United States Department of Labor
Employees' Compensation Appeals Board

P.L., Appellant	)	
and	)	**Docket No. 15-1058**
	)	**Issued: November 12, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Santa Clarita, CA, Employer	)	

Appearances:
Richard Heavey, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 9, 2015 appellant, through counsel, filed a timely appeal of a February 6, 2015 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 to consider the merits of the case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 6, 2014; and (2) whether appellant has met her burden of proof to establish any continuing disability or medical residuals due to her accepted employment injuries.

On appeal counsel argues that OWCP failed to meet its burden of proof to terminate as the statement of accepted facts provided to the impartial medical examiner was flawed, the impartial medical examiner's report was not rationalized, that rheumatoid arthritis was not a new

[1] 5 U.S.C. § 8101 *et seq.*

diagnosis, and that the impartial medical examiner refused to consider appellant's accepted claim for permanent impairment in determining that appellant's disability and medical residuals had resolved.

FACTUAL HISTORY

On March 3, 1986 appellant, then a 32-year-old letter carrier, filed an occupational disease claim alleging a wrist condition due to her daily routine at work. She underwent a right carpal tunnel release on October 3, 1986. OWCP accepted appellant's claim for right carpal tunnel syndrome and aggravation of left flexor tenosynovitis on February 18, 1987. Appellant also accepted left trigger finger of the index and long fingers and the resultant surgical releases which occurred October 3, 1986 and May 1, 1987.

Appellant filed a claim for a recurrence of disability on June 9, 1987 alleging that her regular duties aggravated her right wrist. OWCP denied the claim noting that she submitted a medical report dated June 29, 1988 diagnosing rheumatoid arthritis.

On May 4, 1989 OWCP granted appellant schedule awards for 31 percent permanent impairment of her right upper extremity and 31 percent impairment of her left upper extremity.

Appellant accepted a limited-duty position on December 24, 2008 as a modified general clerk working as a lobby director which met her physician's work restrictions. She worked in this position until April 13, 2009 when the employing establishment advised her that, under the National Reassessment Process, there was no work for her within her restrictions.

In a report dated June 9, 2009, Dr. Sangarappillai Manoharan, an occupational medicine physician, noted appellant's history of injury and medical history. He noted that she had nonemployment-related rheumatoid arthritis. Dr. Manoharan stated that appellant's work restrictions were not based on rheumatoid arthritis, but instead on her accepted conditions. On May 26, 2011 he found that she had decreased range of motion and tenderness in the wrists bilaterally. Dr. Manoharan noted that appellant had decreased range of motion in the left hand due to nonemployment-related arthritis. He continued to support her permanent work restrictions due to her accepted employment injuries.

OWCP referred appellant for a second opinion evaluation with Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, on January 15, 2013.

In a report dated January 25, 2013, Dr. Manoharan noted appellant's report of bilateral wrist and hand pain. He noted that she had a history of rheumatoid arthritis in both hands which was not related to her employment. Dr. Manoharan found that appellant exhibited decreased range of motion of her finger joints due to rheumatoid arthritis. He stated that her accepted employment injuries were still medically present and disabling.

Dr. Hanley completed a report on March 5, 2013 and stated that appellant had an abnormal hand examination. He found the long-standing synovial-based arthritis of the hands, but without the significant drift normally found in rheumatoid arthritis. Dr. Hanley noted that appellant's arthritis significantly limited motion. He stated, "At the present time, [appellant] has fixed changes in her hands that would indeed limit her capacities at any workplace, but these

changes are not related to work activities." Dr. Hanley concluded that appellant's initially accepted conditions of right carpal tunnel syndrome and left flexor tenosynovitis with trigger finger release were no longer active and that the only active condition was her nonemployment-related arthritis. He opined that she did not require further treatment for her accepted conditions and that she had no disability (work restrictions) due to the accepted conditions. Dr. Hanley stated that there were no objective findings related to her accepted conditions, and that she was capable of working sedentary work, with any restrictions being related to nonwork-related conditions.

OWCP found a conflict of medical opinion between Dr. Hanley and Dr. Manoharan regarding the extent of appellant's employment-related disability and medical residuals. It referred her, a statement of accepted facts and list of specific questions to Dr. Kenneth Sabbag, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve this conflict. The statement of accepted facts noted that appellant was employed as a modified letter carrier and that she stopped work on April 13, 2009 as work was no longer available for her within her restrictions. The statement of accepted facts listed the accepted conditions as right carpal tunnel syndrome and flexor tenosynovitis and noted the authorized surgeries on October 3, 1986 and May 1, 1987.

