United States Department of Labor
Employees' Compensation Appeals Board

R.R., Appellant	)	
and	)	**Docket No. 16-0595**
	)	**Issued: August 5, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Margate, NJ, Employer	)	

Appearances:
Michael D. Overman, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 9, 2016 appellant, through counsel, filed a timely appeal of a November 4, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 June 29, 2015; and (2) whether appellant

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

has met her burden of proof to establish any continuing employment-related disability or medical condition on or after June 29, 2015.

On appeal counsel contends that the impartial medical examiner, Dr. Ian Fries, a Board-certified orthopedic surgeon, was not entitled to the weight of the medical opinion as his reports were contradictory and not sufficiently well-reasoned.

FACTUAL HISTORY

On April 21, 2006 appellant, then a 52-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome due to her employment duties. She underwent electrodiagnostic testing including electromyogram (EMG) and nerve conduction velocity (NCV) studies on March 23, 2006. These tests demonstrated evidence of severe carpal tunnel syndrome on the left and moderately severe carpal tunnel syndrome on the right. OWCP accepted appellant's claim on June 12, 2006 for bilateral carpal tunnel syndrome.

At the request of OWCP, Dr. Zohar Stark, a Board-certified orthopedic surgeon, examined appellant on June 14, 2007 for a second opinion evaluation. He found no apparent sensory or motor deficit in the arms. Dr. Stark noted that Tinel's sign was negative and that Phalen's test was questionably positive in the left wrist. He reviewed appellant's electrodiagnostic testing and found that this reported bilateral carpal tunnel syndrome. Dr. Stark found that physical examination showed no clinical evidence of this condition.

Appellant returned to full-time work in a light-duty position on May 12, 2008. By decision dated December 5, 2008, OWCP found that her limited-duty position fairly and reasonably represented her wage-earning capacity. It found that appellant's actual earnings met those of her date-of-injury position and found that she had no loss of wage-earning capacity.

Appellant filed a claim for a recurrence of disability (Form CA-2a) on March 30, 2009. She alleged that the employing establishment removed her light-duty position. On the reverse side of the claim form, appellant's supervisor noted that she had been provided with a new limited-duty job offer.

By decision dated June 3, 2009, OWCP denied modification of OWCP's loss of wage-earning capacity determination. Appellant, through counsel, requested an oral hearing from OWCP's Branch of Hearings and Review, and by decision dated August 14, 2009, the OWCP hearing representative vacated OWCP's June 3, 2009 decision, finding that appellant's limited-duty position was temporary and therefore not suitable for a loss of wage-earning capacity determination. OWCP accepted her claimed recurrence of disability on August 24, 2009.

Appellant returned to work in a limited-duty position on September 12, 2009. By decision dated August 18, 2010, OWCP granted her a schedule award for five percent permanent impairment of each upper extremity.

Appellant filed a Form CA-2a claim for a recurrence on May 31, 2013 alleging that on February 25, 2013 she sustained a recurrence of disability due to her accepted 2006 employment

injuries. She alleged that there was no light-duty work available at the employing establishment within her work restrictions.

In a report dated July 9, 2013, Dr. Scott Fried, an osteopath and appellant's attending physician, noted appellant's work-related bilateral carpal tunnel syndrome and supported ongoing partial disability for work.

On July 25, 2013 OWCP referred appellant for a second opinion evaluation with Dr. Stanley Askin, a Board-certified orthopedic surgeon and hand surgeon. In an August 16, 2013 report, Dr. Askin noted appellant's history of carpal tunnel syndrome and found that her Phalen's test and Tinel's sign were positive bilaterally. He noted that these tests were subjective. Dr. Askin opined that appellant's carpal tunnel syndrome was age related and caused by thickening of the tissues within the carpal tunnel. He noted that OWCP had accepted this condition as related to appellant's employment, but opined that on a scientific basis this was not the case. Dr. Askin found that appellant's work activities were no longer associated with a worsening of her symptoms as she had not worked since January 2013. He determined that appellant was fully recovered from any work associated disturbance of her baseline condition. Dr. Askin responded to questions posed by OWCP and concluded that appellant was not receiving any medically reasonable or necessary treatment for carpal tunnel syndrome. He opined that appellant could return to her date-of-injury position on a full-time basis. Dr. Askin concluded that any work-related problem had resolved and that appellant's age-appropriate carpal tunnel syndrome should be addressed through surgery.

