United States Department of Labor
Employees' Compensation Appeals Board

S.T., Appellant	)	
and	)	**Docket No. 16-1471**
	)	**Issued: August 18, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Santa Ana, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 7, 2016 appellant filed a timely appeal from an April 25, 2016 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.

ISSUE

The issue is whether OWCP properly terminated appellant's compensation benefits effective January 27, 2015 as her accepted employment-related neck sprain had resolved without residuals.

On appeal appellant contends that she and her doctors disagree with OWCP's referral physician, and that the correct diagnosed conditions were not accepted.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 22, 2013 appellant, then a 51-year-old automated mark-up clerk, filed an occupational disease claim (Form CA-2), alleging that she developed neck, hand, and wrist conditions due to repetitive motions at work. She indicated that she first became aware of her condition on April 13, 2013 and first realized it was caused or aggravated by her employment on May 8, 2013. Appellant stated that her federal duties included repetitive motions, twisting and turning her neck, and typing on a keyboard. She did not stop work.

In a July 19, 2013 report, Dr. Edward Mittleman, a family practitioner, diagnosed cervical disc herniation, cervical spondylosis with myelopathy, Guyon's canal syndrome, and carpal tunnel syndrome. He opined that appellant's conditions were causally related to her federal employment and requested carpal tunnel release surgery. Dr. Mittleman advised that appellant was capable of working part-time, limited duty with the following restrictions: no lifting or carrying more than 5 pounds continuously and 15 pounds intermittently; bending, twisting, pushing, and pulling intermittently for one hour; and simple grasping/fine manipulation intermittently for four hours.

By decision dated September 25, 2013, OWCP accepted the claim for neck sprain.

Appellant began filing claims for disability (Form CA-7) beginning September 25 to November 8, 2013 and continuing.

On September 27, 2013 OWCP referred appellant to Dr. Steven Ma, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her employment-related condition.

In his October 17, 2013 report, Dr. Ma reviewed a statement of accepted facts (SOAF), history of the injury, and the medical evidence of record.[2] He conducted a physical examination and found no asymmetry, no scars, and no spasm. Dr. Ma found no tenderness to palpation. Appellant pointed to the paracervical area down to both trapeziuses as the location of her symptoms. She was unable to bring her chin to her chest or to her left and right shoulders. Range of motion of the neck was limited. X-rays of the cervical spine showed no fractures or dislocations. A May 10, 2013 magnetic resonance imaging (MRI) scan report revealed cervical hypolordosis and thinning on the disc throughout the cervical spine. There was moderate desiccation of the disc at C3-6 with significant central spinal stenosis at C3-4. There was moderate-to-advanced disc space thinning at C3-4 with a three to four millimeter (mm) broad-based disc protrusion and joint hypertrophy bilaterally at C3-4. There was minimal apophyseal joint effusion seen at C3-4 and C4-5, indicating post-traumatic inflammatory and reparative change. There was a 1.5 mm broad-based disc protrusion at C4-5 and some minimal reactive endplate edema at C3-4 involving the posterior endplates.

[2] The SOAF indicated that appellant was working as an automation clerk and on July 22, 2013 she filed an occupational disease claim alleging that she developed a neck and bilateral hand condition after working as a mail processing clerk during the period 1998 to 2009 and as a mark-up clerk from 2009 to present date. The SOAF further indicated that OWCP accepted the claim for neck sprain.

Dr. Ma concluded that appellant's accepted neck sprain had resolved completely and currently suffered from a cervical herniated disc causing a cervical radiculitis/radiculopathy. He opined that appellant's condition was not employment related on the basis that it was a preexisting condition and would not be caused by her usual customary work duties. Dr. Ma also noted that appellant's bilateral carpal tunnel syndrome was not work related. He advised that appellant had no physical limitations from any work-related condition and released her to work with temporary restrictions for her nonemployment-related conditions.

In a July 26, 2013 report, Dr. Serge Obukhoff, a Board-certified neurosurgeon, diagnosed cervical spondylosis and myelopathy and opined that appellant's conditions were causally related to repetitive lifting at work. He asserted that there was a definitive relationship between the repetitive activities appellant performed during the course of her federal employment and her severe advanced cervical spondylosis with cord compression. In order to treat appellant's cervical conditions, Dr. Obukhoff requested authorization for a C3-5 partial corpectomy with discectomy and decompression of the spinal cord followed by fusion.

