

**United States Department of Labor
Employees' Compensation Appeals Board**

C.M., Appellant)

and)

U.S. POSTAL SERVICE, PARKWAY BRANCH,)
Sacramento, CA, Employer)

**Docket No. 17-1325
Issued: February 23, 2018**

Appearances:
Appellant, pro se
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 31, 2017 appellant filed a timely appeal from a March 6, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (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 November 5, 2015; and (2) whether

¹ Appellant timely requested oral argument before the Board. By order dated November 3, 2017, the Board exercised its discretion and denied the request, finding that the arguments presented on appeal could adequately be addressed based on review of the case record. *Order Denying Oral Argument*, Docket No. 17-1325 (issued November 3, 2017). The Board's *Rules of Procedure* provide that any appeal in which a request for oral argument is not granted by the Board will proceed to a decision based on the case record and any pleadings submitted. 20 C.F.R. § 501.5(b).

² 5 U.S.C. § 8101 *et seq.*

appellant has met her burden of proof to establish any continuing disability or medical residuals causally related to her May 20, 2013 employment injuries on or after November 5, 2015.

FACTUAL HISTORY

On May 21, 2013 appellant, then a 31-year-old window clerk, filed a traumatic injury claim (Form CA-1) alleging that she injured her right wrist and arm on May 20, 2013 while putting away parcels at the end of the night. She did not immediately stop work. On August 5, 2013 OWCP accepted appellant's claim for other tenosynovitis of the right hand and wrist and authorized compensation benefits.³

Appellant's attending physician, Dr. Michael Bugola, a Board-certified physiatrist, diagnosed tendinitis of the right wrist. On June 26, 2013 he took her off of work.⁴ On August 23, 2013 Dr. Bugola found that appellant's electromyogram was borderline and that she reported continued wrist discomfort, forearm discomfort, and also discomfort in the right medial condyle.

Dr. Robert S. Burger, a Board-certified orthopedic surgeon to whom appellant was referred by Dr. Bugola, examined her on September 6, 2013 and listed symptoms of right elbow pain, volar forearm pain, volar wrist pain, numbness, and tingling in the thumb, as well as spasms in the hand, shoulder, and arm. Appellant used a wheelchair for chronic foot pain, arthritis, and spasms. Dr. Burger reviewed her nerve conduction velocity testing and found borderline electrodiagnostic evidence for right carpal tunnel syndrome. He reported that during physical examination appellant was crying and histrionic. Dr. Burger found intact sensation, negative Phalen's test, negative Tinel's sign, full range of motion, and good strength. He determined that there was no clear cut carpal tunnel syndrome. Dr. Burger diagnosed multiple chronic pain syndromes, chronic neuralgia, and chronic pain medication abuse and addiction. He reported that appellant's subjective complaints were inconsistent with her objective findings and that her objective findings did not follow any anatomic or neurologic plane. Dr. Burger concluded, "I have nothing to offer this patient. I do not have an etiology for all of her symptoms."

In a September 9, 2013 letter, OWCP requested an additional medical report from Dr. Bugola explaining appellant's continued total disability. Dr. Bugola examined her on September 19, 2013 and reviewed Dr. Burger's report as well as indicating that she used a wheelchair due to increased foot problems. He noted that appellant had exaggerated pain behavior including complaints of pain to superficial palpation which was inconsistent as it was not always manifested with distraction. Dr. Bugola diagnosed chronic arm pain and noted that it did not appear to fit any pathoanatomical model. He determined that appellant had no evidence to support her claim of total disability and placed her on modified work. Dr. Bugola noted that

³ Appellant has a previous occupational disease claim which OWCP accepted for right wrist tendinitis on August 30, 2012. File No. xxxxxx757. File No. xxxxxx757 has been administratively combined with the present claim, File No. xxxxxx114.

⁴ Appellant filed claims for wage-loss compensation and OWCP placed her on the supplemental rolls beginning July 8, 2013.

she disagreed and threatened to sue him if she was harmed. He indicated that appellant could lift, carry, push, and pull no more than two pounds. Dr. Bugola also found that she could not perform heavy pinching or grasping. The employing establishment had no work available for appellant in accordance with these restrictions.

Appellant underwent a right wrist magnetic resonance imaging (MRI) scan on October 12, 2013 which revealed perforation of the ventral aspect of the scapholunate ligament, joint effusion of the right distal radial ulnar joint, and a suspected small perforation of the triangular fibrocartilage at the attachment to the radius. The MRI scan demonstrated no evidence of tendinosis or tenosynovitis.

OWCP placed appellant on the periodic rolls effective November 17, 2013.

