United States Department of Labor
Employees' Compensation Appeals Board

T.B., Appellant	)	
and	)	**Docket No. 12-285**
	)	**Issued: January 4, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Joseph E. Allman, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On November 14, 2011 appellant, through her attorney, filed a timely appeal from the May 18, 2011 decision of the Office of Workers' Compensation Programs (OWCP) which denied modification of decisions that terminated her 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.[2]

ISSUE

The issue is whether OWCP properly terminated appellant's compensation benefits effective June 3, 2008.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant previously appealed a nonmerit decision pertaining to claim number xxxxxx467. In a November 15, 2010 decision, the Board found that OWCP properly refused to reopen the claim for a merit review regarding whether she had work-related ganglion cysts. Docket No. 10-767 (issued November 15, 2010).

FACTUAL HISTORY

On or before January 19, 1996, appellant, a 29-year-old mail processing clerk, sustained occupational injuries to her hands and neck due to repetitive work duties, including sorting, taping and stamping mail. OWCP accepted the claim for bilateral wrist tendinitis, right carpal tunnel syndrome and permanent aggravation of her cervical spondylosis.[3] After returning to limited-duty work, it accepted a recurrence on February 23 and April 8, 2002.[4] Appellant did not return to work thereafter and was placed on the periodic compensation rolls.

In an October 3, 2005 report, Dr. Samuel J. Chmell, a treating Board-certified orthopedic surgeon, advised that appellant's accepted conditions were symptomatic and disabling. On July 27, 2006 he diagnosed multiple tendinitis, cervical spondylosis and right shoulder derangement. Dr. Chmell also found reduced cervical lordosis and motion with muscle spasm and tenderness. He opined that appellant was totally incapacitated.

On July 26, 2006 OWCP referred appellant to Dr. Edward Forman, a Board-certified orthopedist for a second opinion. In an August 31, 2006 report, Dr. Foreman noted appellant's history and findings. He advised that 2003 x-rays and magnetic resonance imaging (MRI) scan of both hands were normal. An August 1, 2003 electromyography (EMG) scan was normal while an August 13, 2003 cervical spine computerized tomography (CT) scan showed degenerative joint disease but no fracture. Dr. Foreman opined that appellant had no current aggravation of her hand or neck conditions due to her work injury. He explained that her conditions should have resolved over the last two years and four months. Dr. Forman noted that appellant had sarcoidosis that might cause overlapping symptomatology in her right arm. He opined that she was not capable of performing her date-of-injury job as a mail processing clerk but could perform a modified mail processing job previously offered the employer. Dr. Forman recommended a functional capacity evaluation (FCE) and opined that it was imperative to differentiate the work-related injury from her underlying scleroderma which was an exacerbating condition. On September 26, 2006 appellant underwent an FCE. In an October 12, 2006 report, Dr. Forman reviewed the FCE and found that she was capable of light duty. He recommended a gradual return to modified work, increasing hours over a four-week period gradually until eight hours per day was reached.

On October 2, 2006 Dr. Chmell noted that appellant had increased pain, especially in her neck, right shoulder and arm. He stated that the worsening pain occurred during the September 26, 2006 FCE where her hands and wrists were evaluated without consideration of her neck and right shoulder injuries. Dr. Chmell opined that this aggravated and worsened her neck and right shoulder pain and caused low back pain. He diagnosed multiple tendinitis, aggravated; cervical spondylosis, aggravated; right shoulder derangement, aggravated and consequential lumbar derangement.

[3] OWCP accepted the injuries as occurring on August 1, 1995 for the right wrist, January 1, 2000 for her left wrist condition and January 21, 2000 for her cervical condition.

[4] Appellant also was in a motor vehicle accident in 2001and had further injury to her neck.

