

On appeal appellant's counsel contends that there was no true conflict at the time of the referral to an impartial medical examiner as OWCP erred in giving equal weight to the opinion of OWCP's referral physician. He also argues that the impartial medical examiner's report is insufficient to resolve the issue presented as it was based on an incomplete and inaccurate medical history.

FACTUAL HISTORY

This case has previously been before the Board on appeal. Appellant, then a 49-year-old slaughter food inspector, injured her left hand, forearm, and fingers and her right palm while inspecting chicken carcasses on August 14, 2000. OWCP accepted the claim for bilateral trigger fingers and left medial epicondylitis and paid her compensation benefits effective December 5, 2000. On March 4, 2003 it reduced appellant's compensation benefits to reflect her capacity to earn wages as a manager for Quality Control. Following requests for reconsideration, OWCP denied modification by decisions dated June 4, 2003 and June 28, 2004. On March 17, 2005 the Board issued an order remanding the case to OWCP as the record before the Board was incomplete.³ By decision dated July 15, 2005, OWCP reassembled the record "re-issuing its decision of June 28, 2004" denying modification of the March 4, 2003 loss of wage-earning capacity decision. In a June 13, 2006 decision, the Board affirmed the reduction of appellant's compensation based on her ability to earn wages as a manager for Quality Control.⁴ However, the Board found that the case was not in posture for a decision on the issue of whether modification of the March 4, 2003 loss of wage-earning capacity was warranted. The Board found the new medical evidence, by appellant's attending physician, Dr. Scott M. Fried, a treating osteopathic Board-certified orthopedic surgeon, submitted since the March 4, 2003 loss of wage-earning capacity decision, warranted further development by OWCP.

By decision dated September 6, 2011, the Board affirmed an August 25, 2010 OWCP hearing representative's decision affirming OWCP's January 15, 2010 decision terminating her compensation benefits effective January 17, 2010. The Board found that the special weight of the medical evidence was represented by Dr. John F. Perry, a Board-certified orthopedic surgeon selected as the impartial medical specialist, who opined that, based on physical examination and normal findings on diagnostic testing, appellant did not have any residuals or disability causally related to her employment-related bilateral hand overuse syndrome, left medial epicondylitis, and bilateral trigger fingers.⁵

On March 26, 2012 the Board granted appellant's petition for reconsideration and reversed its September 6, 2011 decision. The Board found that in the prior OWCP decision, Dr. William Kirkpatrick, the Board-certified orthopedic surgeon and impartial medical specialist, had been reduced from an impartial medical specialist to that of a second opinion physician. Under 5 U.S.C. § 8123, appellant has a statutory right to timely request to have a physician of her choosing to participate in any second opinion evaluation. Therefore, as appellant had not

³ Docket No. 04-1918 (issued March 17, 2005).

⁴ Docket No. 05-1848 (issued June 13, 2006).

⁵ Docket No. 11-41 (issued September 6, 2011).

been provided advance notice of Dr. Kirkpatrick's now second opinion evaluation, his report could not create a conflict in medical evidence.⁶ Accordingly, the Board reversed the termination. The facts and the circumstances of the case as set out in the Board's prior decision are incorporated herein by reference. The relevant evidence from the prior decisions is set forth below.

By correspondence dated July 20, 2012, OWCP combined OWCP File No. xxxxxx177,⁷ which had been accepted for bilateral overuse of hands, bilateral hand sprain, and triggering small fingers with OWCP File No. xxxxxx742. The latter file is the master file number.

In a May 28, 2010 report, Dr. Fried had disagreed with Dr. Perry's 2009 reports finding that appellant had no residuals or disability causally related to her accepted conditions. Based on his review of the October 30, 2009 EMG, he found it substantiated his diagnosis of brachial plexopathy and was contrary to Dr. Perry's conclusion. Dr. Fried opined that based on his review of the objective data and medical evidence, appellant continued to be totally disabled due to her accepted work injuries.

