

FACTUAL HISTORY

On August 13, 2004 appellant, then a 44-year-old clerk, filed an occupational disease claim (Form CA-2) asserting that she developed tendinitis of her left elbow and hand as a result of constant repetitive motion of feeding mail into a canceling machine. She first became aware of her condition on June 20, 2004 and realized its relation to her employment on August 11, 2004. OWCP accepted appellant's claim for bilateral lateral epicondylitis. Appellant stopped work on June 20, 2004 and did not return.³

Appellant came under the treatment of Dr. Ignatius D. Roger, a Board-certified orthopedist, from September 24 to December 7, 2001. Dr. Roger noted positive Tinel's sign and pronounced atrophy on the bilateral wrists and hands. In reports dated June 22 and November 3, 2004, he treated appellant for injuries sustained to both arms on June 20, 2004. Appellant reported repetitively using both upper extremities on the job when she experienced swelling of the left lateral epicondylar region. Dr. Roger noted that her symptoms worsened and she was forced to stop work on August 16, 2004. He noted clinical findings consistently disclosed pain at both lateral epicondyles with pain on resistive carpal dorsiflexion, edema at both lateral epicondyles. Dr. Roger diagnosed bilateral lateral epicondylitis and recommended tennis elbow splints, therapy and anti-inflammatory medications.

Thereafter, in the course of developing the claim, OWCP referred appellant to several second opinion physicians.

On August 3, 2009 Dr. Roger noted that appellant had been under his care since 1996 for bilateral lateral epicondylitis and carpal tunnel syndrome. He opined that her conditions were causally related to repetitive manual activities as a flat sorter since 1988. Dr. Roger advised that electrodiagnostic studies of March 2009 confirmed right carpal tunnel syndrome and the lateral epicondylitis was confirmed with clinical findings. He noted positive findings on examination and opined that the objective findings were causally related to repetitive manual activity required by appellant at work. Dr. Roger advised that due to the clinical findings she was unable to return to work in a capacity requiring repetitive manual activity. Appellant declined carpal tunnel release surgery.

On November 14, 2011 appellant was referred for a functional capacity evaluation which was performed on November 26, 2011. The evaluation revealed that she could work in the physical demand level of sedentary full time.

On November 22, 2013 OWCP referred appellant to Dr. Leon Sultan, a Board-certified second opinion orthopedist, to determine if the accepted conditions had resolved. In a December 9, 2013 report, Dr. Sultan indicated that he reviewed the records and provided results on examination. He found no muscle atrophy involving hands, grip strength was strong bilaterally, pinch mechanism was intact, sensory testing in both hands was preserved, and superficial Tinel's and Phalen's signs bilaterally. Examination of the elbows revealed no

³ On June 10, 1996 appellant filed a claim, assigned File No. xxxxxx954, which was accepted for bilateral carpal tunnel syndrome and a ganglion condition of the right wrist. On May 1, 1997 she filed a claim that was accepted for right carpal tunnel syndrome, assigned File No. xxxxxx260.

abnormalities and subjective soreness over the medial elbows. Dr. Sultan noted that the orthopedic examination did not confirm any objective findings to indicate any ongoing bilateral carpal tunnel syndrome or bilateral elbow epicondylitis. He opined that appellant's bilateral upper extremity condition had resolved and that she was capable of performing her date-of-injury job as a clerk. Dr. Sultan advised that she did not require any additional medical care to treat her work-related injuries, her overall prognosis was favorable, and her potential for reemployment in the future was favorable. He indicated that there were no other conditions which would prevent appellant from returning to full-time work. Dr. Sultan noted that she had reached maximum medical improvement. In a work capacity evaluation, he noted that appellant could return to her usual job full time with restrictions of lifting between 20 and 50 pounds.

On January 15, 2014 OWCP proposed to terminate all wage-loss compensation and medical benefits, finding that Dr. Sultan's December 9, 2013 report was the weight of the evidence and established no continuing residuals of appellant's work-related conditions.

In a February 12, 2014 statement, counsel disagreed with the proposed termination and asserted that there was a conflict in medical opinion between appellant's physician, Dr. Roger, and OWCP referral physician. In a report dated August 19, 2013, Dr. Roger noted having treated appellant since 1996 for bilateral lateral epicondylitis, extensor tenosynovitis of both arms and bilateral carpal tunnel syndrome. He opined that these conditions were causally related to her repetitive manual work activities. Dr. Roger noted that appellant made several attempts to return to work in the past with exacerbation of her symptoms. He noted treating her on August 5, 2013 and at that time there was diffuse hypoesthesia of both hands including the median and ulnar distributions, the elbow flexion test, Tinel's sign and Phalen's sign were positive bilaterally. Dr. Roger advised that, given the chronic gradually progressive course, he did not expect appellant would be able to return to work.

On February 18, 2014 OWCP requested Dr. Sultan to review the job description and clarify his work restrictions. Dr. Sultan had opined that appellant's work-related conditions had resolved yet he also provided that she had restrictions on lifting between 20 and 50 pounds occasionally.

In a decision dated March 3, 2014, OWCP terminated appellant's compensation benefits effective March 9, 2014. It based its decision on the reports of the second opinion physician Dr. Sultan. OWCP provided him with appellant's full-duty position description and a medical report from Dr. Roger dated August 19, 2013 and asked for clarification with respect to any restrictions and limitations appellant may require. In its decision, it referenced a February 18, 2014 addendum report in which Dr. Sultan opined that there were no objective findings of ongoing carpal tunnel syndrome or bilateral elbow epicondylitis.⁴ Dr. Sultan advised that restrictions on handling occasionally between 20 and 50 pounds at a time were due to appellant's age, gender, and body type.

