United States Department of Labor
Employees' Compensation Appeals Board

N.G., Appellant	)	
and	)	**Docket No. 13-1230**
	)	**Issued: October 23, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 25, 2013 appellant, through her attorney, filed a timely appeal from the March 7, 2013 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.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective February 15, 2012 on the grounds that she had no residuals of her accepted work injury after that date.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

In August 2006, OWCP accepted that appellant, then a 26-year-old city carrier, sustained bilateral carpal tunnel syndrome due to the repetitive duties of her job. She stopped working on January 5, 2007 and received disability compensation on the periodic rolls.

Dr. Eric Freeman, an attending Board-certified orthopedic surgeon, performed right carpal tunnel release and tenosynovectomy surgery on January 5, 2007 and left carpal tunnel release and tenosynovectomy surgery on June 15, 2007. The procedures were authorized by OWCP. Dr. Freeman performed a right wrist tenosynovectomy with de Quervain release on November 14, 2008 and a left wrist exostectomy, tenosynovectomy and de Quervain release on March 19, 2010 which also were authorized.

Dr. Freeman examined appellant on July 28, 2010 and found that she was disabled as there was "no light duty available." He stated that he would "put her in for light duty" but that such work was not available. Dr. Freeman did not list appellant's work restrictions or explain the cause of her disability.

In a November 30, 2010 report, Dr. Freeman stated that appellant's "carpal tunnel has resolved" but noted that she was now developing "some fourth and fifth digit numbness." He indicated that she would only be able to work in a light-duty position and noted that her physical examination was positive for ulnar nerve entrapment at the wrist. In a December 21, 2010 report, Dr. Freeman again indicated that his findings for carpal tunnel syndrome were negative and requested an electromyogram of appellant's left arm to rule out any type of ulnar nerve entrapment. He stated that appellant was "currently disabled."

In brief reports dated January 11, August 1 and September 6, 2011, Dr. Freeman stated that appellant was to undergo diagnostic testing and remained disabled because there was no light-duty work available. In a September 22, 2011 report, he reviewed the findings of nerve conduction velocity (NCV) testing conducted on September 8, 2011 and acknowledged that the diagnostic study showed normal results.[2] Dr. Freeman noted that there was no change in the physical examination and stated that appellant was "capable of strict light duty only" with no repetitive grasping and no lifting more than 10 pounds.

In order to gain further understanding of appellants' medical condition, OWCP referred her to Dr. Leon Sultan, a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Sultan was provided with a statement of accepted facts and copies of the medical evidence of record.

In an October 11, 2011 report, Dr. Sultan detailed appellant's medical history and summarized the medical evidence of record. He noted that she reported that she no longer experienced numbness in either hand but that her hands felt "clumsy" and that she dropped objects. Appellant reported having a pins-and-needles feeling in her left fourth and fifth digits and bilateral thumb triggering, right greater than left, over the prior year. Upon physical

[2] The record contains a copy of the September 8, 2011 report which indicated, "This electrodiagnostic study of the upper extremities is within normal limits."

examination of appellant's hands and wrists, Dr. Sultan noted the surgical scars and indicated that there was a negative Tinel's test, a negative Phalen's test and a negative Finkelstein's test. There was no intrinsic muscle atrophy in appellant's hands and sensory testing of the hands was intact. Dr. Sultan stated that appellant had a firm grip and that the "pinch mechanism [was] well preserved" on both sides. Range of motion of appellant's wrists was found to be within normal range. Dr. Sultan did not detect any triggering of her thumbs.

Dr. Sultan further indicated in his narrative report that appellant's work-related condition of bilateral carpal tunnel syndrome had resolved through surgery and stated that appellant was capable of returning to her date-of-injury position as a city carrier on a full-time basis. He also noted that appellant's nonwork-related condition of de Quervain's syndrome had resolved through surgery. Dr. Sultan indicated that as her physical examination was unremarkable, she was able to work as a city carrier without restrictions. He posited that appellant's prognosis was favorable and that no additional testing or treatment was needed as she was at a point of maximum medical improvement. In an attached work restrictions form, Dr. Sultan marked a "yes" for the question of whether the worker was capable of performing his/her usual job.

In a January 11, 2012 letter, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits on the grounds that she ceased to have residuals of her accepted work injury. It informed her that the weight of the medical evidence regarding her work-related residuals rested with the well-rationalized opinion of Dr. Sultan, OWCP's referral physician. Appellant was provided 30 days from the date of the letter to submit evidence and argument challenging the proposed termination.

Appellant submitted a February 6, 2012 statement in which she asserted that she still had pain in both of her hands, that her right thumb had severe trigger finger and that her grip strength had been extremely depleted. She posited that her right hand condition would likely cause issues with racking the mail, a task which required repetitive motion for more than 20 to 30 minutes at a time. Appellant asserted that the weakened state of her left hand with its two locking fingers caused regular incidents of dropping items at work. She indicated that she needed to be properly examined before she returned to work.

Appellant submitted a January 23, 2012 report in which Dr. Freeman indicated that she was having some triggering in her left third and fourth digits. Physical examination revealed that her mobility was good, she was neurologically intact, her nerve conduction study was negative and there were no other changes in her examination. Dr. Freeman noted that appellant was capable of going back to light-duty work only with no repetitive grasping and no lifting more than 10 pounds.

In a February 15, 2012 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective February 15, 2012 on the grounds that she had no residuals of her accepted work injury after that date. It indicated that the reports of Dr. Freeman did not show that appellant continued to have residuals of a work-related condition.

