United States Department of Labor
Employees' Compensation Appeals Board

U.G., Appellant	)	
and	)	**Docket No. 14-355**
	)	**Issued: June 3, 2014**
U.S. POSTAL SERVICE, POST OFFICE, West Sacramento, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 2, 2013 appellant filed a timely appeal from the July 15, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her disability claim. 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 appellant's disability on April 17 and 18, 2013 was causally related to an accepted medical condition.

FACTUAL HISTORY

On June 23, 1989 appellant, a 31-year-old distribution clerk, filed an occupational disease claim alleging that the tendinitis in her shoulders was causally related to the physical demands of

[1] 5 U.S.C. § 8101 *et seq.*

her position. OWCP accepted her claim for bilateral rotator cuff syndrome, bilateral tendinitis of the wrists and elbows and thoracic outlet syndrome.

On a prior appeal of this case,[2] the Board found that appellant was not entitled to receive disability compensation when she was terminated for cause effective February 3, 1997. Appellant was since accommodated with full-time light duty. OWCP approved nerve block injections for pain.

In 2009 OWCP terminated continuing medical coverage for the accepted tendinitis of the wrists and elbows. A hearing representative affirmed the termination of medical benefits in a February 22, 2010 decision.

On November 2, 2010 Dr. Michael M. Bronshvag, a Board-certified neurologist and second opinion physician, found that appellant did not demonstrate objective findings of thoracic outlet syndrome. With arms at 90 degrees, adequate for documenting thoracic outlet syndrome, appellant's radial pulses were full and did not demonstrate any vascular compromise of the thoracic outlet type.

Dr. Bronshvag found that appellant did demonstrate bilateral shoulder capsulitis and the possibility of inflammatory-irritative symptoms relevant to perineural steroid injections. While thoracic outlet syndrome *per se* did not preclude abduction and forward flexion past 90 degrees, shoulder capsulitis did cause impaired abduction. Dr. Bronshvag recommended against further injections around the brachial plexus, as steroid injections close to nerves and plexi caused inflammatory changes. "I do not believe that injections around the brachial plexus are indicated or warranted at this time." He believed that appellant should be treated by either an orthopedic surgeon or a physiatrist skilled in the treatment of shoulder capsulitis. "Passive modalities like perineural injections are to be discouraged. Appropriate range of motion type of efforts are to be encouraged."

Although OWCP expressed some reservation in light of Dr. Bronshvag's report, it continued to approve nerve block injections and pay compensation through 2012 for each resulting two-day period of disability.

On April 12, 2013 Dr. Wladislaw V. Ellis, a neurologist specializing in thoracic outlet syndrome, requested authorization for nerve block injections (brachial plexus, cervical plexus, other peripheral) to be performed on April 17, 2013. An April 17, 2013 disability note from Dr. Ellis took appellant off work on April 17 and 18, 2013 "secondary to nerve blocks."

On April 18, 2013 appellant claimed eight hours of wage-loss compensation for both April 17 and 18, 2013. She noted "Dr. visit [treatment]."

OWCP deferred authorization for the injections pending further medical evidence, as the last report on file was from 2012. "We have not received a comprehensive medical report in this file for many years."

[2] Docket No. 98-1871 (issued October 17, 2000).

On April 23, 2013 OWCP notified appellant that the record was insufficient to support her claim for compensation because there was no medical report to document the treatment provided. It requested additional evidence: "Please have your attending physician submit an updated progress medical report to include the date of your most recent examination and treatment plan."

OWCP received an April 17, 2013 report from Dr. Ellis who explained that he continued to treat appellant when her symptoms flared with ongoing neuropathic pain emanating from the brachial plexi and radiating proximally and distally. Dr. Ellis noted that appellant continued to benefit from the interventions and presented that day for another treatment. He advised that her examination corroborated the need for continued treatment. "Of note, appellant clearly needs two days off work as a consequence of today's perineural blocks." Dr. Ellis described the procedures: He blocked the upper and lower trunks of the brachial plexi perineurally, supraclavicularly, bilaterally and C7 paravertebrally at the cervical plexi bilaterally.

On May 7, 2013 Dr. Ellis again requested authorization of the April 17, 2013 procedures.

In a decision dated July 15, 2013, OWCP denied wage-loss compensation from April 17 to 18, 2013. "As of this date, we have not received the medical report requested in our April 23, 2013 [letter] from your primary care physician (an orthopedic or a physical medicine specialist) addressing our concerns regarding continuing medical treatment and review of Dr. Ellis' findings/reports who is treating you on an ongoing basis relevant to your actual physical findings (capsulitis)." OWCP found that, for the dates of disability claimed, the evidence failed to support disability or a diagnosis related to the accepted conditions.