On August 28, 2012 OWCP referred appellant for a new second opinion evaluation with Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon, to determine appellant's current medical status. In an October 3, 2012 report, Dr. Didizian reviewed the medical evidence and conducted a physical examination. His examination of the back showed no atrophy, no scapula winging, and intact scapulothoracic articulation with no crepitation. Range of motion for the neck included 40 degrees flexion, 30 degrees extension, 35 degrees tilting, and 60 degrees bilateral rotation. Appellant related soreness in the trapezial area with Spurling's test left to left and right to right. Dr. Didizian reported good shoulder movement with negative superior labral tear from anterior-superior, Neer, speed, drop arm, apprehension, and Hawkin's tests. The examination of the elbows also revealed a negative Tinel's sign at radial and cubital tunnel, and no tenosynovitis or synovitis. Next, a wrist resistance test for flexion and extension ruled out lateral or epicondylitis, a negative long finger extensor test for posterior interosseous nerve. According to Dr. Didizian, the only positive finding on his examination was bilaterally fifth digits and to a lesser degree the fourth digit trigger fingers. He found no evidence of cervical radiculopathy, epicondylitis, median or radial nerve involvement, brachial plexopathy, or any reflex sympathy dystrophy. In concluding, Dr. Didizian opined that he disagreed with Dr. Fried's diagnoses based on his negative physical examination findings.

In a December 13, 2012 report, Dr. Fried provided a history of appellant's work injury and physical findings on examination. He diagnosed bilateral carpal tunnel syndrome with flexor tenosynovitis and bilateral trigger fingers, repetitive strain injury, brachial plexitis, and traumatically-induced median and radial neuropathy. Dr. Fried concluded that appellant's conditions were directly caused by her repetitive employment duties. He opined that appellant

⁶ *Order Granting Petition for Reconsideration and Reversing Prior Decision*, Docket No. 11-41 (issued March 26, 2012).

⁷ On December 31, 1997 appellant, then a 47-year-old food inspector, filed an occupational disease claim alleging that in November 1997 she first became aware that her bilateral hand and small finger problems were due to her employment duties.

continued to have severe disabilities as a result of her condition and was unable to perform the duties of the constructed position of manager for Quality Control. Dr. Fried reviewed a neuromusculoskeletal ultrasound and provided a description of the procedure on December 13, 2012. Diagnoses included bilateral trigger finger; sympathetically mediated pain syndrome of the bilateral upper extremities, with reactive depression and true reflex sympathetic dystrophy; bilateral median radial tunnel neuropathy; left brachial plexopathy/cervical radiculopathy with long thoracic neuritis; bilateral carpal tunnel median neuropathy. Dr. Fried attributed these conditions to appellant's work activities.

In a July 18, 2013 report, Dr. Fried provided a medical and employment injury history, physical examination findings, and reviewed Dr. Didizian's report. He noted his disagreement with Dr. Didizian's conclusions regarding the diagnoses of bilateral carpal tunnel syndrome with flexor tenosynovitis and bilateral trigger fingers, repetitive strain injury, brachial plexitis, and traumatically-induced median and radial neuropathy.

On November 21, 2013 OWCP referred appellant to Dr. Lawrence Weiss, a Board-certified orthopedic surgeon and hand surgeon, to resolve the conflict in the medical opinion evidence between Drs. Didizian and Fried on the issue of whether appellant's claim should be expanded to include additional conditions.

On November 26, 2013 Dr. Fried reviewed an EMG/NCS and provided a description of the procedure. Diagnoses included: bilateral trigger finger; sympathetically mediated pain syndrome of the bilateral upper extremities, with reactive depression and true reflex sympathetic dystrophy; bilateral median radial tunnel neuropathy; left brachial pleoxopathy/cervical radiculopathy with long thoracic neuritis; and bilateral carpal tunnel median neuropathy. Dr. Fried attributed these conditions to appellant's work activities.

