

**United States Department of Labor
Employees' Compensation Appeals Board**

A.D., Appellant and U.S. POSTAL SERVICE, POST OFFICE, MIAMI SUNSET BRANCH, Miami, FL, Employer)))))))))))	Docket No. 13-1339 Issued: November 21, 2013
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Appearances:
 Harry James, Jr., 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 May 14, 2013 appellant, through counsel, filed a timely appeal of an April 9, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 is whether OWCP properly terminated appellant's compensation for wage-loss and medical benefits.

On appeal, appellant contended that the hearing representative did not properly apply the law and that the second opinion physician did not adequately address the pertinent facts. She argued that the hearing representative should not have affirmed OWCP's decision based on medical information and the test results from her treating physician.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 4, 2001 appellant, then a 40-year-old letter carrier, filed a traumatic injury claim alleging that, on that date, while she was opening a cluster postal box at a condominium, the box came out of the wall and fell. As a result thereof, she twisted her right arm and neck. The accepted diagnoses resulting from this injury include a cervical strain, right forearm strain, right lateral epicondylitis and aggravation of cervical spondylosis. OWCP paid compensation and medical benefits. Appellant returned to full-time light-duty work on January 15, 2001 and worked in this capacity until November 3, 2010 when the employing establishment notified her that limited duty was no longer available under the National Reassessment Process.

Appellant received treatment from Dr. Bruce D. Kohrman, a Board-certified neurologist, who in a July 7, 2010 report, listed his impressions as status post on-the-job injury, traumatic cervicgia/cervical sprain with multilevel degenerative disc and spondylotic changes most notable at C5-6 and C6-7; variable right and left arm pain and paresthesias and headache.

OWCP referred appellant for a second opinion examination. In an August 10, 2011 report, Dr. Brad K. Cohen, a Board-certified orthopedic surgeon, listed his diagnostic impressions as cervical strain, aggravation of preexisting cervical spondylosis, right forearm strain and right lateral epicondylitis. He noted current objective findings of tenderness in the midline and right paraspinal/trapezial/periscapular regions of the cervical spine and mild limitation of cervical motion with discomfort. Dr. Cohen noted no current objective findings to support a diagnosis of cervical strain and that the cervical strain had resolved. He noted that complaints of the cervical spine are likely due to the natural progression of cervical degenerative disc disease/spondylosis. Dr. Cohen noted that there were no objective findings to support a diagnosis of right forearm strain or right lateral epicondylitis and opined that both of these conditions had resolved. He further opined that appellant did not continue to suffer from other residuals from the January 4, 2001 work injury. In an August 31, 2011 addendum, Dr. Cohen indicated that she was no longer capable of performing her regular job and listed work restrictions.

In an October 11, 2011 report, Dr. Kohrman reiterated that appellant was suffering from traumatic cervicgia/cervical sprain with multilevel degenerative disc and spondylotic changes most notable at C5-6 and C6-7, bilateral upper extremity pain and paresthesias and headache. He indicated that the work injury was still present and had not resolved. Dr. Kohrman further opined that this was not an aggravation of a preexisting injury and that appellant had not returned to baseline. In regard to the possibility of returning to work and undergoing vocational rehabilitation, he indicated that would be fine, noting that she was previously performing a light-duty job but that she was told that light duty is no longer available. Dr. Kohrman also noted no objective findings to support a diagnosis of right lateral epicondylitis.

In order to resolve the conflict between Drs. Kohrman and Cohen with regard to whether appellant's employment-related injuries had resolved and whether she had the ability to work, OWCP referred appellant to Dr. Norman Turoff, a Board-certified orthopedic surgeon, for an impartial medical examination. In a March 13, 2012 report, Dr. Turoff conducted a physical examination and reviewed her objective tests. He opined that the conditions of cervical strain, right forearm strain and right lateral epicondylitis had resolved. With regard to the cervical spondylosis, Dr. Turoff opined that the January 4, 2001 injury did cause a temporary aggravation

in cervical spondylosis but that he would have expected the aggravation to have resolved after a period of approximately six months after which only baseline of progression of the underlying disease. He noted that he did not find any objective medical findings suggesting worsening due to the January 4, 2001 work injury. With regard to right lateral epicondylitis, Dr. Turoff noted no objective findings and opined that the condition had resolved, noting that right wrist dorsiflexion to resistance did not cause right elbow pain. He further opined that if appellant participated in a short-term work hardening physical therapy regimen for approximately two weeks, she would be capable of performing the regular duties of a letter carrier.

