United States Department of Labor
Employees' Compensation Appeals Board

T.G., Appellant	)	
and	)	**Docket No. 17-1848**
	)	**Issued: April 17, 2018**
DEPARTMENT OF THE NAVY, MILITARY SEALIFT COMMAND, Oakland, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 31, 2017 appellant filed a timely appeal from a May 26, 2017 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.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation effective January 12, 2017; and (2) whether appellant met his burden of proof to establish continuing employment-related disability after January 12, 2017.

On appeal appellant asserts that, because he needs additional right wrist and hand surgery, his wage-loss compensation should be reinstated.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

The case has previously been before the Board.[2] The facts as presented in the prior Board decisions are incorporated herein by reference. The relevant facts are as follows.

Appellant, then a 41-year-old able-bodied seaman, filed an occupational disease claim (Form CA-2) alleging on May 15, 1995 that his right carpal tunnel syndrome was caused by his federal employment duties.[3] He had resigned his federal employment on April 16, 1993 for personal reasons. Following initial development, on April 7, 1998, OWCP accepted the claim for right carpal tunnel syndrome. Appellant received compensation for previous periods of disability. On February 24, 1999 OWCP found that his private sector employment as a truck driver represented his wage-earning capacity and adjusted his compensation accordingly. Appellant was placed on the periodic rolls at that rate.

Appellant has undergone right carpal tunnel release procedures on June 10, 1991, February 10, 1993, and July 15, 2007. Following the July 15, 2007 procedure he received wage-loss compensation on the periodic rolls for temporary total disability.

On May 7, 2009 OWCP terminated appellant's wage-loss compensation benefits. On October 16, 2009 appellant appealed to the Board. By decision dated October 1 2010, the Board reversed the termination of his wage-loss compensation.[4]

Following the Board's October 1, 2010 decision, appellant, who was receiving retirement benefits from the Office of Personnel Management, elected FECA benefits, effective October 23, 2010. He was returned to the periodic compensation rolls.

OWCP continued to develop the claim and on July 19, 2013 notified appellant that a second-opinion evaluation had been scheduled for August 5, 2013 with Dr. James Bethea, a Board-certified orthopedic surgeon.[5] Appellant did not attend the scheduled appointment and by decision dated August 29, 2013, OWCP suspended his wage-loss compensation in accordance with section 8123(d) of FECA. By decision dated October 30, 2013, OWCP denied modification of the August 29, 2013 decision. Subsequently, appellant attended a December 11, 2013 appointment with Dr. Bethea,[6] and his periodic rolls compensation was reinstated by OWCP, effective November 4, 2013.

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[2] Docket No. 10-0118 (issued October 1, 2010); Docket No. 96-1256 (issued March 9, 1998).

[3] Docket No. 96-1256 *id.*

[4] Docket No. 10-0118 (issued October 1, 2010).

[5] At that time the most recent report from appellant's physician was a May 13, 2009 treatment note from Dr. Richard M. Gordon, an attending Board-certified physiatrist. He noted appellant's complaint of tingling and numbness in both hands. Dr. Gordon provided physical examination findings. An electrodiagnostic study done by him that day demonstrated moderate right and severe left carpal tunnel syndrome.

[6] Dr. Bethea advised that appellant could not return to his usual employment due to right carpal tunnel syndrome, but could work eight hours per day of restricted duty daily.

In November 2015, OWCP referred appellant to Dr. Paul Mazzeo, a Board-certified neurologist, for a second-opinion evaluation.[7] In a January 22, 2016 report, Dr. Mazzeo noted the accepted condition of right carpal tunnel syndrome and described appellant's medical and surgical history. He also indicated that around the year 2000 appellant was diagnosed with diabetes mellitus, and that electromyography testing and a nerve conduction velocity study (EMG/NCV) in 2009 was consistent with diabetic neuropathy. Physical examination demonstrated that median nerve sensation was decreased bilaterally. Strength was 5/5. Dr. Mazzeo indicated that the EMG/NCV on January 22, 2016 showed substantial improvement in right median motor and sensory function compared with a 2009 study. He opined that complete normalization of the median nerve was not expected given underlying findings of diabetic polyneuropathy.[8] Dr. Mazzeo further noted no objective residuals of right carpal tunnel syndrome, finding no muscle atrophy, and a nondisabling sensory deficit. He concluded that appellant had reached maximum medical improvement, advising that it was more medically probable that appellant's right carpal tunnel syndrome had resolved and that any residual symptoms were related to diabetic polyneuropathy. In an attached work capacity evaluation, musculoskeletal conditions (OWCP-6c), Dr. Mazzeo advised that appellant could return to his usual job without restrictions, other than a 100-pound weight restriction due to diabetic neuropathy.