On October 30, 2006 OWCP referred appellant to Dr. M.V. Makhlouf, Board-certified in hand surgery, for an impartial evaluation to resolve a conflict between Dr. Forman and Dr. Chmell about whether the accepted conditions were active and totally disabling. In a November 27, 2006 report, Dr. Makhlouf noted appellant's history and found nothing objective to support a continued condition or disability due to the accepted injury. He opined that "there is no work-related condition still active today. I did not find any documentation of such in reviewing the record." Dr. Makhlouf found that diagnostic tests including the CT scan, EMG/nerve conduction studies and MRI scan were negative. Wrist range of motion, substitution maneuvers and pinch tests performed on the radioulnar joint and wrist were nonrevealing. There was no evidence of stenosing tenosynovitis in any finger. Finkelstein's test was negative. There was no thenar atrophy and no palpable nodule in her arm. Dr. Makhlouf noted that appellant was diagnosed with sarcoidosis around 1995 for which she was prescribed prednisone. He explained that her present complaints were related to sarcoidosis, not her job. Dr. Makhlouf opined that "there is no condition relating to her employment." He reported no evidence of a typical carpal tunnel syndrome or one that was work related as two EMG studies showed no evidence of carpal tunnel syndrome. Dr. Makhlouf stated, although this was "accepted by OWCP," there was no strong evidence of it. Regarding her cervical spine, he opined that there was no evidence of a specific neck injury as appellant worked light duty from 1994 to 2002 with no undue demands. Dr. Makhlouf stated that there was no reason why tendinitis due to her work would persist over four years after she ceased working. He opined that there was no evidence of any work-related injury and noted that appellant's complaints could be due to "sarcoidosis." Dr. Makhlouf noted that sarcoidosis was chronic and would continue to interfere with her work. Appellant required work restrictions due to the nonwork-related sarcoidosis.

On August 15, 2007 OWCP proposed to terminate appellant's compensation based on Dr. Makhlouf's opinion that the residuals of the accepted conditions had ceased.

In a September 7, 2007 report, Dr. Chmell noted treating appellant for over 15 years and opined that she was "fully incapacitated" due to "all of her work-related diagnoses." He noted that it was "not just her hands and wrists, with being afflicted by multiple tendinitis that keeps her from working. It is also her neck and right shoulder and arm that affect her. It is the sum of all of these problems that cause her to be fully incapacitated for duty." Dr. Chmell stated that Dr. Makhlouf incorrectly found cervical spondylosis to be unsubstantiated. He asserted that Dr. Makhlouf did not have complete information, that OWCP accepted a cervical spondylosis aggravation and that February 14, 2001 x-rays showed cervical spondylosis.

In an October 29, 2007 memorandum, OWCP found that there remained a conflict between Drs. Chmell and Forman regarding appellant's cervical conditions. On November 16, 2007 it referred appellant to Dr. Mukund Komanduri, a Board-certified orthopedic surgeon, for an impartial medical evaluation regarding the extent of her work-related conditions and disabilities.

In a January 14, 2008 report, Dr. Komanduri noted appellant's history and examination findings. Reflexes in the triceps, biceps and brachioradialis were equal and symmetric and there were no motor or sensory deficits in the upper extremities. Appellant had full cervical spine range of motion. There was evidence of some right shoulder impingement, some anterior joint line discomfort, a negative Finkelstein's, a negative Tinel's and no thenar atrophy. Two-point

discrimination was intact and lumbar range of motion was full. Median nerve compression tests were negative. There was no evidence of elbow tenderness and other elbow testing was negative. Diagnostic testing which was normal except for cervical spondylosis on plain x-ray and some minimal degenerative joint disease on a cervical CT scan. Dr. Komanduri opined that there was no evidence of ongoing wrist, cervical spine or other injuries. He advised that appellant had sarcoidosis as well as uveitis. Dr. Komanduri explained that appellant "most likely has an autoimmune disorder that may be causing intermittent inflammatory conditions in her hand, wrist and elsewhere. However, I am not able to identify significant injury today. [Appellant] does not have a work-related condition that requires further care or treatment." Dr. Komanduri noted that appellant had an underlying condition, due to her sarcoidosis and autoimmune disorder that required restrictions but the restrictions were not work related. He opined that appellant did not have a current cervical condition and that her aggravation was temporary. The CT scan revealed almost no disease and no physical findings supported her alleged episode. Dr. Komanduri opined that any cervical aggravation would have ceased within three months. He opined that, as of May 2006, appellant could perform her regular mail processor duties although her preexisting condition might preclude her from working full duty.

In an April 4, 2008 letter, OWCP advised appellant that, after it proposed to terminate her benefits on August 15, 2008, it received evidence from her treating physician and determined that further referral to a referee examiner was needed. It noted that it did not apprise her that further referral to a referee was warranted. OWCP allotted appellant 30 days to provide further evidence after which her benefits would be subject to termination.