Dr. Fried completed a note on September 12, 2013 and described appellant's ongoing symptoms of numbness and tingling in her hands. He noted that she was not currently working and found bilateral dysesthesias in the median nerve distribution. Dr. Fried opined that appellant could not return to her regular-duty work and found that she should not drive for work. He diagnosed carpal tunnel median neuropathy or repetitive strain injury of the bilateral upper extremities secondary to appellant's work activities.

On September 11, 2013 Dr. Askin clarified his report and found that appellant could perform her job duties despite her carpal tunnel diagnosis as the condition was "somewhat akin (in a functional manner of speaking) to having a pebble in one's shoe." He expounded that the metaphoric pebble could be annoying such that the person would address the problem or at other times be sufficiently tolerable. Dr. Askin concluded that the fact that appellant had carpal tunnel syndrome did not preclude her from performing her regular job duties. He explained that about 15 percent of those middle-aged or older had some manifestation or feature of carpal tunnel syndrome. Dr. Askin opined that there was no harm to appellant if she tolerated her carpal tunnel condition and continued to be active as it was a nuisance condition.

By decision dated November 26, 2013, OWCP terminated appellant's wage-loss compensation, effective that same date. Appellant, through counsel, requested an oral hearing on December 9, 2013.

In a report dated February 13, 2014, Dr. Fried responded to Dr. Askin's findings and conclusions. He described appellant's symptoms of numbness and tingling in both hands, clumsiness, and altered dexterity. Dr. Fried reviewed appellant's March 2006 EMG findings and

noted that appellant's Phalen's' test was positive at the wrist bilaterally. He found that appellant's symptoms were increased with repetitive activities in the upper extremities including her normal job activities of regular gripping, grasping, pulling, pushing, and reaching.

By decision dated April 4, 2014, an OWCP hearing representative vacated the November 26, 2013 decision. She found a conflict in the medical evidence between Drs. Fried and Askin and remanded the case for a referral for an impartial medical examination to resolve whether appellant continued to have residuals of a work-related condition and if a work-related condition precluded her from performing her regular duties.

In a decision dated April 11, 2014, OWCP denied appellant's request to participate in the selection of the impartial medical examiner as counsel did not provide a valid reason for participation.

On May 22, 2014 OWCP referred appellant, a statement of accepted facts and a list of questions to Dr. Ian B. Fries, a Board-certified orthopedic surgeon, to resolve the conflict in medical opinion. In a June 19, 2014 report, Dr. Fries reviewed a statement of accepted facts, including appellant's date-of-injury position, and medical records. He examined appellant and found no Tinel's sign. Carpal compression test on the right caused some paresthesias into the right index and middle fingers. In the bilateral Phalen's test position, appellant had mild wrist pain and some discomfort but no median paresthesias. Dr. Fries diagnosed chronic bilateral carpal tunnel syndrome. He found that appellant was capable of working full time. Dr. Fries noted that appellant's current physical examination did not confirm bilateral carpal tunnel syndrome as testing did not provoke median distribution symptoms. He found no measurable sensory deficits, excellent dexterity, and no muscle weakness or atrophy. Dr. Fries noted that electrodiagnostic studies confirmed chronic bilateral carpal tunnel syndromes, as well as appellant's subjective complaints, but that her response to provocative physical examination testing was inconsistent. He concluded that appellant may have ongoing bilateral carpal tunnel syndrome symptoms which OWCP had determined were work related. Dr. Fries noted that appellant's diagnosed condition did not preclude her from performing her full duties as a mail carrier. He opined that appellant's current physical examination findings were all subjective and were inconsistent with carpal tunnel syndrome. Dr. Fries concluded that appellant's limitations, if any, were based on tolerance. He determined that appellant did not require any additional conservative care and that she had refused surgical release of her carpal tunnels and therefore had reached maximum medical improvement.

On July 16, 2014 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Fries' report. It afforded appellant 30 days to respond. Appellant did not respond within the time allotted.