On March 1, 2016 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits. It noted that the most recent treatment note from appellant's physician was dated May 13, 2009 and found that the weight of the medical evidence rested with the opinion of Dr. Mazzeo.

Appellant disagreed with the proposed termination, indicating that he continued to have problems with his right hand. He submitted August 20, 2014 and April 20, 2016 upper extremity EMG/NCV studies that were interpreted as abnormal, showing electrodiagnostic evidence for moderate left and mild right carpal tunnel syndrome, and evidence for superimposed polyneuropathy.

In a January 11, 2017 decision, OWCP finalized the termination of wage-loss compensation and medical benefits, effective January 12, 2017. It noted that, while appellant submitted EMG/NCV reports, he submitted no additional medical treatment notes or clinical correlation from a physician to indicate that his right arm condition continued to be employment related. OWCP credited the opinion of Dr. Mazzeo.

On February 6, 2017 appellant requested reconsideration.[9] He submitted a September 22, 2016 treatment note in which Dr. James B. Detorre, a Board-certified orthopedic surgeon, diagnosed failed carpal tunnel surgery on the right and moderate carpal tunnel syndrome on the

[7] Appellant did not attend the first scheduled examination. The appointment was rescheduled in January 2016.

[8] A copy of the study was attached to Dr. Mazzeo's report. He reported that right median motor latency at the wrist was mildly prolonged with otherwise normal amplitudes and conduction velocities, and that right median sensory studies had normalized. The study showed slowing of motor ulnar conduction through the elbow segment, and right ulnar sensory latency was prolonged.

[9] Appellant, through counsel, had originally requested a hearing. In correspondence received on February 6, 2017, appellant requested that this be changed to a reconsideration request.

left. Dr. Detorre advised that appellant was unable to return to his previous occupation or any meaningful heavy labor. Splints were recommended and appellant was discharged to be followed by his primary care provider. Unsigned emergency care discharge instructions noted a diagnosis of right wrist pain and right thumb catching.

By decision dated February 9, 2017, OWCP modified the January 11, 2017 decision to indicate that appellant continued to be entitled to medical treatment for the accepted right carpal tunnel syndrome. It again found that the weight of the medical evidence rested with the opinion of Dr. Mazzeo regarding appellant's ability to work, noting that the evidence submitted contained no medical rationale explaining why appellant continued to be disabled for work.

Appellant again requested reconsideration on February 27, 2017. He submitted a February 24, 2017 progress note signed by Jennifer Renee Bennett, a licensed practical nurse, who described a complaint of right hand and wrist pain and indicated that he was discharged in stable condition. In a progress note dated February 27, 2017, Hannah C. French, a family nurse practitioner, provided right wrist examination findings of sensory and motor intact, no bony tenderness, crepitus, deformity, erythema, warmth, or edema, and no joint instability. She diagnosed wrist pain, carpal tunnel syndrome. Sonya Wright, a registered nurse, noted referral to a plastic surgeon that day for failed right carpal tunnel syndrome surgery.

Dr. Manoucher Tavana, Board-certified in plastic and hand surgery, provided a progress note on April 11, 2017. He described a history that appellant had three failed carpal tunnel release surgical procedures with continued complaints of numbness and tingling in both hands and new sharp pain and burning in the right hand over the past few months. Dr. Tavana indicated that appellant worked in maintenance on a ship, and that the pain interfered with his work. Physical examination demonstrated positive Tinel's signs bilaterally, and a positive Phalen's signs on the right. Dr. Tavana recommended revision carpal tunnel release.

By decision dated May 26, 2017, OWCP noted that the reports from the nurses on February 24 and 27, 2017 were of "little probative value" because they were not physicians. It found Dr. Tavana's April 11, 2017 report of diminished probative value as he only noted appellant's account of inability to work and did not fully address the issue of disability. OWCP concluded that the evidence presented was of insufficient probative value to alter the February 9, 2017 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[10] OWCP's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[11]

[10] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[11] *Id.*

ANALYSIS -- ISSUE 1

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation effective January 12, 2017.

