United States Department of Labor
Employees' Compensation Appeals Board

E.J., Appellant	)	
	)	
and	)	**Docket No. 13-517**
	)	**Issued: May 19, 2014**
DEPARTMENT OF DEFENSE, DEFENSE FINANCE & ACCOUNTING SERVICE, Columbus, OH, Employer	)	

Appearances:
Alan J. Shapiro, 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 January 3, 2013 appellant, through her attorney, filed a timely appeal from a September 26, 2012 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.

ISSUES

The issues are: (1) whether OWCP properly terminated appellant's medical benefits for left arm reflex sympathetic dystrophy (RSD) on June 9, 2010; and (2) whether appellant established that she had continuing residuals after that date.

On appeal appellant's attorney asserts that the September 26, 2012 decision is contrary to fact and law.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

This case has previously been before the Board.[2] On November 13, 2003 appellant, then a 34-year-old accounting technician, sustained an injury to her left hand when it became caught in a door. She returned to light duty on November 24, 2003. Appellant began working part time in January 2004 and stopped work on September 6, 2004. She did not return. OWCP accepted a contusion of the left hand, crush injury of the left hand except the fingers, RSD of the left arm, right carpal tunnel syndrome, bilateral tenosynovitis of the hands and wrists and a single episode of major depression. Appellant was placed on the periodic compensation rolls. In 2006 she moved to Georgia.

On April 16, 2009 OWCP referred appellant to Dr. David A. Olson, a Board-certified neurologist, for a second opinion evaluation. In a May 11, 2009 report, Dr. Olson reviewed the medical record and noted her complaint of pain. He provided findings on physical examination and diagnosed weakness and pain. Dr. Olson found that appellant had no residuals or neurological impairment due to the accepted injury and that her accepted conditions had resolved. He found no objective evidence of RSD and advised that she had no work restrictions due to the employment injury.

Appellant received wage-loss compensation for the accepted emotional condition.

In an August 20, 2009 treatment note, Dr. Allan E. Peljovich, a Board-certified orthopedic surgeon, noted appellant's complaint of left hand pain. He diagnosed RSD and possible left trigger thumb or stenosing tenosynovitis. X-rays of the left wrist and hand obtained that day demonstrated no abnormality.

On September 1, 2009 OWCP proposed to terminate appellant's medical benefits for the conditions of left arm RSD and the additional accepted orthopedic conditions on the grounds that the medical evidence established that she no longer had residuals of the conditions.

Appellant disagreed with the proposed termination and submitted an August 28, 2009 report from Dr. Erik T. Shaw, Board-certified in physical medicine and rehabilitation, who noted the history of injury and appellant's complaints of neck and left arm pain. Dr. Shaw provided physical examination findings and diagnosed right upper extremity pain/RSD, myofascial pain, anxiety, depression and sleep disturbance.

On October 5, 2009 OWCP terminated medical benefits for the conditions of left arm RSD, left hand contusion, crush injury of the left hand and fingers, right carpal tunnel syndrome and bilateral tenosynovitis of the wrists.[3]

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[2] Docket No. 10-743 (issued November 2, 2010). The Board affirmed the denial by OWCP of appellant's request for authorization of her purchase of a home Jacuzzi.

[3] The Board notes that in a June 19, 2009 decision, OWCP denied to accept appellant's cervical radiculitis, anxiety or headaches as a consequence of the November 13, 2003 injury. This determination was affirmed in part by the December 15, 2009 decision of an OWCP hearing representative. The case was remanded for further development of the anxiety claim.

In a March 30, 2010 decision, an OWCP hearing representative affirmed the October 5, 2009 decision with regard to each of the orthopedic conditions except the left arm RSD, finding that a conflict in medical evidence arose between appellant's attending physician, Dr. Shaw, and Dr. Olson, OWCP's referral physician.

On April 12, 2010 OWCP referred appellant to Dr. Michael S. Baugh, a Board-certified neurologist, for an impartial evaluation. In a May 17, 2010 report, Dr. Baugh reviewed the medical record and the statement of accepted facts. He noted appellant's treatment by various medical specialists and the disagreement as to the diagnosis of left upper extremity RSD. Dr. Baugh also noted that she was diagnosed with depression and a personality disorder. He reviewed the diagnostic tests of record, noting that a January 23, 2004 whole body scan revealed only a questionable left 4th metacarpal possible occult fracture with no evidence of RSD. An MRI scan of the left wrist and hand in 2004 found no changes consistent with RSD. In September 2004, an electromyelogram and nerve conduction studies of the left arm were reported as normal. Another normal MRI scan was obtained on December 29, 2008, with the exception of a possible ganglion cyst. X-rays of the left hand and wrist obtained in August 2009 were reported as normal. A repeat EMG and nerve conduction study of both upper extremities in January 2009 were also normal. Dr. Baugh stated that his review of the diagnostic reports did not evidence changes consistent with left upper extremity RSD.