Appellant submitted reports dated January 10 through July 16, 2014 from Dr. Mittleman who diagnosed cervical disc herniations, cervical spondylosis with myelopathy, bilateral carpal tunnel syndrome, right Guyon's canal syndrome by nerve conduction velocity, and sprain of neck. Dr. Mittleman asserted that appellant continued to suffer from neck pain and bilateral hand and wrist pain.

OWCP found a conflict in the medical evidence and referred appellant to Dr. Mark J. Legome, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict in medical opinion between Drs. Ma and Mittleman on the issue of whether she continued to have any disability or residuals as a result of the accepted employment condition.

In a report dated June 3, 2014, Dr. Legome reviewed the SOAF, appellant's history of the injury, and the medical evidence of record. He conducted a physical examination and found that appellant barely moved the cervical spine five degrees in any direction and when asked to do so she expressed extreme fear and apprehension. Dr. Legome noted that foraminal compression test could not be carried out since appellant would not move her neck in any direction. He found no evidence of carpal tunnel syndrome and concluded that the relationship of appellant's present cervical symptoms to her work-related injury was undetermined.

Appellant continued to file claims for compensation (Form CA-7s) for intermittent periods commencing April 15, 2013.

In an August 5, 2014 report, Dr. Legome asserted that there were "huge gaps in the records" and he had reported to OWCP that, during the course of his review of appellant's medical records, there were many questions that arose and needed to be answered before he could generate an appropriate, logical, reasonable, and accurate medical report.

In a report dated August 15, 2014, Dr. Legome opined that the first inkling of appellant's cervical symptoms may have been in 2005 and likely continued to progress thereafter. He explained that Dr. Ma opined that appellant's bilateral carpal tunnel syndrome was not work related because it was incidentally found by diagnostic studies. Dr. Ma further indicated that

there was no aggravation of a preexisting condition due to appellant's federal duties. Dr. Legome found that a computerized tomography (CT) scan dated April 4, 2013, which predated the date of injury, demonstrated that appellant had extensive disc degeneration at every single level of her cervical spine, from C2 all the way through C6-7, enlarged facets from C2-6, and uncovertebral joint hypertrophy bilaterally from C3 through C7-T1. There were also broad-based disc bulges from C2 to C5-6. Dr. Legome determined that, based on her medical history, appellant was genetically predisposed to develop cervical conditions and opined that appellant's diagnosed conditions were not work related. He found that appellant's disc bulges, disc degeneration, facet hypertrophy, and uncovertebral hypertrophy were directly related to a genetic predisposition and her spinal stenosis in the cervical canal was a congenital condition, which was determined by her genes and not her work activities. Dr. Legome concluded that appellant did not sustain an employment-related neck sprain and her diagnosed conditions "would have been exactly the same if she was never employed."

In an August 28, 2014 report, Dr. Mittleman indicated that he had reviewed Dr. Legome's opinion and found that his reports were "markedly incomplete." He opined that the reports from Dr. Legome lacked probative value to resolve the conflict in the medical evidence.

By decision dated December 15, 2014, OWCP declined to expand appellant's claim to include bilateral carpal tunnel syndrome and other cervical conditions. It further denied her claims for wage-loss compensation, commencing April 15, 2013 due to the nonwork-related conditions.

In a December 15, 2014 letter, OWCP notified appellant that it proposed to terminate her medical benefits and wage-loss compensation as her accepted condition had resolved without residuals, relying on the reports from Dr. Legome. It afforded her 30 days to submit additional evidence or argument in disagreement with the proposed action.

In response, appellant submitted a December 16, 2014 report from Dr. James A. Kim, a specialist in anesthesiology and pain medicine, who diagnosed chronic pain, disc displacement of the cervical spine, cervical facet arthropathy, cervical radiculopathy, and bilateral carpal tunnel syndrome. Dr. Kim found spinal vertebral tenderness in the cervical spine at C5-7. Range of motion of the cervical spine was slightly-to-moderately limited due to pain. Sensory examination revealed decreased sensation in the bilateral upper extremities and motor examination showed moderate decreased strength in the bilateral upper extremities. Spurling's test was positive bilaterally.

On January 15, 2015 appellant requested reconsideration of OWCP's December 15, 2014 decision denying compensation and the expansion of her claim (and submitted progress reports dated November 26, 2014 and January 8, 2015 from Dr. Mittleman who reiterated his diagnoses and opinions.

By decision dated January 27, 2015, OWCP terminated appellant's FECA benefits effective January 27, 2015. It found the special weight of the medical evidence was represented by the opinion of Dr. Legome.

By decision dated February 12, 2015, OWCP denied modification of its December 15, 2014 decision regarding the claim for expansion and disability resulting from the nonemployment-related conditions.