By decision dated August 20, 2014, OWCP terminated appellant's wage-loss compensation and medical benefits, effective August 20, 2014. Counsel requested an oral hearing in a September 2, 2014 letter. On February 3, 2015 the OWCP hearing representative reversed the August 20, 2014 decision and directed OWCP to request a supplemental report from Dr. Fries to explain inconsistencies regarding whether appellant continued to experience bilateral carpal tunnel syndrome and any work restrictions due to this condition.

On February 11, 2015 OWCP requested a supplemental report from Dr. Fries addressing whether appellant continued to experience the accepted condition and any disability from this condition. Dr. Fries responded on February 23, 2015 and noted that OWCP had accepted appellant's condition of bilateral carpal tunnel syndrome and that he was compelled to also accept this condition and its relationship to appellant's employment. He opined that appellant no longer had residuals of this condition. Dr. Fries noted that in 2007 appellant had neither symptoms nor physical findings when examined by Dr. Stark, such that this was a reasonable date for maximum medical improvement. In regard to the positive findings on electrodiagnostic studies, he differentiated chronic from acute test findings, and explained that a patient with abnormal electrodiagnostic studies labeled chronic was not necessarily clinically symptomatic or impaired. Dr. Fries reiterated that appellant had no symptoms consistent with bilateral carpal tunnel syndrome when he examined her and that he could not provoke median distribution symptoms employing the standard physical examination maneuvers. He repeated his findings that appellant did not have measureable sensory deficits, loss of dexterity, muscle weakness, or atrophy. Dr. Fries opined, "Carpal tunnel syndrome symptomatic for more than a decade should display measurable sensory, motor, skin, and muscle findings. None were present in [appellant.]" Dr. Fries concluded that appellant did not have symptoms, physical findings, or impairment due to chronic bilateral carpal tunnel syndrome. He found that she had no disability for work and did not require work restrictions or accommodations.

OWCP issued a proposed notice to terminate appellant's wage-loss compensation and medical benefits on May 28, 2015 based on Dr. Fries' reports. Appellant did not respond within the 30 days allotted.

By decision dated June 29, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits, effective June 29, 2015. Counsel requested an oral hearing on July 6, 2015.

In a note dated July 14, 2015, Dr. Fried indicated that appellant's bilateral carpal tunnel syndrome continued to by symptomatic. He found that appellant did better at rest and when she was careful to stay within her limits. Dr. Fried noted that appellant was retired and diagnosed carpal tunnel median neuropathy or repetitive strain injury secondary to work activities. He found that appellant could not perform her regular work activities. Dr. Fried recommended neurolysis. He repeated these findings and conclusions on September 29, 2015. On September 29, 2015 Dr. Fried also found that Phalen's testing was positive bilaterally for dysesthesias in the median nerve distribution. He reported a positive Tinel's sign at the median nerve in the left wrist.

Appellant testified at the oral hearing held on September 15, 2015. She noted that she retired from the employing establishment. Appellant opined that Dr. Fried's therapies had decreased her symptoms from bilateral carpal tunnel syndrome. She noted that as long as she restricted her activities her symptoms were controlled. Appellant asserted that she could no longer use her hands for leisure activities, cooking, cleaning, drying her hair, or applying makeup. She felt that she still experienced residuals. Appellant requested her medical benefits be reinstated.

By decision dated November 4, 2015, OWCP's hearing representative found that Dr. Fries' reports were entitled to the weight of the medical evidence. She found that Dr. Fries explained that appellant's objective physical examination did not support the electrodiagnostic findings of bilateral carpal tunnel syndrome. OWCP's hearing representative affirmed the June 29, 2015 decision.

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.[3] 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.[4] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[5] 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.[6]

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) 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] 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.[9]

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective June 29, 2015.

Appellant's attending physician, Dr. Fried, continued to support appellant's disability for work and medical residuals due to her accepted condition of bilateral carpal tunnel syndrome.

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

[4] *Id.*

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

[6] *Id.*

[7] *Supra* note 2 at 8123; *B.C.*, 58 ECAB 111 (2006); *M.S.*, 58 ECAB 328 (2007).

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

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

OWCP referred appellant for a second opinion evaluation with Dr. Askin, who found that appellant did not require further medical treatment for her condition and that she had no disability for work due to this condition. The Board finds that these varying opinions from appellant's physician and a physician for OWCP created a conflict of medical opinion which had to be resolved through an impartial medical examination. OWCP, therefore, properly referred appellant to Dr. Fries to resolve the conflict.