Dr. Baugh noted appellant's complaint of constant left upper extremity pain from the base of her neck, over her shoulder into her arm and fingers, worst into digits 3 and 4. The pain was accompanied by weakness and numbness. On examination, appellant reported pain with range of motion testing. There was no significant temperature asymmetry or sweating asymmetry with possible slight edema of the left wrist and hand. Left upper extremity strength was limited by poor voluntary effort and notable give-way weakness. Muscle bulk was normal and reflexes were symmetrical. Sensory examination was symmetrically intact to light touch, vibration, graphesthesia and temperature with decreased sensation on the left upper extremity to pinprick on the lateral arm, forearm and hand. Dr. Baugh stated that appellant's evaluation did not meet the diagnostic criteria for RSD. He noted that she should have an MRI scan of the cervical spine as her symptoms could be reproduced by cervical spinal cord disease. Dr. Baugh diagnosed limb pain and cervicalgia/neck pain. He advised that, while appellant was symptomatic in all subjective symptoms of RSD, she had no objective symptoms on examination or imaging studies to support that diagnosis and concluded that she did not meet the diagnostic criteria for RSD. Dr. Baugh noted that diagnostic testing showed some boney changes over the prior seven years.

In a June 9, 2010 decision, OWCP found that appellant's medical benefits for RSD remained terminated based on the referee opinion of Dr. Baugh.[4]

[4] Concurrently, in a May 6, 2009 decision, OWCP denied appellant's request for authorization for a home Jacuzzi on the grounds that the medical evidence failed to establish that a Jacuzzi was necessary and appropriate for effective treatment of her work-related RSD. Appellant filed an appeal with the Board, and in a November 2, 2010 decision, the Board affirmed the November 5, 2009 OWCP decision. The law and facts of the previous Board decision are incorporated herein by reference. The record also contains an employing establishment investigative report dated June 30, 2010.

Appellant, through her attorney, requested a hearing. She submitted reports from Dr. Shaw dated June 22 to November 18, 2010. Counsel noted appellant's complaints of left arm pain and tenderness, provided examination findings and diagnosed left upper extremity pain/complex regional pain syndrome, extensive myofascial pain, anxiety and depression. At the October 7, 2010 hearing, appellant testified regarding her condition and medical treatment.

By decision dated December 28, 2010, an OWCP hearing representative affirmed the June 9, 2010 decision. She found that the weight of the medical evidence rested with the opinion of Dr. Baugh, the referee physician, who determined that appellant did not have RSD of the left upper extremity.[5]

Appellant requested reconsideration of her claim on March 28, 2011, December 4, 2011 and June 25, 2012. OWCP issued merit decisions on June 7, 2011, March 8 and September 26, 2012, denying modification of the termination of her medical benefits for left arm RSD.

The medical evidence submitted on reconsideration includes a partial report of a January 24, 2012 left upper extremity bone scan. While the report is incomplete, it indicates that evaluation of the left elbow and wrist was unremarkable with a normal appearance.

In a January 30, 2012 report, Dr. Philip R. Kennedy, a neurologist, reported a history that in 2003 appellant caught her left hand in a door and since that time had symptoms suggestive of complex regional pain syndrome. He noted her complaints of an extremely sensitive and painful left hand with tingling, burning and numbness. Physical examination of the left upper extremity demonstrated some mild atrophy with no discoloration, normal tone, and give-way strength due to pain. Sensation to light touch was diminished from the shoulder down into the hand and pinprick demonstrated numbness in the shoulder and triggered pain in the hand. Dr. Kennedy advised that appellant unquestionably had complex regional pain syndrome.

In reports dated March 1, 2011 and May 24, 2012, Dr. Shaw noted appellant's complaint of left upper extremity pain. Findings on physical examination included significant pain and tenderness of the left upper extremity and myofascial tenderness through the shoulder and neck region. Dr. Shaw diagnosed left upper extremity pain/complex regional pain syndrome with involvement of the hand, extensive myofascial pain, anxiety and depression. On August 8, 2012 he advised that appellant had good days and bad days. Musculoskeletal examination demonstrated decreased range of motion and no vasomotor, psychomotor or atrophic changes were noted. Temperature was grossly normal. Dr. Shaw reiterated his diagnoses.

LEGAL PRECEDENT -- ISSUE 1

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must

[5] In a December 8, 2010 decision, an OWCP hearing representative reversed a June 23, 2010 decision that denied appellant's claim for an anxiety condition. On December 15, 2010 OWCP informed appellant that her claim was accepted for major depression, single episode, moderate and anxiety state. Appellant also submitted medical reports dated October 8, 2009 to September 6, 2012 from treating psychologists regarding her emotional condition. She remains on the periodic compensation rolls, based on her accepted emotional condition. *See supra* note 2.

establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.[6]

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[7] The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second-opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination, and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[8] When there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[9]

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's medical benefits for left upper extremity RSD on June 9, 2010. OWCP found a conflict between appellant's physician, Dr. Shaw, and the referral physician, Dr. Olson. Dr. Shaw supported that appellant had ongoing residuals of the accepted left arm RSD that required medical treatment. Dr. Olson, however, found that appellant did not have any residuals or neurological impairment and that the left arm RSD had resolved. OWCP properly found a conflict in medical opinion.

