

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

C.C., Appellant)

and)

DEPARTMENT OF THE ARMY, SOUTHERN)
COMMAND, Fort Sam Houston, TX, Employer)

**Docket No. 14-823
Issued: August 1, 2014**

Appearances:

Capp P. Taylor, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 27, 2014 appellant, through her attorney, filed a timely appeal from the February 6, 2014 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.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 30, 2013 on the grounds that she had no residuals of her accepted work-related injury after that date; and (2) whether appellant met her burden of proof to establish work-related bilateral carpal tunnel syndrome.

FACTUAL HISTORY

On October 20, 1992 appellant, then a 52-year-old writer/editor, filed an occupational disease claim alleging that she sustained compression of the ulnar nerves at both elbows due to

¹ 5 U.S.C. §§ 8101-8193.

the performance of her repetitive duties overtime. Her work included typing, using a computer mouse and adapting to an uncomfortable, poorly adjusted workstation. OWCP accepted that appellant sustained bilateral ulnar nerve entrapment ulnar nerve entrapment at her elbows. Appellant received compensation on the periodic rolls.

In a March 6, 2013 report, Dr. Gordon Zuerndorfer, an attending Board-certified orthopedic surgeon, described appellant's medical history and reported findings on physical examination. He stated that her right elbow had a full range of motion and no tenderness. There was a negative Tinel's sign over the right cubital tunnel. Dr. Zuerndorfer reported similar findings for appellant's left elbow, but there was a positive Tinel's sign. The right wrist exhibited decreased strength and sensation in the ulnar nerve distribution, but no obvious atrophy of those muscles. There was an equivocal Tinel's sign over the ulnar nerve at the wrist, a negative Tinel's sign over the median nerve at the wrist and a negative Phalen's test at the wrist. Dr. Zuerndorfer reported similar findings for appellant's left wrist. He stated that an electromyogram (EMG) and nerve conduction velocity (NCV) from April 19, 2012 showed bilateral carpal tunnel syndrome moderately, but no evidence of right or left ulnar neuropathy. Dr. Zuerndorfer gave appellant a prescription for a Medrol Dosepak and asked her to frequently use heat on her hands and wrists.

In an April 4, 2012 report of a March 29, 2012 examination, Dr. William Dinenberg, a Board-certified orthopedic surgeon serving as an OWCP referral physician, reviewed appellant's medical history and reported physical examination findings. He noted that she was sensitive to light touch thumb through the small finger bilaterally and that she had two-point discrimination to five-millimeter thumb through small finger bilaterally. Appellant had a positive Tinel's sign at the cubital tunnel bilaterally and there was no atrophy of the thenar or hypothenar eminence. Dr. Dinenberg stated that she had positive Phalen's sign, positive Tinel's sign and positive carpal tunnel compression at the wrists bilaterally. Bilateral elbow range of motion was 0 to 140 degrees. Dr. Dinenberg advised that he could not answer any questions regarding work-related residuals until EMG and NCV testing was completed.

The findings of EMG and NCV testing obtained on April 19, 2012 showed moderate bilateral carpal tunnel syndrome but no electrical evidence of right or left ulnar pathology.

In an April 30, 2012 supplemental report, Dr. Dinenberg stated that the April 19, 2012 EMG and NCV testing represented objective evidence which showed moderate bilateral carpal tunnel syndrome but no electrical evidence of right or left ulnar pathology. Physical examination revealed a positive Tinel's sign of the cubital tunnel, positive Phalen's sign and positive carpal tunnel compression test at the wrists. Dr. Dinenberg stated that it did not appear that appellant had residuals of the accepted bilateral ulnar nerve entrapment of her elbows. Rather, it appeared that appellant's residuals were secondary to the nonwork-related condition of bilateral carpal tunnel syndrome. Dr. Dinenberg concluded that the accepted ulnar nerve condition had resolved and that she had no disability or need for medical care due to a work-related injury. Appellant had restrictions on wrist and elbow motions, but these were due to the nonwork-related condition of bilateral carpal tunnel syndrome.

In an April 19, 2013 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 bilateral ulnar nerve entrapment. The termination was based on the opinion of Dr. Dinenberg, the second opinion referral physician. OWCP provided appellant an opportunity to submit evidence and argument challenging the proposed termination action within 30 days of the letter. Appellant did not respond.

In a June 20, 2013 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective June 30, 2013. It found that she had no residuals of her accepted bilateral ulnar nerve injury after that date. The weight of the medical evidence rested with the well-rationalized opinion of Dr. Dinenberg.

In a November 6, 2013 affidavit, Dr. Dinenberg responded to a number of questions posed by appellant's counsel. He responded in the affirmative to a question regarding whether diagnostic testing showed that appellant's ulnar nerve neuropathies had resolved, but that there was evidence of bilateral carpal tunnel syndrome. Dr. Dinenberg noted that the observed bilateral carpal tunnel syndrome had the same cause, namely the repetitive motion work duties as performed in 1992, as the bilateral ulnar nerve neuropathies that were accepted as work related. He agreed that appellant had residuals from this work-related bilateral carpal tunnel syndrome.