On April 25, 2012 OWCP proposed terminating appellant's medical benefits and compensation for wage loss. On May 31, 2012 it terminated her medical benefits and compensation for wage loss.

On June 12, 2012 appellant requested an oral hearing before an OWCP hearing representative.

In a November 28, 2012 report, Dr. Kohrman listed his impressions as status post on-the-job injury 2001; traumatic cervicalgia/cervical sprain with MRI scan documented multilevel degenerative disc and spondylotic changes most notable at C5-6 and C6-7; right and left arm pain and paresthesias -- improved on the left; and stable headache. He opined that appellant's compensation case should be upgraded to include cervical disc osteophyte complexes at C5-6 and C6-7, carpal tunnel syndrome and headaches, as these conditions are directly related to her injury of January 4, 2011. Dr. Kohrman noted that she had not returned to the baseline state that she was in prior to her January 4, 2001 injury.

At the hearing held on January 18, 2013, appellant described her employment duties and discussed her pain. Appellant's attorney argued that the medical evidence showed continuing residuals from her employment injuries.

By decision dated April 9, 2013, the hearing representative affirmed the May 31, 2012 decision.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's 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 OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

² *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

³ *J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988). See *I.R.*, Docket No. 09-1229 (issued February 24, 2010).

⁴ *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that he or she no longer has residuals of an employment-related condition, which would require further medical treatment.⁵

Section 8123(a) of FECA provides in pertinent part: 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.⁶ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background must be given special weight.⁷

ANALYSIS

OWCP accepted appellant's claim for cervical strain, right forearm strain, right lateral epicondylitis and aggravation of cervical spondylosis. It properly determined that a conflict in medical evidence had been created between the opinions of Dr. Kohrman, appellant's treating physician who opined that she had continuing residuals from his employment injury and the second opinion physician, Dr. Cohen, who opined that she did not continue to suffer from residuals from the January 4, 2001 employment injury. Accordingly, OWCP referred her to Dr. Turoff for an impartial medical examination, pursuant to 5 U.S.C. § 8123(a).

Dr. Turoff, after conducting a physical examination and reviewing appellant's objective tests, concluded that the conditions of cervical strain, right forearm strain and right lateral epicondylitis had resolved. He opined that the employment injury did cause a temporary aggravation of her cervical spondylosis, but that the aggravation would have been expected to resolve after a period of approximately six months after which she returned to baseline progression of his underlying disease. Dr. Turoff also noted that he saw no objective findings supporting continuing residuals from the employment injury. He specifically indicated that appellant's right lateral epicondylitis had resolved, noting that right wrist dorsiflexion to resistance does not cause right elbow pain.

The Board finds that Dr. Turoff's report is entitled to the special weight of the medical evidence. Dr. Turoff provided a detailed report reviewing the medical records and physical examination findings. He explained why he determined that appellant's accepted conditions had resolved. As Dr. Turoff's report is based on a proper factual history and provided findings and medical reasoning supporting his conclusion, the Board finds that OWCP met its burden of proof to terminate her compensation and medical benefits.

After Dr. Turoff's report, appellant submitted a November 28, 2012 report by her treating physician, Dr. Kohrman, wherein he continued to discuss residuals from her employment injury.

⁵ *B.K.*, Docket No. 08-2002 (issued June 16, 2009); *Kathryn E. Demarsh*, *id.*; *James F. Weikel*, 54 ECAB 660 (2003).

⁶ 5 U.S.C. § 8123(a); *see also R.H.*, 59 ECAB 720 (2008); *Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁷ *V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

However, Dr. Kohrman was on one side of the conflict that Dr. Turoff resolved and, thus, this report is insufficient to overcome the special weight of Dr. Turoff's report or to create a new medical conflict.⁸

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 9, 2013 is affirmed.

Issued: November 21, 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

⁸ See *S.J.*, Docket No. 09-1794 (issued September 20, 2010) (submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict). See also *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyahiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990).