On December 1, 2014 OWCP referred appellant for a second opinion evaluation with Dr. Donald Heitman, an orthopedic surgeon. In a report dated December 16, 2014, Dr. Heitman noted her history of injury and performed an examination. He found that appellant reported pain multiple times in the examination that was out of proportion to the objective physical findings. Dr. Heitman found slight visible swelling to the right hand and wrist with full range of motion. He was unable to assess her strength due to pain. Dr. Heitman also noted that appellant was unable to comply with median nerve compression or Tinel's sign. He found some decreased sensation over the right index finger and right finger. Dr. Heitman opined that appellant had symptoms out of proportion to her objective findings and that the history from her work-related injury did not support her subjective and objective findings. He recommended an updated MRI scan.

Dr. Melanie Jay, a Board-certified internist, completed a work capacity evaluation on December 23, 2014. She indicated that OWCP had accepted tendinitis, carpal tunnel syndrome, or ligament tear and reported, "Diagnosis unclear." Dr. Jay attributed appellant's disability for work to her use of a wheelchair since 2011 due to chronic lower extremity pain. She opined that appellant had not reached maximum medical improvement. Dr. Jay noted that appellant was unable to walk without a walker, but could not use a walker due to her wrist pain. She further noted that appellant was unable to leave her house unassisted due to bilateral lower extremity pain.

Appellant underwent a right wrist MRI scan on January 9, 2015 which demonstrated a focal tear in the central fibers of the scapholunate ligament, but that the volar and dorsal fibers remained intact. The MRI scan further demonstrated extensor carpi ulnaris tendinosis.

In a report dated January 16, 2015, Dr. Heitman reviewed the January 9, 2015 MRI scan and found minimal tendinosis. He concluded that this study did not account for the degree of subjective symptoms. Dr. Heitman opined that appellant could return to full duty with no disability due to her wrist injury lifting up to 20 pounds. He also found that she did not require further treatment for her employment-related condition.

On April 27, 2015 OWCP requested a supplemental report from Dr. Heitman and provided him with her date-of-injury work duties. It asked that he address whether appellant

could occasionally lift up to 70 pounds and that he provide a rationalized statement explaining whether the accepted condition of tenosynovitis of the hand and wrist had resolved.

In a note dated May 5, 2015, Dr. Heitman opined that appellant's accepted condition of other tenosynovitis of the right hand and wrist had resolved based on the January 9, 2015 MRI scan which had minimal findings of tendinosis. He noted, "The MRI [scan] does not clarify the degree of the tendinosis, but regardless, it does not account for her degree of subjective symptoms." Dr. Heitman again opined that appellant could return to full duty and found, based on the MRI scan, that she should be able to lift 70 pounds occasionally. He also determined that appellant could perform full-time, full-duty work.

OWCP requested additional information from Dr. Heitman on July 14, 2015 addressing appellant's need for a wheelchair and the extent of the tendinosis found on the MRI scan. It asked that he provide medical reasoning in support of his opinion that she could return to full-time, full-duty work while she was in a wheelchair and had objective findings on the MRI scan.

Dr. Heitman responded on July 23, 2015. He again noted that the MRI scan did not clarify the degree of the tendinosis, but that the findings did not account for her degree of subjective symptoms. Dr. Heitman concluded, "Therefore, based on the minimal findings within the MRI scan of the right wrist, the accepted condition of other tenosynovitis of hand and wrist, right, has resolved." He noted that appellant presented in a wheelchair due to a right foot injury which she sustained in the military, as well as a second work-related injury to the foot resulting in complex regional pain syndrome (CRPS) as well as neuropathy. Dr. Heitman opined that these conditions were not due to her accepted right wrist tenosynovitis and that she could return to full-time full duty due to the accepted condition in this claim.

On September 14, 2015 OWCP provided appellant with a notice of proposed termination of her wage-loss compensation and medical benefits. It found that based on Dr. Heitman's reports she no longer had residuals or continuing disability due to her accepted conditions. OWCP afforded appellant's 30 days to submit additional evidence or argument if she disagreed with the proposed termination.

In a report dated October 20, 2015, Dr. Jay diagnosed chronic ankle pain due to CRPS, arthritis, and nerve damage which required appellant to use a wheelchair. She also diagnosed chronic bilateral wrist pain. Dr. Jay listed appellant's wrist symptoms as pressure build-up which was released through popping her wrists as well as shooting pains down her wrists with involuntary twitching movements. She also diagnosed secondary major depressive disorder. Dr. Jay described appellant's medical history including a motor vehicle accident while in the military which resulted in chronic neck pain, bilateral ankle pain with ankle surgery in 2001 as well as a work injury resulting in CRPS, arthritis, and nerve damage. She noted wrist pain, questionable medial epicondylitis, depression, anxiety, knee pain, and gastroparesis. Dr. Jay reviewed appellant's upper extremity diagnostic studies and opined that appellant could not return to work in a position requiring standing, lifting, typing, or writing. She also noted that appellant's chronic pain was worsened by anxiety, depression, and post-traumatic stress disorder.

By decision dated November 5, 2015, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date. It found that Dr. Heitman's reports were entitled to the weight of the medical evidence and supported that her accepted conditions had resolved.