On June 26, 2014 appellant requested reconsideration. Appellant, through counsel, asserted that OWCP had finalized the termination of benefits based on an addendum report from the second opinion physician, Dr. Sultan, without providing a copy of the addendum report to

⁴ The February 18, 2014 addendum report is not in the case record before the Board.

appellant or counsel. Counsel asserted that OWCP, by failing to provide appellant and counsel with a copy of the addendum report from Dr. Sultan, rendered the termination of benefits procedurally improper. He indicated that benefits must be reinstated retroactively to the date of the improper termination.

Appellant submitted an April 1, 2014 report from Dr. Roger who diagnosed bilateral lateral epicondylitis, extensor tenosynovitis of both upper extremities, and bilateral carpal tunnel syndrome and opined that these conditions were disabling with respect to her vocational activities. On February 3, 2014 Dr. Roger noted positive findings on examination and opined that she had remained unable to return to work due to limitations with respect to her ability to the use of her hands. He noted that the restrictions were permanent and he did not believe that appellant would be able to resume her vocational duties.

In a decision dated July 15, 2014, OWCP denied modification of the decision dated March 3, 2014.

On December 12, 2014 appellant appealed the July 15, 2014 OWCP decision to the Board. In an order dated May 26, 2015, the Board remanded her case to OWCP. The Board instructed OWCP to consolidate her claims for bilateral carpal tunnel syndrome and a ganglion condition of the right wrist, File No. xxxxxx954 and right carpal tunnel syndrome, File No. xxxxxx260 as correct adjudication depended on cross-referencing between files.⁵

Appellant submitted a June 8, 2015 report from Dr. Roger, in which he noted paresthesias in both hands, twitching in the right arm, and tremors. Dr. Roger noted findings of diminished sensation in the median distribution of both hands, positive bilateral carpal Tinel's sign, and paresthesias bilaterally with Phalen's maneuver. He diagnosed chronic bilateral carpal tunnel syndrome and tendinitis.

In a decision dated March 14, 2016, OWCP terminated appellant's medical benefits and wage-loss compensation effective March 9, 2014 as the weight of the medical evidence established that she had no residuals of the accepted work-related conditions.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁶ 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.⁷ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a

⁵ S.R., Docket No. 15-0409, *Order Remanding Case* (issued May 26, 2015).

⁶ *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

⁷ *Mary A. Lowe*, 52 ECAB 223 (2001).

claimant no longer has residuals of an employment-related condition, which requires further medical treatment.⁸

Under FECA, when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased, even if the employee is medically disqualified to continue employment because of the effect work factors may have on the underlying condition.⁹

Title 20 of the Code of Federal Regulations § 10.540 provides: “When and how is compensation reduced or terminated? (a) Except as provided in paragraphs (c), (d), and (e) of this section, where the evidence of record establishes that compensation should be either reduced or terminated, OWCP will provide the beneficiary with written notice of the proposed action and give him or her 30 days to submit relevant evidence or argument to support entitlement to continued payment of compensation (b). Notice provided under this section will include a description of the reasons for the proposed action and a copy of the specific evidence upon which OWCP is basing its determination.”¹⁰

ANALYSIS

OWCP accepted bilateral lateral epicondylitis as a result of appellant’s work feeding mail into a canceling machine. Appellant stopped work on June 20, 2004 and did not return. OWCP terminated her compensation effective March 9, 2014 based on Dr. Sultan’s December 9, 2013 and February 18, 2014 reports.

OWCP terminated appellant’s FECA benefits based on Dr. Sultan’s reports dated December 9, 2013 and February 18, 2014. A review of the record reveals that the February 18, 2014 addendum report from Dr. Sultan is not in the case record and the record does not substantiate that the February 18, 2014 report was in fact provided to appellant and counsel. As such OWCP has failed to comply with the governing regulations and its procedures.¹¹ Therefore, the Board finds the March 14, 2016 decision affirming the termination of appellant’s medical and compensation benefits effective March 9, 2014 was in error and must therefore be reversed.

On appeal counsel asserts that OWCP failed to meet its burden of proof to terminate appellant’s compensation and medical benefits because OWCP finalized the termination of benefits based in part on a February 18, 2014 addendum report from the second opinion physician, Dr. Sultan, without providing a copy to appellant or counsel. Counsel asserted that,

⁸ *Id.*; *Leonard M. Burger*, 51 ECAB 369 (2000).

⁹ *Raymond W. Behrens*, 50 ECAB 221 (1999).

¹⁰ *See* 20 C.F.R. § 10.540; *see also* Federal (FECA) Procedure Manual, Part 2 -- Disallowances, *Regulatory Provisions*, Chapter 2.1400.2(a)-(b) (February 2013).

¹¹ *Id.*

by failing to provide appellant and counsel with a copy of the addendum report from Dr. Sultan, termination was improper.

As noted above, OWCP regulations¹² and procedures¹³ provide that, where the evidence establishes that compensation should be either reduced or terminated, OWCP will provide the beneficiary with written notice of the proposed action and give him or her 30 days to submit relevant evidence or argument to support entitlement to continued payment of compensation. This includes a description of the reasons for the proposed action and a copy of the specific evidence upon which OWCP is basing its determination.

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate benefits effective March 9, 2014.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 14, 2016 is reversed.

Issued: March 20, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² *See id.* at § 10.540.

¹³ *Supra* note 10 at Chapter 2.1400.2(a)-(b) (February 2013).