In the May 17, 2010 report, Dr. Baugh, the impartial specialist, reviewed the history of injury, appellant's medical treatment and the diagnostic testing performed. He addressed the reports of the examining physicians of record and the diagnostic studies obtained. Dr. Baugh stated that the test results obtained from 2004 through 2009 included MRI scan studies, EMG and nerve conduction studies and x-rays that were reported as normal for testing of the left upper extremity. He advised that the reports revealed no evidence of changes consistent with complex regional pain syndrome either acute or chronic on the early or later bone scans. On physical examination, Dr. Baugh noted that left upper extremity strength testing and range of motion was limited by poor voluntary effort and notable give-away weakness. Muscle bulk was reported as normal with symmetrical reflexes. While Dr. Baugh noted that appellant was symptomatic in all subjective symptoms of RSD, there were no objective symptoms on examination or diagnostic studies to support the diagnosis. He concluded that she did not meet the diagnostic criteria for left arm RSD.

As noted, in situations where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of

[6] *T.P.*, 58 ECAB 524 (2007).

[7] 5 U.S.C. § 8123(a); *see R.H.*, 59 ECAB 382 (2008).

[8] 20 C.F.R. § 10.321.

[9] *Manuel Gill*, 52 ECAB 282 (2001).

resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[10]

The Board finds that, as Dr. Baugh provided a comprehensive, well-rationalized opinion on the issue of whether appellant had residuals of her accepted left upper extremity sympathetic reflex dystrophy. He determined that at the time of his examination, appellant did not have findings on physical examination or prior diagnostic study to support ongoing residuals that required further medical treatment. Dr. Baugh noted that appellant should follow-up with further diagnostic study of her cervical spine as testing had revealed boney erosion. The Board finds that the opinion of Dr. Baugh is entitled to the special weight accorded an impartial examiner and constitutes the weight of the medical evidence.[11] OWCP therefore properly terminated appellant's medical benefits for RSD.[12]

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate medical benefits for RSD on June 9, 2010, the burden of proof shifted to appellant to establish continuing residuals causally related to the November 13, 2003 employment injury.[13]

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.[14] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[15] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[16]

ANALYSIS -- ISSUE 2

The Board notes that appellant continues to receive wage-loss compensation for her accepted psychological conditions. The Board finds that she submitted insufficient medical evidence to establish residuals of the left upper extremity RSD after June 9, 2010, due to the November 13, 2003 employment injury.

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[10] *Id.*

[11] *See Sharyn D. Bannick*, 54 ECAB 537 (2003).

[12] *Manuel Gill, supra* note 9.

[13] *See Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

[14] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[15] *Id.*

[16] *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The medical evidence submitted by appellant includes a partial report of a January 24, 2012 left upper extremity bone scan. The copy of record is not complete but indicates that evaluation of the left elbow and wrist was unremarkable with a normal appearance. This report is of limited probative value as it does not contain any opinion from a physician as to whether she has RSD of her left upper extremity that requires medical treatment.

Dr. Kennedy noted physical examination findings of mild atrophy of the left upper extremity with no discoloration, normal tone, and give-way strength due to pain. Sensation to light touch was diminished from the shoulder down into the hand and pinprick demonstrated numbness in the shoulder and triggered pain in the hand and diagnosed complex regional pain syndrome. The Board, however, finds this report insufficient to overcome the special weight accorded to Dr. Baugh as the medical referee. Dr. Kennedy saw appellant in January 2012, more than eight years after the employment injury. While he diagnosed complex regional pain syndrome, he merely noted a history that her hand was caught in a door in 2003. He did not provide sufficient opinion on causal relation or address how such condition required further medical treatment related to the accepted injury.[17]

In treatment records dated March 1, 2011 to August 8, 2012, Dr. Shaw reiterated his opinion as to appellant's complaints of left upper extremity weakness and the diagnosis of left arm RSD. The Board notes that Dr. Shaw was on one side of the conflict in medical opinion for which appellant was referred to Dr. Baugh. It is well established that reports from a physician who was on one side of a medical conflict that an impartial specialist resolved, are generally insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict.[18] Dr. Shaw's additional medical record essentially reiterated his prior findings regarding appellant's left arm and his opinion on causal relationship and need for medical care. He did not specifically address the January 24, 2012 bone scan of the left arm which was reported as normal. Dr. Shaw's reports are not sufficient to overcome the weight of medical opinion accorded Dr. Baugh as the impartial medical specialist.

The Board finds that the medical evidence appellant submitted with her reconsideration requests is of diminished probative value and insufficient to meet her burden to establish the need for ongoing medical treatment.[19]

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 properly terminated appellant's medical benefits for left upper extremity RSD. Further, she did not establish that she had any continuing employment-related residuals after June 9, 2010.

[17] *See S.S.*, 59 ECAB 315 (2008).

[18] *I.J.*, 59 ECAB 408 (2008).

[19] *Supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 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