On November 27, 2015 appellant requested a review of the written record from OWCP's Branch of Hearings and Review. In support of this request, she submitted a November 20, 2015 report from Dr. Jay. Dr. Jay reported that, a hand specialist, Dr. Green had examined appellant due to her scapholunate ligament tear and tendinosis in her wrists. Dr. Green recommended that appellant not use her hand, return to pain management, and using hand splints during the night and day as tolerated. Dr. Jay repeated her determination that appellant was unable to work due to her May 30, 2013 right wrist injury and that her restrictions were no standing, walking, lifting, typing, or writing.

By decision dated May 19, 2016, OWCP's hearing representative found that Dr. Heitman's report represented the weight of the medical evidence and established that appellant had no residuals or continuing disability due to her accepted right wrist conditions after November 5, 2015. She further found that Dr. Jay did not provide medical reasoning supporting her opinion that appellant's current disability from work was due to her accepted right wrist tenosynovitis.

On June 20, 2016 Dr. Jay noted that appellant sustained a work-related injury on May 30, 2013 which resulted in major depressive disorder, chronic pain, carpal tunnel syndrome, tendinosis, and ligament tears. She opined that appellant was totally disabled with no standing, walking, lifting, typing, or writing. Dr. Jay noted that appellant's May 30, 2013 injury was ongoing and that she continued to receive medical treatment for this condition.

On December 9, 2016 appellant requested reconsideration of the May 19, 2016 decision. By decision dated March 6, 2017, OWCP denied modification of its prior decisions. It found that Dr. Jay's report was insufficiently detailed and well-reasoned to establish continuing residuals or disability causally related to appellant's accepted right wrist tenosynovitis.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of proof to prove that the disability has ceased or lessened in order to justify termination or modification of compensation 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 Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁷ To

⁵ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

⁶ *Id.*

⁷ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁸

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective November 5, 2015.

OWCP accepted appellant's claim for other tenosynovitis of the right hand and wrist. It further authorized wage-loss compensation benefits. OWCP has the burden of proof to establish that appellant's medical residuals and disability for work had ceased, in order to terminate her wage-loss compensation and medical benefits.

OWCP relied on Dr. Heitman, a second opinion physician, in terminating appellant's wage-loss compensation and medical benefits. The Board finds that his reports are not sufficiently detailed and well-reasoned to meet OWCP's burden of proof that the accepted conditions had resolved.⁹ Dr. Heitman performed a physical examination on December 16, 2014 and found slight visible swelling to the hand and wrist as well as decreased sensation over the right index finger and right finger. He noted that the history from appellant's work-related injury did not support her subjective and objective findings. On January 16, 2015 Dr. Heitman reviewed her January 9, 2015 MRI scan which demonstrated a focal tear in the central fibers of the scapholunate ligament as well as extensor carpi ulnaris tendinosis. He opined that the January 9, 2015 MRI scan did not account for appellant's degree of subjective symptoms.

OWCP requested a supplemental report including a rationalized statement explaining whether the accepted condition of tenosynovitis of the hand and wrist had resolved. In a note dated May 5, 2015, Dr. Heitman opined that appellant's accepted condition had resolved as January 9, 2015 MRI scan had minimal findings of tendinosis. He noted, "The MRI [scan] does not clarify the degree of the tendinosis, but regardless, it does not account for [appellant's] degree of subjective symptoms."

OWCP requested an additional supplemental report from Dr. Heitman on July 14, 2015 to provide medical reasoning in support of his opinion that appellant could return to full-time full-duty work. Dr. Heitman responded on July 23, 2015 and again noted that the MRI scan did not clarify the degree of the tendinosis, but that the findings did not account for her degree of subjective symptoms. He concluded, "Therefore, based on the minimal findings within the MRI [scan] of the right wrist, the accepted condition of other tenosynovitis of hand and wrist, right, has resolved." Dr. Heitman did not provide medical reasoning as to how appellant's accepted condition had resolved. He also failed to explain why the findings on physical examination of swelling in the hand and wrist as well as decreased sensation over the right index finger and right finger, were unrelated to her accepted employment injury of other tenosynovitis of the right hand and wrist. The Board has held that medical evidence that states a conclusion, but does not offer

⁸ *Id.*

⁹ *B.B.*, Docket No. 16-0723 (issued October 19, 2016).

any rationalized medical explanation is of limited probative value.¹⁰ As there is no clear, well-rationalized medical opinion evidence establishing that appellant's accepted conditions had resolved due to her accepted conditions, OWCP has not met its burden of proof to terminate her wage-loss compensation and medical benefits.¹¹

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective November 5, 2015.¹²

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2017 decision of the Office of Workers' Compensation Programs is reversed.

Issued: February 23, 2018
Washington, DC

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

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

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

¹⁰ *S.B.*, Docket No. 16-0779 (issued January 5, 2017).

¹¹ *P.C.*, Docket No. 16-0961 (issued May 1, 2017); *J.J.*, Docket No. 16-0984 (issued November 17, 2016).

¹² Given the disposition of this matter in Issue 1, Issue 2 is moot.