Counsel submitted a legal brief in which he asserted that OWCP failed to accept all of appellant's work-related medical conditions, including her trigger finger condition. He argued that appellant continued to have residuals of her work-related condition. Counsel felt that an

attached August 15, 2012 report of Dr. Freeman was sufficiently rationalized to expand the list of appellant's conditions and, at the very least, would create a conflict in the medical opinion evidence between him and Dr. Sultan, thereby requiring referral of appellant for an impartial medical examination.

In his August 15, 2012 report, Dr. Freeman discussed the treatment of appellant's upper extremity conditions and stated that she potentially was going to have trigger finger release in the third, fourth and fifth digits of her left hand. He indicated that the triggering was considered secondary to the ongoing disability of her left wrist, which included the need for carpal tunnel release and de Quervain's release. Dr. Freeman posited that appellant had permanent restrictions of no lifting of more than 10 pounds or engaging in repetitive grasping with either hand and stated:

> "Based on my intimate knowledge of this patient and the medical records available for review and my history as having been taken from the patient, she has an occupational ongoing condition for both hands and wrist. [Appellant] had successful carpal tunnel release, however, now has triggering of the third, fourth and fifth digits on the left hand, which may require trigger finger release."

In a March 7, 2013 decision, OWCP affirmed its February 15, 2012 termination decision noting that the medical evidence submitted by appellant, including the August 15, 2012 report of Dr. Freeman, was of limited probative value on the relevant issue of the present case. It indicated that the trigger finger condition mentioned as causing disability by Dr. Freeman had not been established as work related. The weight of the medical evidence regarding work-related residuals continued to rest with the opinion of Dr. Sultan.

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[3] OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[4] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome due to the repetitive duties of her job. Dr. Freeman, an attending Board-certified orthopedic surgeon, performed right carpal tunnel release and tenosynovectomy on January 5, 2007, left carpal tunnel release and tenosynovectomy on June 15, 2007, right wrist tenosynovectomy with de Quervain release on November 14, 2008, and left wrist exostectomy, tenosynovectomy and de Quervain

[3] *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

[4] *Id.*

[5] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

release on March 19, 2010. The procedures were authorized by OWCP. Appellant stopped working on January 5, 2007 and received disability compensation on the periodic rolls.

OWCP terminated appellant's wage-loss compensation and medical benefits effective February 15, 2012 on the grounds that she had no residuals of her accepted work injury after that date. It found that the weight of the medical evidence regarding her work-related residuals rested with the well-rationalized opinion of Dr. Sultan, a Board-certified orthopedic surgeon who served as an OWCP referral physician.

The Board finds that the weight of the medical evidence with respect to appellant's work-related residuals is represented by the thorough, well-rationalized opinion of Dr. Sultan, the OWCP referral physician. The October 11, 2011 report of Dr. Sultan establishes that appellant had no disability due to her accepted employment injury after February 15, 2012.

In his October 11, 2011 report, Dr. Sultan noted that physical examination of appellant's hands and wrists revealed a negative Tinel's test, a negative Phalen's test and a negative Finkelstein's test. Sensory testing of the hands was intact and appellant had a firm grip and a well-preserved pinch mechanism. Dr. Sultan noted that the range of motion of appellant's wrists was found to be within normal range. He did not detect any triggering of her thumbs. Dr. Sultan further indicated that appellant's work-related condition of bilateral carpal tunnel syndrome and nonwork-related condition of de Quervain's syndrome had resolved through surgery and stated that she was capable of returning to her date-of-injury position as a city carrier on a full-time basis.

The Board has carefully reviewed the opinion of Dr. Sultan and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Sultan provided a thorough factual and medical history and accurately summarized the relevant medical evidence.[6] He provided medical rationale for his opinion by explaining that appellant's physical examination was essentially normal and that the evidence of record revealed that the accepted condition, bilateral carpal tunnel syndrome, had resolved after surgical intervention.

Appellant submitted a number of reports in which Dr. Freeman indicated that she continued to be disabled. However, these reports did not contain a rationalized opinion that she continued to have residuals of her accepted work injury. Dr. Freeman did not explain how appellant continued to have residuals of a work-related condition after February 15, 2012. In fact, he indicated that the only accepted work-related condition in the present case, bilateral carpal tunnel syndrome, had resolved. In a November 30, 2010 report, Dr. Freeman stated that appellant's carpal tunnel condition had resolved. In a September 22, 2011 report, he reviewed the findings of NCV testing conducted on September 8, 2011 and acknowledged that the diagnostic study showed normal results.

Before OWCP and on appeal, counsel argued that appellant continued to have residuals of trigger finger and other conditions believed to be related to work factors. However, these

[6] *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

conditions have not been accepted as work related and the medical evidence, including Dr. Freeman's reports, do not contain rationalized medical opinion relating them to work factors.

In an August 15, 2012 report, Dr. Freeman suggested that appellant sustained left trigger finger due to her OWCP-authorized surgery, which was responsible for her disability. However, he did not provide any explanation of how her surgeries could have resulted in a consequential trigger finger condition. Moreover, Dr. Freeman did not provide any indication that appellant's work activities might have caused or contributed to her trigger fingers. The Board notes that appellant did not appear to develop symptoms of a trigger finger or thumb condition until years after she stopped work in 2007. Appellant has not submitted rationalized medical evidence establishing that she sustained any work-related condition other than bilateral carpal tunnel syndrome and she did not submit medical evidence showing that any other condition should be accepted.[7]

For these reasons, OWCP properly terminated appellant's wage-loss compensation and medical benefits effective February 15, 2012.

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 wage-loss compensation and medical benefits effective February 15, 2012 on the grounds that she had no residuals of her accepted work injury after that date.

[7] The condition of de Quervain's syndrome also has not been accepted by OWCP and the medical evidence does not otherwise show that it was a work-related condition. Moreover, Dr. Sultan indicated in his October 11, 2011 report that this condition had resolved.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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