In an April 17, 2008 report, Dr. Chmell disagreed with Dr. Komanduri and opined that appellant's work injuries caused total disability. This included traumatic aggravation of cervical spondylosis, right shoulder derangement with rotator cuff tendinosis and tearing, and multiple tendinitis to both hands and wrists with carpal tunnel syndrome. Dr. Chmell noted a November 17, 1995 report finding that appellant had right median and ulnar neuropathy. He explained that her right shoulder conditions began when she had physical therapy for her work injury. Dr. Chmell noted diagnostic tests documenting appellant's conditions, opined that she did not have scleroderma and asserted that bias by Dr. Komanduri.

In a June 3, 2008 decision, OWCP terminated appellant's compensation benefits effective that date. It found that Dr. Makhlouf's report established that the accepted hand and wrist conditions had ceased and Dr. Komanduri's January 14, 2008 report established that the cervical condition had ceased.

On June 6, 2008 appellant requested a review of the written record. By decision dated January 9, 2009, an OWCP hearing representative affirmed the June 3, 2008 decision.

On May 25, 2009 appellant requested reconsideration and submitted medical evidence. This included reports from Dr. Chmell reiterating his disagreement with the referee examiners. An April 28, 2009 report from Dr. Debra A. Goldstein, a Board-certified ophthalmologist noted that appellant had chronic granulomatous iridocyclitis secondary to sarcoidosis which was in remission for years. In a March 2, 2009 report, Dr. Linus Ema, a Board-certified internist, opined that appellant's wrist tendinitis, strain, spondylosis were not due to sarcoidosis. He

indicated that she did not have scleroderma and this did not cause her disability. In an August 31, 2009 decision, OWCP denied modification of its prior decision.

On October 7, 2009 appellant again requested reconsideration. In a September 28, 2009 report, Dr. Chmell noted that she had permanent "multiple tendinitis and carpal tunnel syndrome of the hands and wrists as well as a cervical spine derangement/aggravation of degenerative disc disease of the cervical spine." He advised that, "when a condition is permanent just because inciting factors are stopped, does not mean that symptoms go away." Dr. Chmell opined that appellant continued having findings due to permanent work injuries. On October 5, 2009 Dr. Ema opined that appellant's pulmonary sarcoidosis was not work related. By decision dated January 13, 2010, OWCP denied modification of its prior decision.

On June 8, 2010 appellant requested reconsideration and submitted additional evidence. She asserted that there were multiple errors in OWCP's claim development. In an August 24, 2010 decision, OWCP denied modification of its prior decision.

On February 10 and April 4, 2011, appellant requested reconsideration. She reiterated her disagreement with the termination decision. In a December 30, 2010 report, Dr. Chmell diagnosed: cervical spondylosis; multiple tendinitis; carpal tunnel syndrome; bilateral wrist ganglion cysts and right shoulder derangement/rotator cuff tendinitis. He opined that the work-related conditions were permanent and disabling. Dr. Chmell explained that he treated appellant for "approximately 12 years. I am well acquainted with her work history and work activities." He opined that her right shoulder injuries and the ganglion cysts were due to her work injuries. Dr. Chmell noted that appellant's cervical spine spondylosis aggravation caused neck pain and pain radiating down her right arm. He opined that the condition was permanent. Dr. Chmell noted that appellant required ongoing treatment and indicated that it would not be safe for appellant or her coworkers if she attempted to return to her job.

By decision dated May 18, 2011, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[5] 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.[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] In cases where OWCP has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if

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

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

[7] 5 U.S.C. § 8123(a); *Shirley Steib*, 46 ECAB 309, 317 (1994).

sufficiently well rationalized and based upon a proper factual background, must be given special weight.[8]

ANALYSIS

OWCP found a conflict of medical opinion regarding the extent of ongoing residuals of the accepted conditions based upon the reports of Dr. Chmell, for appellant, who supported ongoing work-related conditions and disability and Dr. Forman, an OWCP referral physician, who opined that certain work-related conditions had resolved and appellant could return to work. As noted above, 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.[9]

