

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

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<b>V.W., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 15-640</b>
	)	<b>Issued: June 11, 2015</b>
<b>DEPARTMENT OF THE AIR FORCE,</b>	)	
<b>ANDERSON AIR FORCE BASE, Guam,</b>	)	
<b>Employer</b>	)	
_____	)	

*Appearances:*  
Clevesta White, for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 27, 2015 appellant, through her representative, filed a timely appeal from a September 22, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met its burden of proof to terminate compensation for wage-loss and medical benefits effective September 22, 2014.

**FACTUAL HISTORY**

The case was before the Board on two prior appeals with respect to a schedule award. OWCP issued appellant a schedule award on May 23, 2003 for a 31 percent impairment of the

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

left arm. By order dated March 14, 2004, the Board remanded the case to OWCP, finding that the case record was incomplete.<sup>2</sup> In a decision dated February 24, 2005, the Board affirmed an August 5, 2004 OWCP decision finding that appellant had not established more than a 31 percent left arm permanent impairment.<sup>3</sup> The facts and circumstances as referred to in the prior Board decisions are incorporated herein. The relevant facts are set forth below.

Appellant, then a 34-year-old program technician filed a traumatic injury claim (Form CA-1) alleging that she sustained injury to her left wrist when she fell on a playground while chasing children at work on January 24, 1992. The claim was accepted for a fracture of the left distal radius, left carpal tunnel syndrome (CTS) and left arm reflex sympathetic dystrophy (RSD). OWCP authorized payment of disability compensation benefits through October 16, 1992. The record reflects that in 2003 appellant received retroactive payment of disability compensation benefits for the period October 29, 1993 to November 8, 1999, pursuant to a recurrence of disability.

OWCP referred appellant for vocational rehabilitation services in November 1999. By decision dated December 28, 2000, it reduced appellant's compensation to zero as she had failed, without good cause, to participate in vocational rehabilitation.<sup>4</sup> OWCP noted that the reduction would continue until either appellant underwent the directed vocational testing, or showed good cause for not complying.

The record indicates that appellant received compensation from December 31, 2000 to November 8, 2002 pursuant to the schedule award for a 31 percent left arm permanent impairment. She did not receive an additional compensation after November 8, 2002.<sup>5</sup>

Since her 1992 injury, appellant treated with the offices of Dr. Kevin S. Smith, Board-certified in anesthesiology and pain medicine, and Dr. William L. Wilson, Board-certified in anesthesiology, also specializing in pain medicine. Appellant was primarily seen by physician assistants and medical assistants, who continued to prescribe medications to appellant for diagnoses of RSD, CTS, and median nerve neuritis.

In a report dated January 28, 2013, Dr. Ramya Nagarajan, a pain management specialist, indicated that appellant had complaints of bilateral arm and leg pain. She provided a history that the pain "developed acutely from a slip and fall approximately 20 years ago." Dr. Nagarajan provided results on examination and diagnosed: myofascial pain syndrome; rule out

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<sup>2</sup> Docket No. 03-1855 (issued March 15, 2004).

<sup>3</sup> Docket No. 04-2095 (issued February 24, 2005).

<sup>4</sup> 5 U.S.C. § 8113(b) provides that, if a claimant without good cause fails to apply for and undergo vocational rehabilitation when directed, her compensation may be reduced in accord with what would probably have been her wage-earning capacity in the absence of such failure, until the claimant in good faith participates in vocational rehabilitation.

<sup>5</sup> By decision dated January 19, 2011, OWCP found that appellant was not entitled to an additional schedule award. An OWCP hearing representative affirmed this decision on July 20, 2011. By decision dated December 6, 2011, OWCP denied merit review of the schedule award issue.

fibromyalgia; osteoarthritis; depression/anxiety; CTS; gastric ulcer; hypertension; migraine; RSD; and mononeuritis of upper limb.

Appellant was treated on April 16, 2013 by Dr. Tracy Wimbush, Board-certified in emergency and pain medicine, who indicated that appellant's chief complaint was bilateral arm pain. Dr. Wimbush provided results on examination and diagnosed RSD and arm mononeuritis.

The record contains a letter dated October 25, 2013 indicating that appellant had been offered a two-year job training program at a church. Dr. Wimbush signed the letter on November 1, 2013, indicating that appellant could perform the job training duties. In a memorandum of telephone call (CA-110) dated February 20, 2014, OWCP indicated that appellant was advised that her compensation could be reinstated if she was willing to cooperate with OWCP directed vocational rehabilitation. By letter dated February 25, 2014, appellant indicated that she was ready to participate in vocational rehabilitation.

OWCP prepared a statement of accepted facts (SOAF) and referred appellant, along with medical records, to Dr. Alexander Doman, a second opinion Board-certified orthopedic surgeon. In a report dated May 11, 2014, Dr. Doman provided a history and results on examination.<sup>6</sup> He noted nerve conduction velocity studies of the left arm were normal. Dr. Doman stated, "It is my firm and definitive opinion that the claimant does not suffer disabling residuals of the accepted conditions. Specifically, there are no findings on examination suggestive of any further RSD. There is no swelling. The skin is intact. There is no erythema. There is no painful sensation to light touch. The radiographic findings on the plain x-rays are consistent with her nonwork-related medical condition of rheumatoid arthritis, which is inflammatory arthropathy for which she is currently receiving treatment." Dr. Doman opined that no further treatment was needed for any employment-related conditions. He found that any disability was related to a concurrent nonwork-related disability rheumatoid arthritis.

