United States Department of Labor
Employees' Compensation Appeals Board

E.W., Appellant	)	
and	)	**Docket No. 13-545**
	)	**Issued: May 17, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Newark, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 7, 2013 appellant, through her attorney, filed a timely appeal of a September 26, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision 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 to consider the merits of the case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 13, 2012 due to her accepted condition of carpal tunnel syndrome.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 9, 2008 appellant, then a 51-year-old mail handler filed an occupational disease claim alleging that she developed peripheral nerve damage from constant movement of her limbs and strain to her back. On March 11, 2009 OWCP accepted her claim for bilateral carpal tunnel syndrome.

Appellant's attending physician, Dr. Allen S. Glushakow, a Board-certified orthopedic surgeon, completed a note on October 5, 2010 and found that appellant had reduced grip strength on the left with positive Tinel's sign and Phalen's test. He diagnosed left median neuritis, lumbosacral radiculitis and peripheral polyneuropathy. Dr. Glushakow recommended surgery. Appellant underwent left carpal tunnel surgery in April 2011.

Appellant filed a claim for recurrence of disability on June 5, 2011 noting that she did not return to work after November 10, 2008 and that she sustained a recurrence on April 15, 2011. OWCP accepted this claim on June 15, 2011.

Dr. Glushakow completed a work capacity evaluation on June 29, 2011 which indicated that appellant could not work. He completed a similar form report on June 30, 2011 and indicated that she could work eight hours a day with restrictions. Dr. Glushakow listed appellant's restrictions as no operating a motor vehicle, no repetitive movements of the left wrist and no more than three hours of climbing. He indicated that she could lift, push and pull up to 10 pounds.

In a report dated June 30, 2011, Dr. Nazar H. Haidri, a Board-certified neurologist, found decreased grip strength in both hands and decreased pinprick in the medial distribution of both hands. He diagnosed bilateral carpal tunnel syndrome.

OWCP referred appellant for a second opinion examination with Dr. Kenneth Heist, a Board-certified orthopedic surgeon, on September 15, 2011. In a report dated October 12, 2011, Dr. Heist listed his findings as normal grip strength, full range of motion of the hands and no focal atrophy. He found that Phalen's test was negative bilaterally as was Tinel's sign. Dr. Heist diagnosed postoperative decompression of the left carpal tunnel and peripheral polyneuropathy of the upper extremities secondary to diabetes mellitus. He found no signs of carpal tunnel syndrome. Dr. Heist noted that appellant had temperature changes and hypersensitivity to touch of both forearms and hands which he attributed to her diabetic condition and not her employment. He opined that she could return to her full-duty date-of-injury position with no further treatment necessary.

In a letter dated November 3, 2011, OWCP proposed to terminate appellant's compensation and wage-loss benefits based on Dr. Heist's report. It allowed her 30 days to respond. Counsel responded on November 9, 2011 and objected to Dr. Heist's report on the grounds that he did not discuss diagnostic testing, did not discuss whether appellant's peripheral neuropathy was aggravated by her work duties and did not offer sufficient medical reasoning in support of his report.

In a note dated November 3, 2011, Dr. Glushakow found that appellant's left hand examination revealed negative Phalen's test and Tinel's signs. He found that right hand was within normal limits and diagnosed bilateral carpal tunnel syndrome.

In a letter dated December 20, 2011, OWCP stated that there was a conflict between Drs. Heist and Glushakow regarding the extent of appellant's disability. On January 4, 2012 it referred appellant for an impartial medical examination with Dr. Ian Fries, a Board-certified orthopedic surgeon.

Dr. Glushakow completed a note on January 19, 2012 and found decreased grip strength bilaterally with a positive Phalen's test in the right hand. He diagnosed bilateral carpal tunnel syndrome peripheral polyneuropathy, cervical radiculitis and lumbosacral strain with radiculitis as well as diabetes mellitus. Dr. Glushakow opined that appellant could not perform the duties of her date-of-injury position and found signs of right carpal tunnel syndrome. He stated that he disagreed with Dr. Heist's report.

Appellant underwent additional diagnostic testing including nerve conduction and electromyogram on February 16, 2012. These studies were normal with no indication of neuropathy including carpal tunnel syndrome, ulnar neuropathy, cervical radiculopathy or diabetic polyneuropathy.

In a report dated March 26, 2012, Dr. Fries provided appellant's history of injury and medical treatment. Appellant reported that surgery made her left hand worse, resulting in palmar pain along the incision with repetitive use. Dr. Fries recommended diagnostic studies. After reviewing the February 16, 2012 tests, on March 21, 2012, he reexamined appellant and found that the diagnostic studies failed to identify objective electrical evidence of neuromuscular pathology with no findings of carpal tunnel syndrome either on the left or right. Dr. Fries found mild dysesthesias from the mid-wrist to mid-palmar area on the left with no swelling. He noted appellant's ganglion over the dorsal radial left wrist. Dr. Fries found local tenderness when pressure was applied directly over the carpal tunnels bilaterally without pain radiation or paresthesias. He reported 65 degrees of volar wrist flexion and 70 degrees of dorsiflexion bilaterally. Dr. Fries described collapsing weakness in all muscles tested in the upper extremities but no fasciculations or atrophies. He found two-point testing of sensory discrimination was greater than 10 millimeters over all fingers, but that appellant could handle coins normally. Dr. Fries diagnosed diabetes mellitus, bilateral carpal tunnel syndromes, left wrist dorsal ganglion, possible diabetic peripheral neuropathy and chronic low back pain.

