United States Department of Labor
Employees' Compensation Appeals Board

H.D., Appellant	)	
and	)	**Docket No. 13-1645**
	)	**Issued: December 6, 2013**
PEACE CORPS,VOLUNTEER SERVICES, Guyana, South America, 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 July 10, 2013 appellant filed a timely appeal from a June 26, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating 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.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's compensation effective June 26, 2013 on the grounds that she had no further employment-related disability; and (2) whether it properly terminated authorization for medical benefits.

FACTUAL HISTORY

On October 16, 2012 appellant, then a 32-year-old former Peace Corps volunteer, filed an occupational disease claim vascular thoracic outlet syndrome after working for six months in

[1] 5 U.S.C. § 8101 *et seq.*

Guyana, South America. She attributed her condition to performing computer work. Appellant stopped work on September 12, 2012. OWCP accepted her claim for brachial plexus lesions and paid compensation for disability beginning September 12, 2012.

In a form report dated October 3, 2012, Dr. Fritz J. Baumgartner, an attending Board-certified surgeon, diagnosed thoracic outlet syndrome. He checked "yes" that the condition was caused or aggravated by work factors.

On December 26, 2012 OWCP referred appellant to Dr. Steven M. Ma, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated January 17, 2013, Dr. Ma reviewed the medical evidence of record and provided detailed findings on examination. He diagnosed cervical disc disease and possible thoracic outlet syndrome. Dr. Ma asserted that the "diagnosis of a brachial plexus lesion is not established. In fact, it is difficult to specifically identify [appellant's] medical problem." Dr. Ma noted that electrodiagnostic studies were normal and that her current complaints included pain down the right leg. He found that appellant had no current condition as a result of performing six months of office work for the employing establishment. Dr. Ma related that x-rays and magnetic resonance imaging (MRI) scan studies showed a tortuous cervical spine or cervical spine laxity. He also found that appellant was hyperflexible. Dr. Ma attributed her arm symptoms to a cervical abnormality, which he found to be a "nonindustrial preexisting condition." He recommended against surgery for possible thoracic outlet syndrome due to appellant's hyperflexibility. Dr. Ma stated:

> "However, this examiner does not find any industrial causation for [appellant's] cervical disc disease, brachial plexus lesion or thoracic outlet syndrome. [Appellant] works a sedentary desk work. Her usual and customary work duties would not cause her to have any of these problems. In fact, [appellant] has been only doing this type of physical activity for [six] months when she developed her symptoms. This is too short of a period of time to expect one to have symptoms due to employment."

Regarding whether appellant had residuals of her brachial plexus lesions, Dr. Ma noted that appellant believed that she had thoracic outlet syndrome. He opined that she had no brachial plexus lesion based on the electrodiagnostic evidence.

On February 7, 2013 OWCP advised appellant of its proposed termination of her compensation and entitlement to medical benefits based on Dr. Ma's opinion that she had no current condition as a result of her employment.

In a February 18, 2013 response, appellant questioned why she was sent to an orthopedic surgeon for an evaluation given that her problem was vascular thoracic outlet syndrome. She asserted that she did not have a brachial plexus lesion and asked OWCP to correct its acceptance of her claim to include the proper condition.

Appellant submitted a September 3, 2012 report from Dr. Marc Margolis, a Board-certified thoracic surgeon, who discussed her history of bilateral aching, tingling and numbness of the arms, more on the right. Dr. Margolis stated that her symptoms and the findings on examination were "compatible with arterial thoracic outlet syndrome."

On September 12, 2012 the employing establishment medically separated appellant due to her thoracic outlet syndrome.[2]

On April 3, 2013 OWCP referred appellant to Dr. Reginald Abraham, a Board-certified thoracic surgeon, for a second opinion examination. In a report dated April 19, 2013, Dr. Abraham reviewed the history of injury and discussed her complaints of numbness and tingling in her bilateral upper extremities. On examination, he found "diminish[ed] pulses to both extremities when the neck is moved from side to side." Dr. Abraham advised that arteriograms and venograms showed thoracic outlet syndrome bilaterally. He related that appellant had reduced blood flow to the upper extremities and showed "exacerbated signs of arterial compromise and venous outflow compromise which may indeed result in neurological changes secondary to ischemic type symptoms with movement of her arms and upper torso." Dr. Abraham stated, "I think it is altogether possible that she has contributing thoracic outlet symptoms from a narrow outlet that giving her primarily vascular type findings which can easily explain her neurological symptoms as well." He recommended thoracic outlet surgery on the left side followed by physical therapy and possibly surgery on the right side depending on the results of the left-sided surgery. Dr. Abraham related:

> "This does not mean [appellant] does not have symptoms from other issues that relate to thoracic outlet syndrome. Objective findings include the arteriogram and venogram which show occlusive disease. In terms of providing any injury-related factors of disability, it certainly stands to reason that repetitive work using [appellant's] arms especially as they are raised or lowered would aggravate a condition like this that is likely preexisting."