In a February 6, 2014 decision, an OWCP hearing representative affirmed the June 20, 2013 termination decision. She found that the opinion of Dr. Dinenberg constituted the weight of medical evidence. Further, the evidence was not sufficient to establish that appellant sustained work-related bilateral carpal tunnel syndrome.

LEGAL PRECEDENT -- ISSUE 1

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.² OWCP may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ Its burden of proof includes the necessity of furnishing a rationalized medical opinion which must be based on a complete factual and medical background of the claimant and must be supported by an explanation of the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

ANALYSIS -- ISSUE 1

OWCP accepted that appellant sustained bilateral ulnar nerve entrapment at her elbows due to the performance of her repetitive work duties. It terminated her wage-loss compensation and medical benefits effective June 30, 2013 based on the reports of Dr. Dinenberg, a Board-certified orthopedic surgeon who served as a second opinion referral physician.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Dinenberg. The April 4 and 30, 2012 reports of Dr. Dinenberg

² *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

³ *Id.*

⁴ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

establish that appellant had no disability due to her accepted ulnar nerve entrapment after June 30, 2013.

In an April 4, 2012 report of a March 29, 2012 examination, Dr. Dinenberg discussed appellant's medical history and reported physical examination findings, but noted that he could not answer questions regarding work-related residuals until EMG and NCV testing was completed. He reviewed the findings of EMG and NCV testing obtained on April 19, 2012, which showed moderate bilateral carpal tunnel syndrome but no electrical evidence of right or left ulnar pathology. In an April 30, 2012 report, Dr. Dinenberg stated that the April 19, 2012 EMG and NCV testing represented objective evidence, which showed moderate bilateral carpal tunnel syndrome but no electrical evidence of right or left ulnar pathology at the elbows. Physical examination revealed a positive Tinel's sign of the cubital tunnel, positive Phalen's sign and positive carpal tunnel compression test at the wrist. Dr. Dinenberg indicated that it did not appear that appellant had residuals of the accepted condition of bilateral ulnar nerve entrapment at both elbows.

The Board has carefully reviewed the opinion of Dr. Dinenberg 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. Dinenberg's opinion provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.⁵ Dr. Dinenberg provided medical rationale for his opinion by explaining that appellant ceased to have objective signs of the accepted work injury, bilateral ulnar nerve entrapment at her elbows. He also explained that appellant's continuing problems were due to a nonwork-related condition.⁶

The Board therefore finds that, at the time of the June 30, 2013 termination of appellant's wage-loss compensation and medical benefits, the medical evidence of record justified such termination.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed are causally

⁵ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

⁶ The record also contains a March 6, 2013 report of Dr. Zuerndorfer, an attending Board-certified orthopedic surgeon, but this report does not contain any indication that appellant continued to have residuals of her accepted ulnar nerve condition.

related to the employment injury.⁷ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹

ANALYSIS -- ISSUE 2

The Board finds that the medical evidence is in need of further development regarding whether appellant sustained a work-related bilateral carpal tunnel syndrome. In a November 6, 2013 affidavit, Dr. Dinenberg responded to questions posed by appellant's counsel. He responded in the affirmative to a question regarding whether diagnostic testing showed that appellant's ulnar nerve neuropathies had resolved, but noted that there was evidence of bilateral carpal tunnel syndrome. Dr. Dinenberg observed that the bilateral carpal tunnel syndrome had the same cause, namely the repetitive motion work duties as performed, as the bilateral ulnar nerve neuropathies that were accepted as work related. He advised that appellant continued to suffer from this work-related bilateral carpal tunnel syndrome.

The Board notes that, while the November 6, 2013 report of Dr. Dinenberg is not completely rationalized, it indicates that appellant sustained bilateral carpal tunnel syndrome due to her repetitive work duties. The evidence is sufficient to require OWCP to further develop the medical evidence and the case record.¹⁰

The case will be remanded to OWCP for further evidentiary development regarding the issue of whether appellant sustained a work-related bilateral carpal tunnel condition. OWCP should prepare a statement of accepted facts and obtain a medical opinion on this matter. After completing this development directed by the Board, OWCP shall issue an appropriate decision on this matter.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ See 20 C.F.R. §§ 10.5(ee), (q); *Brady L. Fowler*, 44 ECAB 343, 351 (1992). *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift.

⁹ See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹⁰ See *Robert A. Redmond*, 40 ECAB 796, 801 (1989).

CONCLUSION

The Boards that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective June 30, 2013 on the grounds that she had no residuals of her accepted work-related injury after that date. The Board further finds that the case is remanded to OWCP for further development of the question of whether appellant met her burden of proof to establish a work-related bilateral carpal tunnel condition.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed with respect to OWCP's termination of appellant's wage-loss compensation and medical benefits and the decision is set aside and the case remanded for further action with respect to whether her carpal tunnel condition is employment related.

Issued: August 1, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board