." He indicated that, while appellant was having pain and discomfort at her elbow, he would like to begin the treatment of steroid injections.

Appellant's representative requested a telephonic hearing, which was held on December 7, 2011. During the hearing, appellant indicated that she had severe pain from the middle of her left arm, close to her hand and up to her shoulder, neck and heart. She indicated that the pain was constant. Appellant noted that she had not engaged in any employment since her termination in June 2008. She also indicated that the pain occurred after she underwent surgery for her de Quervain's syndrome. Appellant explained that she did not have the pain before the surgery.[3]

By decision dated February 15, 2012, an OWCP hearing representative affirmed the August 16, 2011 decision finding that OWCP met its burden of proof to terminate compensation benefits.

By letter dated July 20, 2012, appellant's representative requested reconsideration and submitted additional evidence. In a January 18, 2012 report, Dr. Tkach indicated that he was clarifying his previous correspondence. He noted that he initially saw appellant on June 23, 2008 for complaints of left thumb pain, which she had intermittently for several years. Dr. Tkach advised that he diagnosed left de Quervain's syndrome because she had a positive

[3] On December 12, 2011 appellant filed a new occupational disease claim for left arm pain. She indicated that she was having left arm and hand pain related to rotating her hands, heavy lifting with the left arm and repetitive work. Appellant stated that she had left upper arm pain after she had wrist surgery.

Finkelstein test and left wrist tenderness. He noted appellant's September 3, 2010 left wrist surgery and noted that, despite relief of her left thumb symptoms, she reported pain that radiated up into her forearm and that some of this pain radiated up into her left anterior chest. Dr. Tkach explained that, because those symptoms were closely related in time after surgery, it was believed that she had some pain radiating from the surgery area and splinting of the muscles proximally. He advised that appellant's symptoms gradually abated but she still complained of pain radiating into her left proximal forearm as well as down toward the wrist. Dr. Tkach determined that she had left lateral humeral epicondylitis (tennis elbow). He noted that appellant complained of both sides having similar symptoms and his physical examination revealed tenderness over the lateral humeral epicondyle on both sides. Dr. Tkach indicated that he wanted her to fully recover from her de Quervain's syndrome before going any further with the tennis elbow diagnosis.

Dr. Tkach explained that appellant recovered from her de Quervain's surgery but was unwilling to return to work because she still had pain in her proximal forearms. He recommended steroid injections for the tennis elbows but noted that those treatments were not authorized because appellant had recovered from her de Quervain's syndrome. Dr. Tkach explained that the lateral humeral epicondylitis is a different entity that may or may not have been present at the time of her initial presentation. He indicated that it was difficult to assess when there were multiple areas of pain. Dr. Tkach advised that lateral humeral epicondylitis was a result of repetitive stress that could be found in most manual labor jobs requiring gripping wrist and elbow motions, which could have occurred as a result of appellant's work, but could also occur from any other repetitive stress type activity whether on the job or not. He indicated that there were no objective tests other than physical examination to make the diagnosis of lateral humeral epicondylitis. Dr. Tkach opined that it was "probably masked by the de Quervain's problem. The lateral humeral epicondylitis still exists even after the surgery because the surgery was to treat the de Quervain's syndrome, which [appellant] certainly had and that operation does not address lateral humeral epicondylitis."

By decision dated September 24, 2012, OWCP denied modification of the prior decision. It also found that the evidence was insufficient to establish that a left elbow condition was causally related to work factors.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears 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]

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

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

ANALYSIS -- ISSUE 1

The Board finds that the weight of the medical evidence at the time of OWCP's August 16, 2011 termination decision was represented by appellant's treating physician, Dr. Tkach, a Board-certified orthopedic surgeon, who submitted a well-rationalized opinion based upon a complete and accurate factual and medical history finding that appellant's accepted left de Quervain's syndrome had resolved.

