United States Department of Labor
Employees' Compensation Appeals Board

K.V., Appellant	)	
and	)	**Docket No. 15-0960**
	)	**Issued: March 9, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Castle Rock, CO, Employer	)	

Appearances:
John S. Evangelisti, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 26, 2015 appellant, through counsel, filed a timely appeal of a November 4, 2014 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.[2]

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 22, 2013; and (2) whether

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant, through counsel, filed a timely request for oral argument. By order dated October 9, 2015, the Board, after exercising its discretion, denied her request as her arguments could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 15-0960 (issued October 9, 2015).

appellant has met her burden of proof to establish continuing residuals and disability on and after January 22, 2013 causally related to her accepted employment injuries.

On appeal, counsel contends that OWCP improperly terminated appellant's compensation benefits based on the report of the impartial medical examiner as OWCP failed to provide the impartial medical examiner with a statement of accepted facts (SOAF). He argues that the second opinion physician's report is insufficient as he disregarded the SOAF.

FACTUAL HISTORY

On April 3, 1996 appellant filed an occupational disease claim alleging that on July 29, 1994 she first became aware of her bilateral carpal tunnel condition and thoracic outlet syndrome, but did not realize these conditions were employment related until February 28, 1996. OWCP accepted the claim for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx775. Appellant returned to light-duty work for four hours a day on March 31, 1997. She stopped work on July 29, 1999. Appellant received wage-loss benefits on the periodic rolls as of June 16, 2002.

This case has previously been before the Board.[3] By decision dated October 9, 2003, the Board set aside a February 14, 2003 OWCP decision denying appellant's claim for thoracic outlet syndrome and remanded the case for referral to a second opinion physician. Docket No. 03-1140 (issued October 9, 2008). In an *Order Remanding Case* dated November 30, 2007, the Board set aside OWCP's January 8, 2007 hearing representative's decision, which affirmed a June 16, 2004 decision denying appellant's recurrence of disability claim. The Board remanded the case for determination as to whether a January 26, 1999 wage-earning capacity determination should be modified. Docket No. 07-1183 (issued November 30, 2007). By decision dated August 12, 2010, the Board affirmed OWCP decisions dated July 17, 2008 and March 26, 2009 denying modification of the January 26, 1999 loss of wage-earning capacity decision. Docket No. 09-1639 (issued August 12, 2010). The facts and the circumstances of the prior Board decisions are incorporated herein by reference.

On March 2, 2012 OWCP scheduled appellant for a second opinion evaluation with Dr. John D. Douthit, a Board-certified orthopedic surgeon, to provide an assessment of her accepted work-related conditions. The record contains the questions posed to Dr. Douthit by OWCP, but not the SOAF that he was to use in arriving at his opinion. The questions included that appellant's claim had been accepted for bilateral carpal tunnel syndrome and bilateral brachial plexus lesions.

Dr. Douthit, in an April 11, 2012 report, provided a history of appellant's illness, reviewed medical records, and performed a physical examination. He noted over the years OWCP had accepted the conditions cervical strain, low back complaints, thoracic outlet syndrome, and bilateral carpal tunnel syndrome. A physical examination of the upper

[3] On June 25, 1992 appellant, then a 30-year-old letter carrier, injured her back in a motor vehicle accident. OWCP accepted the claim for cervical strain under File No. xxxxxx051. Appellant filed a claim for thoracic outlet syndrome on September 6, 2000 under File No. xxxxxx409. OWCP combined the files under File No. xxxxxx775. Appellant resigned on October 22, 2001 and her disability retirement became effective December 1, 2001.

extremities and thoracic outlet revealed no abnormalities consistent with a normal examination, no Tinel's signs or forearm dysesthesias, fingers flexed and extended well, good hand sweating and texture, and no thenar or hypothenar musculature atrophy. Appellant had a normal physical examination. Dr. Douthit diagnosed cervical spine degenerative disc disease and grade 1 spondylolisthesis. In response to the questions posed by OWCP, he opined that appellant had no objective findings related to the accepted bilateral carpal tunnel syndrome and bilateral brachial plexus lesions. In support of this conclusion, Dr. Douthit referenced the normal physical examination findings and the lack of any objective physical findings. He opined that appellant's cervical degenerative disc disease was unrelated to the employment injury. Dr. Douthit further opined that appellant's "claim appears to have been subjectively based from the outset and is without supportive objective physical findings at all." He further noted that appellant "has been able to recruit multiple medical specialists in support of her claim."