In a report dated July 18, 2014, Dr. Carlos Pulido, a Board-certified anesthesiologist, indicated that appellant continued to report bilateral arm pain. He provided results on examination.

By letter dated August 12, 2014, OWCP advised appellant that it proposed to terminate her compensation for wage-loss and medical benefits based on the medical evidence. It found the weight of the evidence did not establish a continuing employment-related condition or disability. Appellant was advised to submit evidence or argument within 30 days.

Appellant submitted a report dated August 29, 2014 from Dr. Pulido, who provided results on examination. He stated that appellant disagreed with the proposed termination as she was still in pain. Dr. Pulido stated that he could confirm Dr. Doman's findings in regard to physical examination. He stated that some cases of complex regional pain syndrome (CRPS) do not present the "classical" clinical signs or symptoms. Dr. Pulido further opined that "based on the history of injury and prolonged suffering and disability, she still requires costly medical treatment and therefore her medical benefits should not be terminated." Dr. Pulido stated that appellant reported that she was still unable to work.

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<sup>6</sup> Dr. Doman indicated that appellant had been examined on April 25, 2014.

By decision dated September 22, 2014, OWCP terminated entitlement to compensation for wage-loss and medical benefits from the January 24, 1992 injury. It found the weight of the medical evidence was represented by Dr. Doman.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>7</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>8</sup>

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by sound medical rationale to support the opinion offered.<sup>9</sup> Medical opinions that are speculative and not supported by medical rationale are generally entitled to little probative value.<sup>10</sup>

### **ANALYSIS**

In the present case, OWCP accepted that appellant sustained a fracture of the left distal radius, left CTS and left arm RSD, as a result of a January 24, 1992 slip and fall. Appellant had received wage-loss compensation until her compensation was reduced to zero by decision dated December 28, 2000, on the grounds that she did not offer good faith participation in vocational rehabilitation. Under 5 U.S.C. § 8113(b), appellant would be entitled to compensation once she complies with the direction to undergo vocational rehabilitation.<sup>11</sup> By letter dated February 25, 2014, appellant indicated her willingness to participate in vocational rehabilitation.

OWCP terminated entitlement to wage-loss compensation and medical benefits effective September 22, 2014. The Board has reviewed the evidence of record and finds that OWCP properly terminated compensation.

A second opinion physician, Dr. Doman, provided an opinion in his May 11, 2014 report that appellant no longer suffered an employment-related condition. His opinion was based on an accurate and complete background. Dr. Doman provided an unequivocal opinion that appellant's employment-related conditions had resolved. He indicated that nerve conduction studies were normal, and he discussed his examination results with respect to RSD. Dr. Doman provided

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<sup>7</sup> *Elaine Sneed*, 56 ECAB 373 (2005); *Patricia A. Keller*, 45 ECAB 278 (1993); 20 C.F.R. § 10.503.

<sup>8</sup> *Furman G. Peake*, 41 ECAB 361 (1990).

<sup>9</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

<sup>10</sup> *Carolyn F. Allen*, 47 ECAB 240 (1995).

<sup>11</sup> *See M.J.*, Docket No. 09-1291 (issued March 24, 2001).

medical rationale to support his opinion that the accepted conditions had resolved, and any continuing disability was solely a consequence of rheumatoid arthritis. OWCP has not accepted rheumatoid arthritis and Dr. Doman found that the condition was not employment related.

The medical evidence from appellant's attending physicians is of diminished probative value on the question of whether appellant had continuing employment-related condition or disability. Dr. Nagarajan provided only a brief statement in her January 28, 2013 report that appellant had developed pain from a slip and fall 20 years earlier. She does not provided a complete history or a rationalized medical opinion on any current condition causally related to the January 24, 1992 employment injury. Dr. Wimbush does not address the issue.

Dr. Pulido provided an August 29, 2014 report noting that appellant continued to report arm pain. He did not provide a rationalized medical opinion with respect to an employment-related condition. Dr. Pulido referred to the "history of injury" but did not provide a full history of the injury or show an understanding of the employment incident or accepted conditions. He refers to CRPS, but that is not an accepted condition. Dr. Pulido reports that appellant has had prolonged suffering, but his report lacks a complete history or medical rationale to show that a current condition is causally related to the employment injury.

The earlier medical progress notes from the offices of Drs. Smith and Wilson, documented appellant's continuing pain complaints, but did not offer rationalized medical opinion explaining why appellant remained disabled.<sup>12</sup>

On appeal, appellant states that her compensation should not be terminated, and that Dr. Doman spent a limited period of time examining her. The Board's review of the case is based only on the evidence of record before OWCP at the time of the decision on appeal.<sup>13</sup> For the reasons noted, the Board finds that Dr. Doman's May 11, 2014 report represents the weight of the medical evidence.

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 OWCP met its burden of proof to terminate compensation for wage-loss and medical benefits effective September 22, 2014.

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<sup>12</sup> Many of these reports were signed by a physician assistant or medical assistant. A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8102(2). *See also R.M.*, 59 ECAB 690 (2008).

<sup>13</sup> 20 C.F.R. § 501.2(c)(1).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 22, 2014 is affirmed.

Issued: June 11, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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