The accepted condition is right carpal tunnel syndrome. OWCP properly found that the weight of the medical evidence rested with the opinion of Dr. Mazzeo who performed a second-opinion evaluation for OWCP.

At the time OWCP referred appellant to Dr. Mazzeo in November 2015, the most recent medical evidence of record was that of Dr. Bethea, also an OWCP referral physician. Based on Dr. Bethea's December 11, 2013 report, appellant's periodic wage-loss compensation and medical benefits were continued. Appellant had not submitted a report from his physician since a May 13, 2009 report from Dr. Gordon.[12]

In his comprehensive January 22, 2016 report, Dr. Mazzeo noted the accepted right carpal tunnel syndrome and described his review of the medical evidence and statement of accepted facts, noting appellant's medical and surgical history. He also thoroughly described his examination findings. Dr. Mazzeo advised that appellant had reached maximum medical improvement and that he could return to his usual job without restriction. He also noted that appellant had a 100-pound weight restriction due to his diabetic neuropathy.

In response to OWCP's March 1, 2016 proposal to terminate appellant's wage-loss compensation and medical benefits, he submitted August 20, 2014 and April 20, 2016 upper extremity EMG/NCV studies that demonstrated moderate left and mild right carpal tunnel syndrome and evidence for superimposed polyneuropathy. These studies, however, do not contain an opinion regarding his ability to work, and there was no additional contemporaneous medical evidence submitted prior to the January 12, 2017 termination. The Board has held that contemporaneous evidence is entitled to greater probative value than later evidence.[13] Dr. Matteo's opinion is found to be probative evidence and reliable, and sufficient to justify OWCP's termination of wage-loss compensation for the accepted right carpal tunnel syndrome.[14]

LEGAL PRECEDENT -- ISSUE 2

As OWCP met its burden of proof to terminate appellant's wage-loss compensation on January 12, 2017, the burden shifted to him to establish that he had disability causally related to the accepted right carpal tunnel syndrome.[15] Causal relationship is a medical issue. 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

[12] *Supra* note 4.

[13] *S.S.*, 59 ECAB 315 (2008).

[14] *See S.W.*, Docket No. 17-0215 (issued September 19, 2017).

[15] *See Daniel F. O'Donnell, Jr.*, 54 ECAB 456 (2003).

the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[16]

ANALYSIS -- ISSUE 2

The Board finds that appellant failed to meet his burden of proof to establish continuing entitlement to disability compensation causally related to the accepted right carpal tunnel syndrome after January 12, 2017.

Subsequent to the termination appellant submitted several reports completed by various types of nurses. However, nurse's reports are of no probative medical value as nurses are not considered physicians under FECA.[17]

Dr. Detorre merely advised that appellant could not return to heavy labor. He did not comment on specific job duties and did not indicate that this restriction was due to the accepted condition. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.[18]

The Board also finds Dr. Tavana's April 11, 2017 report insufficient to establish continuing disability. Dr. Tavana related a history that appellant worked in maintenance on a ship and that pain interfered with his work. Appellant, however, has not worked on a ship since April 16, 1993 when he resigned for personal reasons. It is well established that to be of probative value a medical opinion must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history are of diminished probative value.[19]

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to a claimant's federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[20] The Board has long held that medical opinions not containing rationale on causal relation are of diminished probative value and are generally insufficient to meet appellant's burden of proof.[21] The evidence submitted by appellant, including Dr. Tavana's

[16] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[17] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *L.C.*, Docket No. 16-1717 (issued March 2, 2017) (a nurse is not considered a physician under FECA).

[18] *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

[19] *L.G.*, Docket No. 09-1692 (issued August 11, 2010).

[20] *A.D.*, 58 ECAB 149 (2006).

[21] *Carolyn F. Allen*, 47 ECAB 240 (1995).

April 11, 2017 report, is of limited probative value on the issue of whether appellant had any continuing disability due to the accepted right carpal tunnel syndrome.

The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[22] As there is no medical evidence of record of sufficient rationale to establish that appellant continued to be disabled after January 12, 2017 due to the accepted right carpal tunnel syndrome, he did not meet his burden of proof to establish that he continued to be entitled to wage-loss compensation after that date.

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 on January 12, 2017. The Board also finds that he did not establish that he had continuing employment-related disability after January 12, 2017.

[22] *Nicolette R. Kelstrom*, 54 ECAB 570 (2003).

ORDER

IT IS HEREBY ORDERED THAT the May 26, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2018
Washington, DC

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

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

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