In a notice dated December 14, 2012, OWCP proposed to terminate appellant's compensation. It found Dr. Douthit's report constituted the weight of the evidence to establish that appellant no longer had any residuals or disability due to her accepted employment injuries.

By decision dated January 22, 2013, OWCP finalized the termination of appellant's compensation benefits effective that day.

Subsequent to the January 22, 2013 termination decision OWCP received a January 16, 2013 report by Dr. Christopher P. Ryan, a treating Board-certified physiatrist, who disagreed with Dr. Douthit's opinion, examination, and objective findings. Dr. Ryan provided a history of appellant's employment injury, summarized the medical history and objective tests which had been performed, and listed appellant's symptoms. A physical examination revealed a negative Spurling's test, globally diminished cervical range of motion, severe anterior and posterior shoulder girdles tightness, positive bilateral Adson's test, right-sided thenar atrophy, grade one weakness in the abductor pollicis brevis, and decreased distal sensation in the first four digits. Dr. Ryan related that appellant's objective test findings have not changed since her 2006 examination. He disagreed with Dr. Douthit's conclusion that appellant's bilateral carpal tunnel syndrome had resolved as diagnostic tests clearly established right median sensory and motor prolonged distal latencies and left-side prolonged sensory latencies. Dr. Ryan concluded that appellant continued to have symptoms and residuals from her thoracic outlet syndrome and bilateral carpal tunnel syndrome and was disabled from working for the employing establishment.

Dr. Ryan, in a later January 16, 2013 report, reiterated what he found to be incorrect assertions made by Dr. Douthit. He clarified that objective testing showed that appellant had recurrent and persistent carpal tunnel syndrome, contrary to Dr. Douthit's conclusion that the condition had resolved. Dr. Ryan related that appellant had carpal tunnel syndrome in 1996 and 1997, that shortly afterwards tests were normal, but repeat tests in 2000 and 2005 showed a recurrence of appellant's carpal tunnel syndrome. He also disputed Dr. Douthit's opinion of a lack of objective findings as his examination clearly noted right-side thumb abduction weakness, which was not normal. In addition, Dr. Ryan's physical examination findings included a markedly positive bilateral Adson's test, which supported a finding of thoracic outlet syndrome, as well as the 2002 finding of an extremely positive scalene muscle block response.

By decision dated August 13, 2013, an OWCP hearing representative found that Dr. Douthit's opinion constituted the weight of the evidence at the time OWCP terminated appellant's compensation benefits in the January 22, 2013 decision. The hearing representative further found that the evidence submitted subsequent to the January 22, 2013 decision created a conflict in the medical evidence requiring referral to an impartial medical examiner for resolution. Thus, the hearing representative affirmed the January 22, 2013 termination decision, but remanded for further action as set forth in the decision.

On February 22, 2013 Dr. Erasmus Morfe, an examining Board-certified physiatrist, performed a nerve conduction study which revealed reduced left median nerve amplitude and right median motor nerve reduced amplitude and prolonged distal onset latency. The test also revealed increased motor unit amplitude, motor unit duration, and diminished recruitment in both left and right abductor pollicis brevis muscles. Dr. Morfe reported there continued to be mild-to-moderate bilateral wrist median neuropathy or carpal tunnel syndrome electrophysiologic evidence with no evidence of underlying peripheral neuropathy or cervical radiculopathy. He noted that the current results were very similar to the results found in the July 29, 2014 study. There was still evidence of carpal tunnel syndrome with no significant worsening.

On November 21, 2013 OWCP referred appellant to Dr. Clive Segil, a Board-certified orthpedic surgeon, for an impartial medical examination to resolve the conflict in the medical opinion evidence between Drs. Douthit and Ryan on the issue of whether appellant's accepted conditions had resolved.[4] It noted that it had attached to the referral to Dr. Segil a SOAF and questions to be answered. However, although the questions were attached, the SOAF he was to use in rendering his opinion was not attached.