In a report dated December 6, 2013, Dr. Weiss, based upon a review of the statement of accepted facts, medical record, and physical examination, diagnosed a history of work-related acquired bilateral acquired left medial epicondylitis, and trigger fingers. In the body of the report, he provided a detailed list of the factual evidence, medical reports, radiographic studies, and diagnostic studies he reviewed from 1999 to 2012. The evidence included evaluations by Dr. Fried from September 15, 2003 through November 26, 2013, which included a review by Dr. Weiss of all the ultrasound tests that had been ordered by Dr. Fried. A physical examination revealed full cervical lateral flexion, lateral rotation, flexion and extension, and no paracervical or paratrapezial spasm. Appellant reported pain on touching from her head, to her trunk and both arms. Dr. Weiss stated that this "was in a nonanatomical distribution of findings" and that there was consistent and equal pain degrees elicited throughout all bilateral four quarters on palpation. He reported that Tinel's sign at the brachial plexus supraclavicular or infraclavicular portion revealed no specific inductive findings. In addition, there was no evidence of any anterior or posterior triangles neck swelling, and no evidence of scapular winging based on normal long thoracic function. A shoulder examination revealed no evidence of shoulder impingement process, instability pattern, or rotator cuff weakness. The acromioclavicular joint was stable and no crepitus pattern was evident. Dr. Weiss reported full bilateral elbow range of motion, no evidence of olecranon bursitis, no evidence of effusion, pattern, no evidence of triceps or biceps insertional tendinitis, no evidence of bilateral lateral or medial epicondylitis, intact radial nerve

function, and no evidence of ulnar subluxation. The examination also revealed negative Tinel's sign and negative cubital tunnel compression test.

Dr. Weiss reported bilateral full wrist range of motion, no first extensor compartment swelling, no evidence of wrist flexor or extensor tenosynovitis, and no evidence of thenar atrophy. Tests performed at the wrist were negative. Dr. Weiss stated that appellant had full bilateral digit range of motion, no deformity at the joints, and no arthritic joint pattern involving the fingers. He noted that he found no clinical evidence supporting Dr. Fried's diagnoses of peripheral entrapment neuropathy, cervical radiculopathy, brachial plexopathy, or other conditions. Dr. Weiss stated that appellant's bilateral upper extremity pain complaints "is inconsistent with a specific physical condition" causally related to the August 14, 2000 employment injury.

Dr. Weiss opined that appellant had no evidence supporting expansion of her claim to include carpal tunnel compression, traumatically-induced median and radial neuropathy, brachial plexopathy, cervical radiculopathy, scapular winging, long thoracic neuritis, or ulnar neuritis pattern. He also found that she no longer had any residuals or disability due to her accepted August 14, 2000 employment injury.

By decision dated April 18, 2014, OWCP denied appellant's request to expand her claim to include additional conditions. It found that the weight of the evidence rested with the opinion of Dr. Weiss, the impartial medical examiner, who concluded that there was no evidence supporting expansion of her claim to include additional conditions.

In correspondence dated May 29, 2014, appellant's counsel requested reconsideration. He contended that Dr. Weiss' opinion was based on an inaccurate or incomplete history. Counsel noted, among other things, that Dr. Weiss specifically failed to list ultrasound test results, including a December 4, 2013 test supporting appellant's upper extremity pathology. As Dr. Weiss failed to reference this report and other tests supporting her request to expand her claim, counsel argued that this failure diminished the probative value of Dr. Weiss' impartial medical examiner opinion. He contended that the conflict in the medical opinion remained unresolved with respect to appellant's disability status and whether her claim should be expanded to include additional conditions. In support of her reconsideration request, appellant provided the tests and reports she claimed Dr. Weiss had failed to consider in his December 6, 2013 report.

On June 12, 2014 OWCP received an April 20, 2008 x-ray of her brain.

In a letter dated June 16, 2014, OWCP requested Dr. Weiss to provide a supplemental opinion based on these allegations and the additional evidence submitted by appellant. On July 18, 2014 Dr. Weiss related reviewing this additional evidence. The evidence included: an April 20, 2008 magnetic resonance imaging scan of her brain; an October 20, 2011 chest x-ray interpretation; a January 25, 2012 barium swallow; a May 3, 2010 report by Dr. Talasania; a March 20, 2008 report by Dr. Weinblatt; a March 5, 2010 report and evaluations for the period June 26, 1999 through November 6, 2013 by Dr. Fried. Dr. Weiss stated that his opinion based on his evaluation remained unchanged as he found no evidence supporting "any ongoing industrial condition of any sort that exists."