In response to the question of whether appellant had a current condition due to her injury, Dr. Abraham related, "Again, I do not believe this is a brachial plexus injury. I do believe this is an outlet[-]related issue with the vascular compromise to the arms which can be compounded by repetitive use and exertion." He opined that the aggravation ceased when appellant stopped performing repetitive work. Dr. Abraham listed work restrictions that were permanent without corrective surgery. In an accompanying work capacity evaluation, he found that appellant could work three to four hours a day with restrictions.

By decision dated June 26, 2013, OWCP terminated appellant's compensation and authorization for medical benefits effective that date. It found that the opinions of the referral physicians Dr. Abraham and Dr. Ma represented the weight of the evidence and established that appellant had no further disability due to her brachial plexus lesions. OWCP further found that neither physician attributed appellant's thoracic outlet syndrome to her employment.

On appeal, appellant contended that she did not have brachial plexus lesions but instead vascular thoracic outlet syndrome as established by a September 6, 2012 venogram and arteriogram. She asserted that OWCP should correct her work-related diagnosis. Appellant argued that Dr. Abraham found that her work duties aggravated her thoracic outlet syndrome.

[2] In a report dated October 4, 2012, Dr. Baumgartner diagnosed symptomatic bilateral thoracic outlet syndrome and recommended surgery.

LEGAL PRECEDENT -- ISSUES 1 & 2

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[3] OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[5] 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.[6]

OWCP's procedures provides as follows:

> "When the DMA [district medical adviser], second opinion specialist or referee physician renders a medical opinion based on a SOAF [statement of accepted facts] which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether."[7]

ANALYSIS -- ISSUES 1 & 2

OWCP accepted that appellant sustained brachial plexus lesions causally related to factors of her federal employment. It paid her compensation for total disability beginning September 12, 2012. By decision dated June 26, 2013, OWCP terminated appellant's compensation and authorization for medical treatment after finding that the weight of the evidence, as represented by the opinions of the referral physicians, established that she had no further residuals of her employment injury.

The Board finds that OWCP improperly terminated appellant's compensation. On December 26, 2012 OWCP referred appellant to Dr. Ma and Dr. Abraham for second opinion examinations. In a report dated January 17, 2013, Dr. Ma diagnosed cervical disc disease and possible thoracic outlet syndrome. He opined that the electrodiagnostic evidence did not show a brachial plexus lesion. Dr. Ma asserted that appellant's work duties did not cause thoracic outlet syndrome, brachial plexus lesions or cervical disc disease. On April 19, 2013 Dr. Abraham also found that she did not have a brachial plexus lesion but instead had thoracic outlet syndrome.

[3] *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[4] *Gewin C. Hawkins*, 52 ECAB 242 (2001).

[5] *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

[6] *Id*.

[7] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

Consequently, neither physician determined that appellant was no longer disabled due to her brachial plexus lesions but instead found that she had not experienced such an injury. OWCP, however, accepted her claim for brachial plexus lesions. To the extent that the opinions of Dr. Ma and Dr. Abraham are outside of the statement of accepted facts, they are based on an inaccurate factual history and insufficient to meet OWCP's burden of proof.[8] OWCP did not address whether it was attempting to rescind acceptance of her brachial plexus syndrome based on the evidence; it did not inform appellant that it was contemplating rescission or actually rescinding acceptance in its termination decision. It must inform a claimant correctly and accurately of the grounds on which a rejection rests so as to afford the claimant an opportunity to meet, if possible, any defect appearing therein.[9] OWCP may not find that residuals of an employment injury have ceased by a particular date when the evidence upon which the decision rests tends to support that, in fact, the injury never occurred.[10]

Additionally, regarding whether appellant had a current condition or disability due to the accepted injury, Dr. Abraham advised that she had an outlet problem with a "vascular compromise to the arms which can be compounded by repetitive use and exertion." He opined that diagnostic studies revealed occlusive disease and on examination found a reduced pulse of both extremities with neck movement. Dr. Abraham recommended thoracic outlet surgery beginning on the left side. He further listed work restrictions. Dr. Abraham's opinion, while not fully definite or rationalized that appellant's employment duties caused or aggravated thoracic outlet syndrome and vascular insufficiency, is generally supportive and sufficient to warrant further development of the evidence. Once OWCP undertakes development of the medical evidence, it has the responsibility to do in a manner that will resolve the relevant issues in the case.[11] Upon return of the case record, OWCP should develop the evidence to determine whether appellant sustained thoracic outlet syndrome and vascular insufficiency caused or aggravated by factors of her federal employment.

CONCLUSION

The Board finds that OWCP improperly terminated appellant's compensation and authorization for medical benefits effective June 26, 2013 on the grounds that she had no further employment-related disability or need for medical treatment.

[8] *Id.*; *see also T.F.*, Docket No. 12-209 (issued June 18, 2012).

[9] *See John M. Pittman*, 7 ECAB 514 (1955).

[10] *See John L. Hofmann*, Docket No. 04-1802 (issued November 22, 2004).

[11] *See Melvin James*, 55 ECAB 406 (2004); *Mae Z. Hackett*, 34 ECAB 1421 (1983).

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2013 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 6, 2013
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