Dr. Sabbag completed a report on April 29, 2013 and noted that appellant last worked on April 13, 2009. He listed her most recent job duties as lobby director and processing passports. Dr. Sabbag noted appellant's current complaints of bilateral hand and wrist stiffness and pain. He provided a medical history including her diagnosis of right carpal tunnel syndrome in 1986 and her right carpal tunnel surgical release on October 3, 1986. Dr. Sabbag also described appellant's trigger finger release on the left on May 1, 1987. He reported her preexisting nonemployment-related diagnosis of rheumatoid arthritis made in 1989. On physical examination Dr. Sabbag found that she had marked loss of range of motion in her wrists bilaterally in all directions. He noted that Watson's, Finkelstein's, and Piano Key test results were difficult to fully interpret because of loss of motion. Dr. Sabbag further found marked loss of range of motion of the fingers with no evidence of trigger finger or active flexor tendon tenosynovitis. Appellant's neurological examination was intact to light touch in the median, ulnar, and radial nerve distributions. Dr. Sabbag found that Tinel's sign was negative on both wrists and that Phalen's test could not be assessed due to loss of motion in the wrists. He opined that her thenar and hypothenar muscle contours were well maintained with no atrophy. Dr. Sabbag reviewed x-rays and found bone arthritic changes at the radiocarpal and mid-carpal joints. He also noted loss of joint space, sclerosis, and slight osteophyte formation highly indicative of inflammatory autoimmune arthritis.

Dr. Sabbag reviewed the medical evidence of record. He found that finger stiffness and loss of motion was documented in 1988 as well as evidence of inflammatory arthropathy prior to surgical care. Dr. Sabbag diagnosed right carpal tunnel syndrome with surgical release on October 3, 1986 and left index finger and long finger trigger finger with surgical release on May 1, 1987 as well as advanced autoimmune arthritic changes, probably rheumatoid arthritis bilaterally in the hands. He opined that the dysfunction of appellant's hands was due to advanced rheumatoid arthritis changes in both hands. Dr. Sabbag stated, "I do not find any evidence of trigger finger or neurologic deficit in either hand. In fact, provocative testing for cervical radiculopathy, carpal tunnel syndrome, and cubital tunnel syndrome is negative. I do

not find any ongoing residuals of [appellant's] accepted industrial injuries." He concluded that appellant had no disability due to her accepted carpal tunnel syndrome or flexor tendon tenosynovitis. Dr. Sabbag stated, "The right carpal tunnel syndrome and the left index finger and long finger trigger fingers are no longer active and there are no objective findings aside from healed scars related to those conditions." He opined that appellant's current disability was due to her loss of range of motion and pain directly resulting from her nonindustrial rheumatoid arthritis and that her industrial conditions had resolved long ago.

OWCP proposed to terminate appellant's compensation for wage-loss and her medical benefits on June 13, 2013. It found that Dr. Sabbag's report constituted the weight of the medical evidence and established that disability and the need for medical treatment due to her accepted right carpal tunnel syndrome and left trigger fingers had ceased. Appellant responded on July 5, 2013 and argued that her accepted conditions remained compensable.

Dr. Manoharan completed a report on January 7, 2014 and noted appellant's history of injury. He diagnosed bilateral wrist joint pain, tenosynovitis bilaterally, and nonwork-related bilateral hand rheumatoid arthritis. Dr. Manoharan stated that appellant's accepted conditions were still medically present and disabling.

By decision dated March 13, 2014, OWCP terminated appellant's medical benefits and wage-loss compensation, effective April 6, 2014. It found that the weight of the medical evidence rested with Dr. Sabbag and that Dr. Manoharan's January 7, 2014 report was not sufficient to overcome the weight of this report or to create a new conflict.

Appellant requested reconsideration on November 13, 2014. Counsel submitted arguments and alleged that the statement of accepted facts was flawed as it did not contain the date of injury of October 19, 1985, failed to identify the job held by her on the date of injury, used the wrong verb tense in her employment status, failed to indicate that her flexor tenosynovitis and the trigger finger release was on the left, and did not accurately represent her employment in 1989. He also argued that Dr. Sabbag's report was not sufficiently rationalized as he did not address appellant's previous findings of permanent impairment in the upper extremities.