On appeal, appellant notes that Dr. Ellis is a specialist in thoracic outlet syndrome and has treated her since 1996. She states that the nerve block injections are the only treatment that allows her to function at work and at home.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[3] A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5]

For each period of disability claimed, appellant has the burden of proving that she was disabled for work as a result of her accepted employment injury.[6] Whether a particular injury

[3] 5 U.S.C. § 8102(a).

[4] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *David H. Goss*, 32 ECAB 24 (1980).

causes an employee to become disabled for work, and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial evidence.[7]

ANALYSIS

OWCP accepted that appellant developed an occupational disease causally related to the performance of her duties as a distribution clerk. It accepted the claim for the condition of thoracic outlet syndrome. OWCP has not terminated compensation for thoracic outlet syndrome. Appellant remains entitled to wage-loss compensation for any disability causally related to that accepted medical condition.

For many years OWCP authorized Dr. Ellis, the attending specialist in thoracic outlet syndrome, to treat appellant. It has regularly authorized nerve block injections and paid wage-loss compensation for the resulting two-day period of disability.

In its April 23, 2013 request for additional information, OWCP asked appellant to have Dr. Ellis submit an updated progress report to include the date of appellant's most recent examination findings as well as a treatment plan. Dr. Ellis complied. He responded on April 17, 2013 by explaining that appellant's examination that date corroborated the need for continuing treatment of the neuropathic pain emanating from the brachial plexi. Dr. Ellis described in some detail the procedure he performed that day, which he explained gave appellant relief from her ongoing neuropathic pain. He concluded that, as a result of the treatment administered, appellant needed two days off to recover.

The record supports that Dr. Ellis treated appellant on April 17, 2013 for the accepted condition of thoracic outlet syndrome, and that such treatments resulted in a two-day period of disability for work.

If OWCP wanted Dr. Ellis to provide a more comprehensive report, one that included objective findings on physical examination, an explicit diagnosis of the medical condition for which he was treating appellant, or an explanation of the reason such treatments continued to remain necessary, it should more clearly request from Dr. Ellis the specific information it requires.

The July 15, 2013 decision mentioned the condition of capsulitis. It appeared to suggest that appellant's "actual physical findings" were those of capsulitis, as opposed to the accepted thoracic outlet syndrome. OWCP did not explain the reason for this, but it appears that OWCP was referring to the November 2, 2010 report from Dr. Bronshvag, the second opinion neurologist, who found that appellant did not demonstrate objective findings of thoracic outlet syndrome, but did demonstrate bilateral shoulder capsulitis and the possibility of inflammatory-irritative symptoms relevant to perineural steroid injections.

OWCP did not request that Dr. Ellis directly address Dr. Bronshvag's findings or concern over further perineural injections. It should develop the medical evidence accordingly. Thoracic

[7] *Edward H. Horton*, 41 ECAB 301 (1989).

outlet syndrome remains an accepted medical condition for which appellant is entitled to compensation. Appellant has no burden to establish that she continues to suffer from this medical condition. Her burden is to establish that her disability on April 17 and 18, 2013 was causally related to treatment of the accepted medical condition.

Section 8103(a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician that the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of any disability or aid in lessening the amount of any monthly compensation.[8] OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to effect the purposes specified in FECA.[9] The only limitation on OWCP's authority is that of reasonableness.[10]

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted. OWCP denied authorization for the April 17, 2013 treatment and compensation for the resulting two days of disability without sufficiently developing the medical evidence. The Board will set aside the July 15, 2013 decision and remand the case for a supplemental report from Dr. Ellis. Following such further development as may become necessary, OWCP shall issue a *de novo* decision on Dr. Ellis' April 12, 2013 request for authorization and appellant's April 18, 2013 disability claim.

CONCLUSION

The Board finds that this case is not in posture for decision on whether appellant's disability on April 17 and 18, 2013 was causally related to an accepted medical condition.

[8] 5 U.S.C. § 8103(a).

[9] *See Marjorie S. Geer*, 39 ECAB 1099 (1988) (OWCP has broad discretionary authority in the administration of FECA and must exercise that discretion to achieve the objectives of section 8103).

[10] *Daniel J. Perea*, 42 ECAB 214 (1990).

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: June 3, 2014
Washington, DC

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

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

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