United States Department of Labor
Employees' Compensation Appeals Board

K.L., Appellant	)	
and	)	**Docket No. 14-328**
	)	**Issued: July 11, 2014**
DEPARTMENT OF AGRICULTURE, RURAL HOUSING SERVICE, York, SC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 27, 2013 appellant filed a timely appeal from an October 28, 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 properly terminated appellant's wage-loss and medical benefits effective November 17, 2013.

FACTUAL HISTORY

On October 7, 1996 appellant then a 35-year-old community development assistant, filed a traumatic injury claim for bilateral carpal tunnel syndrome. OWCP adjudicated the claim as an occupational disease and accepted bilateral carpal tunnel syndrome. It authorized a right carpal tunnel release, which appellant underwent on December 9, 1996 and a left carpal tunnel release, which she underwent on May 23, 1997. OWCP granted her schedule awards for 10 percent

[1] 5 U.S.C. § 8101 *et seq.*

permanent impairment to the right arm on September 23, 1998 and for 10 percent impairment of the left arm on January 27, 1999.

Appellant was released to return to modified duty on October 6, 1997. She did not return to work at the employing establishment. Appellant's position was no longer available due to a reduction-in-force. She was placed on the periodic rolls and received wage-loss compensation for injury-related disability. Appellant underwent vocational rehabilitation services in 1999. On June 14, 2001 OWCP found that she was no longer totally disabled and reduced her compensation based upon her ability to perform the duties of the constructed position of child daycare worker. The record reflects that, thereafter, appellant held jobs with private employers.

Appellant continued to receive medical treatment for bilateral carpal tunnel symptoms. In an August 6, 2012 report, Dr. William G. McCarthy, an attending Board-certified orthopedic surgeon, noted that he had recently reevaluated her for complaints of carpal tunnel syndrome. Appellant had persistent symptoms in both hands that had not resolved with time and splinting. Dr. McCarthy advised that repeat nerve testing was scheduled to determine if there was any change in the findings. He noted that appellant was currently working her regular job and was not disabled. In an October 22, 2012 report, Dr. Neal Powell, an orthopedic surgeon and associate of Dr. McCarthy, noted that appellant had full cervical spine range of motion with pain. He found no definite encroachment signs. Dr. Powell advised that appellant had long-standing neck, shoulder and arm pain and was sent for an electromyogram (EMG) scan and nerve conduction studies, which were reported as normal with some subtleties in terms of the ulnar nerve as well as the abductor pollicis brevis. He diagnosed chronic paresthesias of the upper extremity with previous history of carpal tunnel release. In a December 18, 2012 report, Dr. McCarthy noted no change in appellant's carpal tunnel syndrome. He diagnosed possible carpal tunnel syndrome or mild cervical radiculopathy. Dr. McCarthy advised that appellant could work without restrictions.

On January 28, 2013 OWCP referred appellant to Dr. James Bethea, a Board-certified orthopedic surgeon, for a second opinion regarding her work-related conditions and ability to work. In a February 13, 2013 report, Dr. Bethea noted appellant's history of injury and treatment. Appellant was currently working at Wells Fargo as a mortgage quality analyst and her duties required that she spend considerable time on the computer researching mortgages. Dr. Bethea advised that she continued to have sleep problems with bilateral hand pain such that her hands caused her to awake several times a night. Appellant indicated that when her hands were numb, she would shake them for symptomatic relief. She noted that her pain was as intense as 10/10 or never better than 3/10. Dr. Bethea examined appellant and determined that she had a normal station and gait. Tinel's sign and Phalen's test maneuver were negative bilaterally. Opposition of the thumb to the little finger was intact bilaterally and sensation was normal. Dr. Bethea advised that x-rays of appellant's right wrist failed to reveal any significant osteoarthritis. He diagnosed chronic bilateral carpal tunnel syndrome. Dr. Bethea advised that there was no need for a functional capacity examination. He determined that there was no objective evidence that her bilateral carpal tunnel syndrome was still active.

Dr. Bethea reviewed the records of electrodiagnostic testing in 2000 and 2004, which were negative. He also noted that on October 22, 2012 Dr. Powell also found that electrodiagnostic testing was normal. Dr. Bethea advised that the only medical finding

supporting the diagnosis of bilateral carpel tunnel syndrome were appellant's symptoms. He opined that objectively her work-related symptoms had resolved. Dr. Bethea did not expect appellant to return to her prior job as a community development assistant, as it required extensive typing and heavy lifting. He completed a work restriction report and listed permanent restrictions on extensive typing or heavy lifting. Dr. Bethea limited repetitive movements of the wrists and elbow to four hours daily and restricted pushing, pulling, lifting and squatting to four hours per day, up to 25 pounds.

On February 25, 2013 OWCP requested clarification with regard to the nature and extent of appellant's disability. Dr. Bethea was requested to clarify whether the work restrictions were due to her federal employment or to her present employment in the private sector.