On January 26, 2016 appellant requested reconsideration of OWCP's January 27, 2015 termination decision and submitted an October 2, 2015 report from Dr. James T. Tran, a Board-certified neurological surgeon, who asserted that appellant continued to suffer residuals of her work injury and diagnosed spinal stenosis of cervical region, cervical disc displacement, and cervical disc degeneration.

Appellant also submitted a January 21, 2016 report from Dr. Basimah Khulusi, a Board-certified physiatrist, who diagnosed cervical disc herniation, cervical spondylosis with myelopathy, Guyon's canal syndrome, and bilateral carpal tunnel syndrome. Dr. Khulusi opined that appellant's duties resulted in acceleration of the degeneration of her neck, which aggravated her congenital spinal stenosis and caused her to have a more serious neck condition than she could have had otherwise. He further opined that appellant's job duties also contributed to her development of bilateral carpal tunnel syndrome. Dr. Khulusi found that Dr. Legome's reports had no probative value as they contained a number of contradictory statements and failed to resolve the conflict in the medical evidence.

On February 2, 2016 appellant requested reconsideration of OWCP's decision dated February 12, 2015 regarding wage-loss compensation and its refusal to expand the claim.

By decision dated April 25, 2016, OWCP denied modification of its January 27, 2015 termination decision. Additionally, it indicated that it had received appellant's request for reconsideration of its February 12, 2015 decision and noted that a separate decision would be issued regarding the expansion of her claim.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's 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] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[5]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[6] To terminate authorization for medical treatment, OWCP must

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

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

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

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

establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[7]

Section 8123(a) of FECA provides in pertinent part: 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.[8] Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[9]

ANALYSIS

OWCP accepted appellant's claim for neck sprain. It terminated her medical benefits and wage-loss compensation because the accepted employment-related condition had resolved without residuals based on the opinion of the impartial medical examiner, Dr. Legome. It is OWCP that bears the burden of proof to justify modification or termination of benefits.[10] The Board finds that OWCP has failed to meet its burden of proof to terminate appellant's FECA benefits.

OWCP based its decision to terminate appellant's compensation benefits on reports dated June 3, August 5, and 15, 2014 from Dr. Legome who conducted a physical examination and reviewed appellant's medical history and SOAF. By his own admission, Dr. Legome concluded in his initial June 3, 2014 report that the relationship of appellant's present cervical symptoms to her work-related injury was undetermined, despite the fact that OWCP had previously accepted the claim for a neck sprain.

The Board finds that the SOAF stated that OWCP had accepted the claim for neck sprain. Nevertheless, Dr. Legome concluded that appellant had not sustained an employment-related neck sprain and her diagnosed conditions "would have been exactly the same if she was never employed." He asserted that there were "huge gaps in the records" and he had reported to OWCP that, during the course of his review of appellant's medical records, there were many questions that arose and needed to be answered before he could generate an appropriate, logical, reasonable, and accurate medical report. In his August 15, 2014 report, Dr. Legome reiterated that "the absence of appropriate medical records severely limit[ed] the totality of [his] report," but concluded that appellant's cervical conditions were not work-related. He discussed relevant diagnostic testing, but he did not adequately explain the basis for his opinions regarding appellant's accepted neck sprain.

[7] *See James F. Weikel*, 54 ECAB 660 (2003).

[8] 5 U.S.C. § 8123(a). *See R.C.*, 58 ECAB 238 (2006); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

[9] *See V.G.*, 59 ECAB 635 (2008); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Gary R. Sieber*, 46 ECAB 215 (1994).

[10] *See Curtis Hall*, 45 ECAB 316 (1994); *see also K.B.*, Docket No. 15-11 (issued April 7, 2015).

The impartial medical examiner's report must actually fulfill the purpose for which it was intended; it must resolve the conflict in medical opinion.[11] OWCP should ensure that the report is comprehensive, clear, and definite and that it is based on current information and supported by substantial medical reasoning, as well as a review of the case file.[12] If the report is vague, speculative, incomplete, or not rationalized, it is OWCP's responsibility to secure a supplemental report from the impartial medical examiner to correct any defects.[13] As such, the Board finds that OWCP did not meet its burden of proof to terminate appellant's compensation benefits.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's compensation benefits.

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2016 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 18, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[11] *See M.G.*, Docket No 14-1361 (issued December 8, 2014); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11d(2) (September 2010).

[12] *Id. See also Billie M. Gentry*, 38 ECAB 498 (1987).

[13] *Id.*