In a report dated December 4, 2013, Dr. Segil noted appellant's history of injury and examination findings. He indicated that he had reviewed decisions by OWCP and the Board. Diagnoses included status post bilateral wrist carpal tunnel decompression, resolved lumbosacral sprain, and chronic cervical spine degenerative disc disease. Dr. Segil noted appellant's current cervical, thoracic, lumbar, and bilateral wrist, and wrist complaints of pain and discomfort. On physical examination he found tenderness over the trapezius and supraspinatus muscles, no upper extremity wasting or weakness was noted, no pinprick or light-touch disturbance, negative Adson's sign, abduction test, and radial tests, no supraclavicular fossa or axilla tenderness, no upper extremity deficits, no thoracic or thoracic deformity or tenderness, and full and complete right shoulder range of motion. Dr. Segil reported cervical range of motion as chin touching chest, 70 degrees extension, 80 degrees right rotation and lateral flexion, and 70 degrees left rotation and lateral flexion. His examination of appellant's wrists revealed no deformity or swelling, some slight ulnar wrist border tenderness, no tenderness over the carpal tunnel volar border, full and complete wrist range of motion, bilateral negative Phalen's sign, positive bilateral Tinel's sign, and negative reverse Phalen's sign.

Dr. Segil noted that OWCP had accepted appellant's claim for bilateral carpal tunnel syndrome which he opined had resolved with no residuals or disability. He related that "[c]urrent findings could be related solely to possible carpal tunnel compression syndrome,"

[4] Initially OWCP referred appellant to a physician in Colorado to resolve the conflict but, after receiving a letter from appellant's counsel informing OWCP that she had relocated to California, it referred her to Dr. Segil.

which he concluded was not disabling. Next, Dr. Segil noted that the work injury was permanent and that appellant continued to have subjective wrist symptoms. He concuded that he concurred with Dr. Douthit's opinion and findings as Dr. Douthit's evaluation was consistent with his evaluation.

By decision dated January 2, 2014, OWCP reopened the termination of appellant's compensation benefits on its own motion, and reaffirmed the termination effective January 22, 2013. It found the special weight of the medical evidence rested with the opinion of Dr. Segil, the impartial medical examiner who found that appellant no longer had employment-related residuals or continuing disability causally related to his accepted injuries.

On January 30, 2014 appellant's counsel requested a telephonic hearing, which was held before an OWCP hearing representative on August 14, 2014.

By decision dated November 4, 2014, OWCP's hearing representative affirmed the January 2, 2014 decision. She found that Dr. Segil's opinion constituted the weight of the medical opinion evidence that appellant's residuals and disability had resolved.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[5] 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.[6] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[7] It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a statement of accepted facts.[8]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[9] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[10]

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a statement of accepted facts.[11] OWCP procedures dictate that when an

[5] *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[6] *I.J.*, 59 ECAB 524 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

[7] *See J.M.*, 58 ECAB 478 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

[8] *Donald E. Ewals*, 51 ECAB 428 (2000); *see also Brenda C. McQuiston*, 54 ECAB 816 (2003).

[9] *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

[10] *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

[11] *See supra* note 9.

OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.[12]

ANALYSIS -- ISSUE 1

On appeal appellant's counsel asserts that OWCP failed to meet its burden of proof to terminate appellant's compensation benefits because no SOAF had been provided to the impartial medical examiner, Dr. Segil. Although OWCP's correspondence to Dr. Segil indicates that a SOAF was to be provided, the record does not substantiate that a SOAF was in fact provided upon referral. Because the record does not reflect that an accurate SOAF was provided for Dr. Segil, the November 4, 2014 decision affirming the termination of appellant's compensation benefits effective January 22, 2003 was in error and must therefore be reversed.[13]

Due to the disposition of appellant's case, it is unnecessary for the Board to address the remainder of counsel's arguments on appeal.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective January 22, 2013. In light of the Board's disposition on the first issue, the second issue is moot.

[12] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *see L.J.*, Docket No. 14-1682 (issued December 11, 2015).

[13] *See supra* note 9.

ORDER

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

Issued: March 9, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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