Appellant submitted a report dated October 14, 2014 from Dr. Byron V. Hartunian, a Board-certified orthopedic surgeon. Dr. Hartunian noted appellant's history of injury, work history, and medical treatment including her surgeries. He found significant restricted motion of both wrists and fingers. Dr. Hartunian stated that Phalen's testing was limited at the right wrist, but that appellant did not experience tingling in her fingers. He found a mildly positive Tinel's sign at the right carpal tunnel. Dr. Hartunian reported thickening of proximal interphalangeal joints consistent with rheumatoid arthritis bone deformities as well as tenderness about the wrists bilaterally. He reviewed appellant's April 29, 2013 x-rays which demonstrated severe erosions of the interphalangeal joints of both hands as well as the radial carpal and ulnar carpal joints at the wrists which he interpreted as highly suggestive of inflammatory autoimmune arthritis. Dr. Hartunian stated, "At this time, there are still clinical indicators of residual inflammation from the carpal tunnel syndrome with a positive Tinel's sign on the right and tenderness over the flexor tendons at the left index finger." He disagreed with Dr. Sabbag and opined that appellant's current condition was due to carpal tunnel syndrome and trigger finger as well as a

permanent aggravation of her preexisting rheumatoid arthritis. Dr. Hartunian opined that she continued to experience residuals and disability as a result of her accepted conditions.

By decision dated February 6, 2015, OWCP denied modification of the March 13, 2014 termination decision. It found that the medical evidence submitted was not sufficient to overcome the weight accorded to Dr. Sabbag as the impartial medical examiner. OWCP determined that the minor inconsistencies in the statement of accepted facts were not sufficient to overcome the opinion of the dependent medical examiner.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.[2] After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[3] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[4] 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.[5]

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 resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[6]

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 6, 2014.

Appellant's attending physician, Dr. Manoharan, submitted medical evidence supporting appellant's continued disability due to her accepted conditions of right carpal tunnel syndrome and left flexor tenosynovitis. OWCP referred appellant for a second opinion examination with Dr. Hanley who found no residuals of her accepted conditions and concluded that her current disability for work was due to her preexisting condition of rheumatoid arthritis. Due to this disagreement between appellant's physician and OWCP referral physician, OWCP found a conflict of medical evidence. When there are opposing reports of virtually equal weight and rationale, the case will be referred to an impartial medical specialist pursuant to section 8123(a)

[2] *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

[3] *Id.*

[4] *Furman G. Peake*, 41 ECAB 361, 364 (1990).

[5] *Id.*

[6] *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

of FECA which 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 and resolve the conflict of medical evidence.[7] 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] The Board finds that OWCP properly determined that there was a conflict of medical opinion evidence and properly referred appellant to Dr. Sabbag for an impartial medical examination to resolve this conflict, pursuant to 5 U.S.C. § 8123(a).

In his April 29, 2013 report, Dr. Sabbag provided an accurate history of injury, reviewed the statement of accepted facts, and provided a comprehensive review of the medical records. He also provided detailed findings on physical examination noting marked loss of range of motion of the fingers with no evidence of trigger finger or active flexor tendon tenosynovitis. Dr. Sabbag stated that appellant's neurological examination was intact to light touch in the median, ulnar, and radial nerve distributions and that Tinel's sign was negative on both wrists while Phalen's test could not be assessed due to loss of motion in the wrists. He found no thenar or hypothenar atrophy. Dr. Sabbag concluded, based on his examination that there was no objective evidence of trigger finger or neurologic deficit in either hand and that testing for carpal tunnel syndrome was negative. He therefore found no ongoing residuals of appellant's accepted injuries. Dr. Sabbag reported findings of loss of range of motion of the fingers and x-ray evidence of arthritic changes at the radiocarpal and mid-carpal joints. He also noted loss of joint space, sclerosis, and slight osteophyte formation highly indicative of inflammatory autoimmune arthritis. Based on these physical findings, Dr. Sabbag concluded that the current dysfunction of appellant's hands was due to advanced rheumatoid arthritis such that her ongoing disability was no longer related to her employment injuries, but to her preexisting nonemployment-related condition of rheumatoid arthritis.

The Board finds that Dr. Sabbag's April 29, 2013 report is sufficiently detailed and well-reasoned to constitute the special weight of the medical evidence and meet OWCP's burden of proof to terminate appellant's wage-loss compensation and medical residuals. Dr. Sabbag explained that testing and neurological examination did not produce findings supporting her accepted conditions of carpal tunnel syndrome and flexor tenosynovitis. He examined x-rays and explained why he found that appellant's current symptoms and disability for work were due to her rheumatoid arthritis. These findings and conclusions establish that she has no employment-related disability or medical residuals due to her accepted conditions.

Subsequent to the proposed termination, appellant submitted an additional report from Dr. Manoharan dated January 7, 2014, which described her history of injury. Dr. Manoharan diagnosed bilateral wrist joint pain, tenosynovitis bilaterally, and nonwork-related bilateral hand rheumatoid arthritis. He stated that appellant's accepted conditions were still medically present and disabling, and that there was a permanent work-related aggravation of the rheumatoid arthritis. The Board finds that Dr. Manoharan's report contains conclusory statements without supportive medical reasoning and is not sufficient to overcome the weight accorded Dr. Sabbag

[7] 5 U.S.C. §§ 8101-8193, 8123; *M.S.*, 58 ECAB 328 (2007); *B.C.*, 58 ECAB 111 (2006).