In his January 27, 2011 report, Dr. Tkach noted that appellant returned for follow up as she still had pain in her left forearm. He examined her and determined that there was no tenderness at the wrist, her Finkelstein test was negative and sensory function to the finger tips was intact. Dr. Tkach indicated that appellant had tenderness at the proximal lateral aspect of the left forearm just distal to the lateral humeral epicondyle, increased tenderness with resisted pressure on the middle finger and some with resisted pressure at the index finger. He indicated that there was no numbness of the forearm. Dr. Tkach opined that it appeared that appellant "probably has a lateral humeral epicondylitis (tennis elbow)." He explained that she probably had a compression of the radial nerve proximally in the forearm, but advised that it was difficult at this juncture to distinguish between the two problems. Dr. Tkach provided a work capacity evaluation on February 10, 2011 and opined that appellant had reached "maximum medical improvement." He indicated that she did not have any restrictions from de Quervain's syndrome. Although Dr. Tkach indicated that appellant had symptoms of lateral humeral epicondylitis, the Board notes that this was not an accepted condition.

Although appellant submitted additional reports from Dr. Tkach after her benefits were terminated, these reports continued to indicate that the accepted de Quervain's syndrome had resolved. Therefore, those reports are insufficient to establish any continuing disability or residuals of the left de Quervain's syndrome.[6]

In these circumstances, OWCP properly accorded the medical weight of the medical evidence to Dr. Tkach's January 27 and February 10, 2011 findings. Thus, the Board finds that Dr. Tkach's reports established that appellant ceased to have any disability causally related to the accepted employment, thereby justifying OWCP's August 17, 2011 decision which terminated appellant's medical and wage-loss compensation.

LEGAL PRECEDENT -- ISSUE 2

When an employee claims that he or she sustained an injury in the performance of duty, the employee must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The employee must also establish that such event, incident or exposure caused an injury. Once an employee establishes an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, which the employee

[6] *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004) (after termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant).

claims compensation, is causally related to the accepted injury.[7] To meet his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.[8] Medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.[9]

Neither the fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[10]

ANALYSIS -- ISSUE 2

OWCP denied appellant's request to expand her claim to include the condition of lateral epicondylitis. The issue is whether appellant has met the burden of proof to establish that her diagnosed conditions are causally related to her accepted injury. The Board finds that she has not met her burden of proof.

In support of her request to expand her claim appellant included reports from Dr. Tkach, who noted that, while her de Quervain's syndrome had resolved, she had lateral epicondylitis. In his January 18, 2012 report, Dr. Tkach clarified his treatment of her and explained the basis of his left de Quervain's syndrome diagnosis and her recovery from the September 3, 2010 surgery. He advised that she reported pains radiating up her forearm and continuing and that some of these pains radiated all the way up into her left anterior chest. Dr. Tkach explained that because those symptoms were closely related in time after surgery, it was believed that appellant was having some pain radiating from the area from surgery and splinting of the muscles proximally.

Dr. Tkach indicated that her symptoms gradually abated but she still complained of pain radiating into her left proximal forearm. He diagnosed left lateral humeral epicondylitis. Dr. Tkach advised that his examination revealed tenderness over the lateral humeral epicondyle on both sides. He explained that the lateral humeral epicondylitis may or may not have been present when he first treated appellant but it was difficult to assess due to multiple areas of pain. Dr. Tkach stated that lateral humeral epicondylitis resulted from repetitive stress that could be found in most manual labor jobs requiring gripping wrist and elbow motions, which could have occurred as a result of her work, but could "also occur from any other repetitive stress type activity whether on the job or not." He opined that it was "probably masked by the de Quervain's problem." The Board notes that Dr. Tkach has not given a definitive opinion with regard to the cause of the lateral epicondylitis as he couched his opinion in equivocal terms. The Board has held that speculative and equivocal medical opinions regarding causal relationship

[7] *See Leon Thomas*, 52 ECAB 202 (2001).

[8] *See Gary J. Watling*, 52 ECAB 278 (2001).

[9] *Albert C. Brown*, 52 ECAB 152 (2000).

[10] *Ernest St. Pierre*, 51 ECAB 623 (2000).

have no probative value.[11] Dr. Tkach did not explain the process by which particular work activities caused or aggravated bilateral lateral epicondylitis. The need for such an explanation is particularly important as appellant has not worked at the employing establishment since June 10, 2008.

The Board finds that appellant has not met her burden of proof to establish that she had any additional conditions causally related to her accepted work injury. Therefore, OWCP properly denied her request to expand her claim.

Appellant may submit evidence or argument with a written request for reconsideration 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 August 17, 2011. The Board also finds that she has not met her burden of proof.

[11] *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal; the opinion should be expressed in terms of a reasonable degree of medical certainty).

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 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