Dr. Fries stated that appellant did not have objective findings of bilateral carpal tunnel syndrome other than her left palmar surgical scar and that objective electrodiagnostic testing did not confirm a residual neuromuscular pathology. He further stated that she had nonphysiological findings including inconsistently claimed sensory loss over all 10 fingers, inappropriate responses to sham testing, no muscle atrophy and full weight bearing on her upper extremities. Dr. Fries concluded that appellant's carpal tunnel syndromes had objectively resolved and that any residual subjective symptoms were clouded by behavioral complaints and nonphysiological muscle and sensory testing. He opined that she did not require further treatment for bilateral carpal tunnel syndrome and was capable of resuming her date-of-injury position with regards to the accepted condition of bilateral carpal tunnel syndrome.

By decision dated April 13, 2012, OWCP terminated appellant's medical and wage-loss compensation benefits effective April 13, 2012 based on Dr. Fries' reports and review of diagnostic studies.

Dr. Glushakow completed notes on January 23 and March 27, 2012 and found reduced grip strength on the right with positive Tinel' signs and Phalen's tests on the right. He diagnosed bilateral carpal tunnel syndrome and right median neuritis.

Counsel requested an oral hearing before an OWCP hearing representative on April 19, 2012. In a note dated June 16, 2012, Dr. Haidri found positive Tinel's sign bilaterally, decreased grip strength on the left and decreased pinprick in the median distribution of both hands. He completed an electromyography (EMG) on June 16, 2012 and found the test demonstrated bilateral carpal tunnel syndrome and sensory motor polyneuropathy. Counsel appeared at the oral hearing on July 11, 2012 and argued that Dr. Haidri's report created an additional conflict with Dr. Fries.

By decision dated September 26, 2012, OWCP's hearing representative found that OWCP met its burden of proof to terminate appellant's compensation benefits based on Dr. Fries' detailed and well-reasoned report.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[2] After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[3] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[4] 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.[5]

When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination and resolve the conflict of medical evidence.[6] This is called a referee

[2] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[3] *Id.*

[4] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[5] *Id.*

[6] 5 U.S.C. §§ 8101-8193, 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006).

examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[7]

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[8]

ANALYSIS

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome on March 11, 2009. Appellant underwent a left carpal tunnel release in April 2011. Her attending physicians, Drs. Glushakow and Haidri continued to support her disability for work and her need for additional medical treatment due to her accepted condition. OWCP referred appellant for a second opinion evaluation with Dr. Heist, who opined that she had no disability or medical residuals due to her accepted bilateral carpal tunnel syndrome. The Board finds that there was a conflict of medical opinion between appellant's physician and OWCP's physician regarding both appellant's ability to work and her need for further treatment due to bilateral carpal tunnel syndrome. To resolve this conflict, OWCP properly referred appellant to Dr. Fries to determine the extent of her disability and medical residuals, pursuant to 5 U.S.C. § 8123(a).

In his March 26, 2012 report, Dr. Fries reviewed the statement of accepted facts. He requested and reviewed additional diagnostic studies finding no objective electrical evidence of carpal tunnel syndrome in either extremity. On physical examination, Dr. Fries found collapsing weakness in all muscles tested in the upper extremities but no atrophy. He noted that appellant reported two-point testing of sensory discrimination was greater than 10 millimeters over all fingers, but that she could handle coins normally. Dr. Fries concluded that she did not have objective findings of bilateral carpal tunnel syndrome on examination other than her left palmar surgical scar and that objective electrodiagnostic testing did not confirm a residual neuromuscular pathology. He further found that appellant had nonphysiological findings and no muscle atrophy. Dr. Fries opined that her accepted bilateral carpal tunnel syndrome had resolved and that she did not require further treatment for the accepted condition. He concluded that appellant was capable of resuming her date-of-injury position.

The Board finds that Dr. Fries' report was based on a proper factual background and provided detailed findings on electrodiagnostic testing and physical examination. Dr. Fries based his opinion that appellant had no residuals or disability due to her accepted bilateral carpal tunnel syndrome on her conflicting responses to testing and lack of objective findings. As his report was supported by medical findings and reasoning, the Board finds that his report is entitled to the special weight of the medical evidence as an impartial medical specialist and met OWCP's burden of proof to terminate appellant's compensation benefits.

[7] *R.C.*, 58 ECAB 238 (2006).

[8] *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

Appellant submitted a report from Dr. Haidri dated June 16, 2012, finding positive Tinel's sign bilaterally, decreased grip strength on the left and decreased pinprick in the median distribution of both hands. Dr. Haidri completed an EMG on that date and found bilateral carpal tunnel syndrome and sensory motor polyneuropathy. He did not address the inconsistent findings reported by Dr. Fries and did not offer any reasoning in support of his opinion that appellant continued to experience residuals of her accepted condition. Furthermore, as Dr. Haidri was on one side of the conflict that Dr. Fries resolved, the additional report from Dr. Haidri is insufficient to overcome the weight accorded Dr. Fries' report as the impartial medical specialist or to create a new conflict with it.[9]

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 to terminate appellant's compensation and medical benefits based on the detailed and well-reasoned report of Dr. Fries, the impartial medical specialist.

[9] *Dorothy Sidwell,* 41 ECAB 857, 874 (1990).

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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