In a March 8, 2013 addendum, Dr. Bethea noted that the electrodiagnostic testing done in 2000 and 2004 was negative. He explained that appellant's physical examination revealed no evidence of carpal tunnel syndrome. Dr. Bethea advised that his work restrictions were based on the fact that she had bilateral carpal tunnel release and that she was experiencing "most likely tenosynovitis in both hands." He noted that the claim was only accepted for bilateral carpal tunnel syndrome.

On April 12, 2013 OWCP requested that Dr. Bethea clarify whether appellant's work restrictions were solely due to the bilateral tenosynovitis. In an April 19, 2013 addendum report, Dr. Bethea noted that the work restrictions were not done for prophylactic reasons but were due to her bilateral tenosynovitis.

In an August 8, 2013 report, Dr. McCarthy examined appellant and determined that she had neuropathy of the right hand. He indicated that he did not feel that any further treatment was warranted.

On August 28, 2013 OWCP proposed to terminate appellant's compensation. It found that the weight of the medical evidence, as represented by the reports of Dr. Bethea, established that the residuals of the work injury had ceased.

In a letter dated September 18, 2013, appellant disagreed with Dr. Bethea's findings. She continued to have symptoms of bilateral carpal tunnel syndrome with severe bilateral wrist pain. Appellant also noted limited grip strength and difficulty with activities of daily living, such as dropping objects, difficulty doing her hair and cooking.

In an October 28, 2013 decision, OWCP terminated appellant's wage-loss and medical benefits effective November 17, 2013. It found that the weight of medical evidence rested with Dr. Bethea and established that appellant no longer had residuals of the accepted bilateral carpal tunnel syndrome.[2]

[2] OWCP noted that as appellant no longer had any residuals of her accepted work-related conditions, formal modification of her prior loss of wage-earning capacity decision was not necessary.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[3] 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.[4]

ANALYSIS

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome. It authorized a right carpal tunnel release on December 9, 1996 and a left carpal tunnel release on May 23, 1997.

In a report dated August 6, 2012, Dr. McCarthy, appellant's treating physician, advised that appellant was recently reevaluated for her complaints of carpal tunnel syndrome. He noted that she had complaints of persistent numbness in both hands. Dr. McCarthy recommended nerve testing and noted that appellant was working and not disabled. He saw her on December 18, 2012 and advised that she could work without restrictions.

OWCP referred appellant for a second opinion examination to Dr. Bethea. In a February 13, 2013 report, Dr. Bethea noted that appellant's Tinel's sign and Phalen's test maneuver were negative bilaterally, sensation was normal and the opposition of the thumb to the little finger was intact bilaterally. He found no objective evidence that her bilateral carpal tunnel syndrome was still active. Dr. Bethea explained that electrodiagnostic testing in 2000 and 2004 was negative and that Dr. Powell, on October 22, 2012, also reported normal electrodiagnostic testing. The only findings supporting a diagnosis of bilateral carpel tunnel syndrome were her symptoms. Dr. Bethea opined that objectively appellant's work-related symptoms had resolved. He provided work restrictions. On February 25, 2013 OWCP requested clarification with regard to whether the work restrictions were due to appellant's federal employment. In a March 8, 2013 addendum, Dr. Bethea explained that electrodiagnostic testing done in 2000 and 2004 was negative and his physical examination revealed no evidence of carpal tunnel syndrome. He attributed the work restrictions to appellant's bilateral carpal tunnel releases and because she was experiencing "most likely tenosynovitis in both hands." On April 12, 2013 OWCP requested further clarification with regard to whether the work restrictions were prophylactic in nature or whether they were due to the bilateral tenosynovitis. In an April 19, 2013 addendum report, Dr. Bethea opined that the work restrictions were due to appellant's bilateral tenosynovitis.

The Board finds that Dr. Bethea's opinion is well rationalized and represents the weight of the medical evidence regarding appellant's accepted bilateral carpal tunnel syndrome. The Board notes that there are no current reports from a treating physician that find active residuals of appellant's accepted conditions. Appellant's physician, Dr. McCarthy, advised that appellant could return to work and was not disabled.

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

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

The Board finds that appellant no longer has residuals or disability related to her accepted employment condition. OWCP properly terminated entitlement to wage-loss and medical benefits effective November 17, 2013.[5] Accordingly, its decision to terminate appellant's compensation benefits is affirmed.

CONCLUSION

The Board finds that OWCP met its burden of proof in terminating appellant's benefits effective November 17, 2013.

ORDER

IT IS HEREBY ORDERED THAT the October 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[5] Having issued a formal wage-earning capacity determination on June 14, 2001, such decision typically remains in place unless it is modified. *See Katherine T. Kreger*, 55 ECAB 633 (2004). However, in certain situations, if the medical evidence is sufficient to meet OWCP's burden of proof to terminate benefits, the same evidence may also negate a loss of wage-earning capacity such that a separate evaluation of the existing wage-earning capacity determination is unnecessary. *See A.P.*, Docket No. 08-1822 (issued August 5, 2009). The Board finds that the medical evidence from Dr. Bethea discharges that burden.