

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

S.A., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Jersey City, NJ, Employer)
_____)

**Docket No. 13-2138
Issued: March 25, 2014**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 17, 2013 appellant, through his representative, filed a timely appeal from the June 26, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her claim for continuing compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision.

ISSUE

The issue is whether appellant has met her burden to establish that she had a continuing condition or disability causally related to her accepted employment injury.

FACTUAL HISTORY

On August 24, 2009 appellant, a 33-year-old general clerk, filed an occupational disease claim alleging that the pain and swelling in her arms was a result of the repetitive and other

¹ 5 U.S.C. § 8101 *et seq.*

duties she performed in the course of her federal employment. OWCP accepted her claim for tendinitis of the right hand and wrist. It later accepted bilateral carpal tunnel syndrome.

A conflict arose on whether appellant continued to have residuals of the accepted employment injury. Dr. Edward M. Weiland, a Board-certified neurologist and second-opinion physician, could find no evidence of any lateralizing neurologic deficits as it related to the accepted injury. He saw no reason appellant could not perform activities of daily living and return to gainful employment. Dr. Mark A.P. Filippone, the attending Board-certified physiatrist, found that appellant remained totally disabled for work as a result of her bilateral carpal tunnel syndrome.

To resolve the conflict, OWCP referred appellant to Dr. Dev R. Gupta, a Board-certified neurologist, who performed a comprehensive neurological examination of appellant. Although appellant had multiple complaints, Dr. Gupta did not find anything objectively abnormal. He noted that an electromyogram (EMG) study performed by Dr. Filippone showed electrical evidence of bilateral carpal tunnel syndrome, but he could make no specific neurological diagnosis. On clinical grounds, there was no evidence of neurological disease.

Dr. Gupta reexamined appellant the following year and found no abnormalities or deficits. He also performed EMG and conduction velocity studies in both upper extremities, and they were within normal limits. Specifically, there was no evidence of carpal tunnel syndrome.

In an August 27, 2012 decision, OWCP terminated appellant's compensation for the accepted employment injury effective that date. On March 14, 2013 an OWCP hearing representative affirmed. The hearing representative found that the opinion of the impartial medical specialist, Dr. Gupta, was based on a proper factual and medical background and was sufficiently well reasoned that it must be given special weight in resolving the conflict and establishing that the accepted conditions had resolved.

In a February 25, 2013 report, Dr. Filippone noted that his findings that day gave obvious evidence of carpal tunnel syndrome. He added that his studies on October 9, 2009 objectively showed evidence of carpal tunnel syndrome. Dr. Filippone noted that Dr. Gupta failed to perform mid-palm calculations. It was his opinion that "we are using an over-simplified nerve conduction study to pull the rug out from under the patient as she continues to suffer from bilateral carpal tunnel syndrome." Dr. Filippone was of the opinion that appellant remained totally disabled directly and solely as a result of the injuries she sustained at work.

Appellant requested reconsideration and argued that Dr. Gupta's EMG testing was in conflict with Dr. Filippone's findings and that a new conflict was created requiring a referee examination.

On June 26, 2013 OWCP granted appellant's reconsideration request, reviewed the merits of her claim and denied modification of its prior decision. It noted that Dr. Gupta was selected to resolve a conflict involving Dr. Filippone and that Dr. Gupta's substantially more recent EMG studies were afforded greater probative value.

Appellant's representative argues that Dr. Filippone's most recent report confirmed that appellant still suffers from the residuals of the work injury. He adds that Dr. Gupta's opinion

should not carry the weight of the medical evidence, as he did not perform proper neurologic testing, including EMG testing to the mid palmar portion of the median nerve in both arms. Appellant's representative suggests that a new referee medical examination is needed and new EMG testing required to resolve the conflict in medical evidence.²

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁴ Where OWCP meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent condition or disability is causally related to the accepted employment injury.⁵

The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition or disability and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury, and must explain from a medical perspective how the current condition or disability is related to the injury.⁶

ANALYSIS

OWCP accepted appellant's occupational disease claim for tendinitis of the right hand and wrist and for bilateral carpal tunnel syndrome. It terminated her compensation effective August 27, 2012 on the basis of the opinion given by Dr. Gupta, the Board-certified neurologist and impartial medical specialist, who could find no evidence of neurologic disease and no specific neurological diagnosis based on examination and diagnostic testing.

An OWCP hearing representative affirmed the termination, finding that Dr. Gupta's opinion represented the weight of the medical evidence.

OWCP having met its burden to terminate compensation, the burden shifted to appellant to establish that she had a continuing condition or disability causally related to her accepted employment injury.

² Appellant's representative asks that this matter be combined with the appeal pending under Docket No. 13-1596. That appeal, however, was dismissed by the Board on October 25, 2013. Docket No. 13-1596 (issued October 25, 2013).

³ 5 U.S.C. § 8102(a).

⁴ *Harold S. McGough*, 36 ECAB 332 (1984).

⁵ *Maurice E. King*, 6 ECAB 35 (1953); *Wentworth M. Murray*, 7 ECAB 570 (1955) (after a termination of compensation payments, warranted on the basis of the medical evidence, the burden shifts to the claimant to show by the weight of the reliable, probative and substantial evidence that, for the period for which he claims compensation, he had a disability causally related to the employment resulting in a loss of wage-earning capacity).

⁶ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

In support thereof, appellant submitted the February 25, 2013 report of Dr. Filippone, the attending Board-certified physiatrist, who argued that his examination findings showed evidence of carpal tunnel syndrome. But this was not new. Dr. Filippone had reported the same in the past. It was that opinion, supported by an EMG study in 2009, which caused a conflict with Dr. Weiland, the Board-certified neurologist and second-opinion physician, who could find no evidence of any lateralizing neurologic deficits as it related to the accepted injury.

OWCP's hearing representative found that Dr. Gupta resolved that conflict.

Dr. Filippone's current examination findings and opinion on continuing residuals are not sufficiently probative to create a second conflict.⁷ Notably, he provided no current EMG and conduction velocity studies to support his opinion.⁸ Dr. Filippone questioned Dr. Gupta's failure to perform mid-palm calculations, but he did not establish that such testing was mandatory or was necessary to the opinion of the Board-certified neurologist or would show, if performed, abnormal conduction velocities establishing the continuing presence of carpal tunnel syndrome. Dr. Filippone's calculations based on his testing in 2009 are immaterial.

The Board finds that the medical evidence is not sufficient to create a second conflict or to establish that appellant has a continuing condition or disability causally related to her accepted employment injury. The Board will therefore affirm OWCP's June 26, 2013 decision.

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 appellant has not met her burden to establish that she had a continuing condition or disability causally related to her accepted employment injury.

⁷ *M.C.*, Docket No. 12-1720 (issued March 5, 2013).

⁸ *Cf. Gloria J. Godfrey*, 52 ECAB 486 (2001) (finding that reports from the attending physician, who was on one side of the conflict, plus the findings of a more recent magnetic resonance imaging scan, created a new conflict with the opinion of the impartial medical specialist regarding the claimant's ability to work).

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 25, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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