By decision dated August 4, 2014, OWCP denied appellant's request for modification of April 18, 2014 decision.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁸ 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 medical and factual background supporting such a causal relationship.⁹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰ Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

Section 8123(a) 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.¹³ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.¹⁴

ANALYSIS

OWCP accepted the conditions of bilateral trigger fingers and left medial epicondylitis under OWCP File No. xxxxxx742 and bilateral overuse of hands, bilateral hand sprain, and triggering small fingers under OWCP File No. xxxxxx177. Appellant requested OWCP to expand her claim to include the conditions of bilateral carpal tunnel syndrome, flexor tenosynovitis, radial and medial neuropathy, brachial plexopathy, and reflex sympathetic dystrophy. OWCP found a conflict in the medical opinion between Dr. Fried, appellant's

⁸ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁹ *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

¹⁰ *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

¹¹ *Phillip L. Barnes*, 55 ECAB 426 (2004); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹² *V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹³ 5 U.S.C. § 8123(a). See *S.R.*, Docket No. 09-2332 (issued August 16, 2010); *Y.A.*, 59 ECAB 701 (2008); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

¹⁴ *A.R.*, Docket No. 09-1566 (issued June 2, 2010); *M.S.*, 58 ECAB 328 (2007); *Bryan O. Crane*, 56 ECAB 713 (2005).

physician, and Dr. Didizian, an OWCP referral physician. Dr. Fried opined that appellant's claim should be expanded to include additional conditions while Dr. Didizian noted his disagreement with Dr. Fried's findings. Thus, OWCP referred appellant to Dr. Weiss to resolve the conflict regarding whether appellant's claim should be expanded to include additional conditions, pursuant to 5 U.S.C. § 8123(a).

Dr. Weiss concluded, based upon his physical examination and a review of the objective and medical evidence, that appellant had no evidence supporting expansion of her claim to include carpal tunnel compression, traumatically-induced median and radial neuropathy, brachial plexopathy, cervical radiculopathy, scapular winging, long thoracic neuritis, or ulnar neuritis pattern. He explained that there was no clinical evidence to support Dr. Fried's diagnosis of peripheral entrapment neuropathy, cervical radiculopathy, brachial plexopathy or other conditions, and that diagnostic tests were also normal. Dr. Weiss pointed out that appellant's bilateral upper extremity pain was inconsistent with a specific condition attributable to the accepted August 14, 2000 employment injury. Additionally, he concluded that appellant's accepted August 14, 2000 work-related condition had resolved and that she had no industrial condition of any kind. In his supplemental report, Dr. Weiss reviewed additional reports and found his opinion unchanged.

The Board finds that Dr. Weiss' report was entitled to the special weight of the medical evidence. Dr. Weiss provided a detailed report reviewing the medical records and physical examination findings. It was based on a proper factual history and provided findings and medical reasoning supporting his conclusions and provided a rationalized medical opinion as to why appellant's claim should not be expanded to include the additional conditions. Dr. Weiss' report is sufficient to carry the weight of an independent medical specialist. As such, the Board finds that appellant has failed to meet her burden of proof to establish as work related the additional conditions of carpal tunnel compression, traumatically-induced median and radial neuropathy, brachial plexopathy, cervical radiculopathy, scapular winging, long thoracic neuritis, or ulnar neuritis pattern.

On appeal counsel argues that Dr. Weiss' opinion is deficient as he failed to review all the medical evidence of record and was not based on a complete and accurate medical history. Contrary to counsel's contentions, however, Dr. Weiss did review all the medical evidence of record. His claim that Dr. Weiss specifically did not review the ultrasound evidence is not supported by the record. Although he did not refer to each of the referenced ultrasound reports as ultrasound reports, he referred to them as Dr. Fried reports from June 26, 2009 through November 6, 2013. The reports from Dr. Fried were, in fact, the ultrasound reports as these reports had been ordered and reviewed by Dr. Fried.

Counsel further argues that there was no conflict in the medical opinion evidence requiring referral for an impartial medical examination. As discussed above, OWCP properly found a conflict in the medical opinion evidence between Drs. Fried and Dr. Didizian regarding the issue of expansion of appellant's claim.

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 failed to establish additional work-related conditions of flexor tenosynovitis, radial and medial neuropathy, bilateral carpal tunnel syndrome, reflex sympathetic dystrophy, and brachial plexopathy.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 4, 2014 is affirmed.

Issued: September 16, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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