Thus, OWCP properly referred appellant to Dr. Makhlouf, a Board-certified hand surgeon, for an impartial medical examination to resolve the medical conflict. In a November 27, 2006 report, Dr. Makhlouf noted appellant's history and determined that there were no objective findings to support a continued work-related medical condition or disability. He attributed appellant's condition to sarcoidosis. Dr. Makhlouf opined that she no longer had work-related carpal tunnel syndrome and indicated that there was no evidence to support a work-related cervical condition. He found the CT scan; EMG/nerve conduction studies and MRI scan were negative. Dr. Makhlouf related numerous findings for the wrist and arm that were negative. He indicated that appellant was diagnosed with sarcoidosis around 1995 for which she was prescribed prednisone and opined that her present complaints were related to sarcoidosis, not her employment. Dr. Makhlouf found that "there is no condition relating to her employment." He reiterated that there was no evidence of a typical carpal tunnel syndrome and explained that there was no reason why tendinitis due to appellant's work would persist over four years after she stopped work. Dr. Makhlouf noted that sarcoidosis was a chronic condition that would continue to interfere with her work. He stated that appellant required work restrictions due to the nonwork-related sarcoidosis. The Board finds that Dr. Makhlouf submitted a rationalized opinion with regard to the hand and wrist conditions and his report must be given special weight.[10]

Because OWCP determined that a medical conflict remained between Drs. Chmell and Forman regarding appellant's cervical conditions,[11] on November 16, 2007 it referred appellant to Dr. Komanduri, a Board-certified orthopedic surgeon, for an impartial medical evaluation to resolve whether the remaining work-related conditions were still active and totally disabling. Dr. Makhlouf had a specialty in hand surgery.

In a January 14, 2008 report, Dr. Komanduri noted appellant's history and examination findings. Reflexes in the triceps, biceps and brachioradialis were equal and symmetric and there

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

[9] *See supra* note 7.

[10] *See supra* note 8.

[11] This was reasonable in view of Dr. Makhlouf's specialty in hand surgery.

were no motor or sensory deficits identified in the upper extremities. Appellant had full cervical spine range of motion and diagnostic testing which was normal except for cervical spondylitis on plain x-ray and some minimal degenerative joint disease on a cervical CT scan. Dr. Komanduri indicated that the CT scan revealed almost no disease and physical findings were supportive. He advised that there was no medical evidence of ongoing cervical spine or other injuries. Dr. Komanduri also noted that appellant had sarcoidosis as well as uveitis, which "most likely has an autoimmune disorder that may be causing intermittent inflammatory conditions." He opined that she did not have a work-related condition that required further care or treatment. Dr. Komanduri opined that any cervical aggravation would have ceased within three months. He opined that, as of May 2006, appellant could perform her regular mail processor duties but indicated that her preexisting condition might preclude her from working full duty. The Board finds that Dr. Komanduri submitted a rationalized opinion with regard to the cervical conditions and his report must be given special weight.

The Board finds that the opinions of both impartial medical advisers constitute the weight of the medical evidence and are sufficient to justify OWCP's termination of benefits for the accepted conditions.

Dr. Chmell's continued medical reports reiterating his disagreement with the impartial medical examiners. He had been on one side of the conflict in the medical opinion that the impartial specialist resolved. These subsequent reports were insufficient to overcome the special weight accorded the impartial specialist or to create a new medical conflict.[12]

Appellant also submitted reports from Drs. Ema and Goldstein. However, these reports merely provided opinions that appellant had certain conditions without any explanation or objective findings to support how these conditions were related to her work. As such are of no probative weight.[13]

On appeal, appellant's representative made several arguments related to the medical conflict and noted the conclusions of appellant's physician. However, as found above the reports of the impartial medical examiners are accorded special weight and established that residuals of appellant's accepted conditions had ceased. The Board finds that OWCP met its burden to terminate her compensation benefits.

CONCLUSION

The Board finds OWCP properly terminated appellant's compensation benefits effective June 3, 2008.

[12] *Alice J. Tysinger*, 51 ECAB 638 (2000); *Barbara J. Warren*, 51 ECAB 413 (2000).

[13] *See William E. Enright*, 31 ECAB 426, 430 (1980).

ORDER

IT IS HEREBY ORDERED THAT the May 18, 2011 Office of Workers' Compensation Programs' decision is affirmed.

Issued: January 4, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board