In his reports dated June 19, 2014 and February 23, 2015, Dr. Fries reviewed the statement of accepted facts, including appellant's date-of-injury position, and medical records. On examination, he found no Tinel's sign and advised that carpal compression testing on the right caused some paresthesias into the right index and middle fingers. In the bilateral Phalen's test position, appellant had mild wrist pain and some discomfort but no median paresthesias. Dr. Fries diagnosed chronic bilateral carpal tunnel syndrome. He found that appellant could work full time. Dr. Fries noted that appellant's current examination did not confirm bilateral carpal tunnel syndrome as testing did not provoke median distribution symptoms. He found no measurable sensory deficits, excellent dexterity and no muscle weakness or atrophy. On February 23, 2015 Dr. Fries clarified that OWCP had accepted appellant's condition of bilateral carpal tunnel syndrome, but he opined that appellant no longer had residuals of this condition. Dr. Fries noted that as early as 2007 appellant had neither symptoms nor physical findings when examined by Dr. Stark.

Dr. Fries initially noted that electrodiagnostic studies confirmed chronic bilateral carpal tunnel syndromes, as well as appellant's subjective complaints, but that her response to provocative physical examination testing was not consistent. In his supplemental report, Dr. Fries differentiated chronic from acute test findings, and explained that a patient with abnormal electrodiagnostic studies labeled chronic was not necessarily clinically symptomatic or impaired. He reiterated that appellant had no symptoms consistent with bilateral carpal tunnel syndrome when he examined her and that he could not provoke median distribution symptoms employing the standard physical examination maneuvers. Dr. Fries noted that appellant's diagnosed condition did not preclude her from performing her full duties as a mail carrier. He opined that appellant's current examination findings were all subjective and not consistent with carpal tunnel syndrome. Dr. Fries concluded that appellant's limitations if any were based on tolerance. He opined that appellant did not require any additional conservative care. Dr. Fries opined, "Carpal tunnel syndrome symptomatic for more than a decade should display measurable sensory, motor, skin, and muscle findings. None were present in [appellant.]" Dr. Fries concluded that appellant did not have symptoms, physical findings, or impairment due to chronic bilateral carpal tunnel syndrome. He found that she had no disability for work and did not require work restrictions or accommodations.

The Board finds that these reports from Dr. Fries are based on a proper history, are detailed, and well-reasoned. Dr. Fries explained why electrodiagnostic findings were not determinative without clinical correlation and did not establish appellant's ongoing diagnosis of bilateral carpal tunnel syndrome. He responded to OWCP's questions and concluded that appellant had no residuals or disability of her accepted conditions. These reports are entitled to special weight and are a sufficient basis for OWCP to terminate appellant's wage-loss compensation and medical benefits.

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's compensation benefits, the burden shifted to appellant to establish that she had 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 rationalized 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

The Board finds that appellant has not submitted sufficient medical opinion evidence to establish any continuing employment-related disability or medical condition on or after June 29, 2015.

In support of her claim, appellant submitted two notes from Dr. Fried dated July 14, and September 29, 2015. Dr. Fried indicated that appellant's bilateral carpal tunnel syndrome continued to be symptomatic. He diagnosed carpal tunnel median neuropathy or repetitive strain injury secondary to work activities. Dr. Fried found that appellant could not perform her regular work activities. He recommended additional medical treatment. On September 29, 2015 Dr. Fried also found that Phalen's testing was positive bilaterally for dysesthesias in the median nerve distribution. He reported a positive Tinel's sign at the median nerve in the left wrist. These treatment notes are not sufficiently detailed or well-reasoned to establish that appellant continues to experience disability or residuals due to her bilateral carpal tunnel syndrome. While Dr. Fried found physical testing including Phalen's test and Tinel's sign indicative of carpal tunnel syndrome, these findings alone are not sufficient to establish appellant's claim especially as Dr. Fries had been unable to replicate these findings. Furthermore, as Dr. Fried was on one side of the conflict that Dr. Fries resolved, the additional reports from Dr. Fried are insufficient to overcome the weight accorded to Dr. Fries' reports as the impartial medical specialist or to create a new conflict.[12]

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

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

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

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 June 29, 2015 and that appellant has not met her burden of proof to establish any continuing disability or medical residuals on or after that date.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 5, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board