[8] *R.C.*, 58 ECAB 238 (2006).

as the impartial medical examiner. Furthermore, as Dr. Manoharan was on one side of the conflict that Dr. Sabbag resolved, the additional report from Dr. Manoharan is not sufficient to overcome the weight accorded Dr. Sabbag's report as the impartial medical specialist or to create a new conflict.[9]

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish disability causally related to her accepted employment injury.[10] To establish a causal relationship between the condition, as well as any disability claimed, and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[11]

ANALYSIS -- ISSUE 2

Following OWCP's March 13, 2014 termination decision, appellant requested reconsideration and submitted a report dated October 14, 2014 from Dr. Hartunian who noted her history of injury, work history, and medical treatment. Dr. Hartunian provided specific findings on physical examination including significant restricted motion of both wrists and fingers. He found a mildly positive Tinel's sign at the right carpal tunnel. Dr. Hartunian opined that appellant had clinical indicators of residual inflammation from the carpal tunnel syndrome including a positive Tinel's sign on the right as well as tenderness over the flexor tendons at the left index finger. He stated that he disagreed with Dr. Sabbag and opined that her current condition was due to carpal tunnel syndrome and trigger finger as well as a permanent aggravation of her preexisting rheumatoid arthritis. Dr. Hartunian opined that appellant continued to experience residuals and disability as a result of her accepted conditions.

The Board finds that Dr. Hartunian's report is not sufficiently well reasoned to establish appellant's claim for continuing disability. Dr. Hartunian described her current symptoms and findings consistent with her diagnosis of rheumatoid arthritis; however, he opined that there were still clinical indicators of carpal tunnel syndrome. He did not explain how he differentiated the findings of a positive Tinel's sign and tenderness over the flexor tendons at the left index finger

[9] *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

[10] *George Servetas*, 43 ECAB 424, 430 (1992).

[11] *James Mack*, 43 ECAB 321 (1991).

from appellant's arthritic symptoms. Furthermore, Dr. Hartunian's report is not based on a complete review of the medical records. Due to these deficiencies, his report is not sufficient to meet appellant's burden of proof to establish continuing disability due to her accepted employment-related conditions.

The Board further finds that Dr. Hartunian's report is not sufficient to establish a conflict of medical opinion evidence with Dr. Sabbag, the impartial medical specialist. Dr. Sabbag clearly reviewed the prior medical evidence and determined that appellant's rheumatoid arthritis had progressed and affected her hand and wrist, the same parts of her body previously impacted by her employment injury. He determined that there was no aspect of her medical condition that cannot currently be explained by her progressive arthritis. Furthermore, Dr. Sabbag discussed the history of appellant's surgical and other treatment for both carpal tunnel syndrome and rheumatoid arthritis in greater detail than Dr. Hartunian.

The Board notes that on reconsideration and appeal counsel argues that appellant's schedule awards for 31 percent permanent impairment of each upper extremity should establish that her employment-related residuals and disability continue. The Board notes that preexisting impairments to the scheduled member are to be included when determining entitlement to a schedule award.[12] The record indicates that appellant's rheumatoid arthritis was a preexisting condition and impairments from this condition would have been included in appellant's 1989 schedule awards. Therefore, the argument that because she had received a schedule award for permanent impairment does not equate to inability to earn the same wages as she received at the time of her injury, or the need for further medical treatment, as the employment-related conditions had ceased.

On appeal and before OWCP, counsel argues that Dr. Sabbag's report was not based on a proper history of injury as he was provided an inaccurate or incomplete statement of the accepted facts. The Board notes that there were typographical errors, minor omissions, and a lack of clarity in the statement of accepted facts provided him, but finds that these issues do not adversely impact the weight of his report. Dr. Sabbag's factual recitation is in keeping with the record. He included an accurate description of appellant's employment, he accurately listed the injuries to her left upper extremity and he explained how he reached his conclusions based on review of the medical records and the statement of accepted facts. For these reasons, the Board finds that counsel's arguments regarding the statement of accepted facts are without merit in this case.

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 met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective April 6, 2014. The Board further finds that, following its March 13, 2014 decision terminating her benefits, she submitted an additional

[12] *Carol A. Smart*, 57 ECAB 340 (2006).

medical report which was not sufficient to meet her burden of proof to establish continuing disability or to create a conflict of medical opinion evidence.

ORDER

IT IS HEREBY ORDERED THAT the February 6, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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