

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On August 15, 2001 appellant, then a 47-year-old postal clerk, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to her employment duties of throwing mail from a conveyor belt. In an October 22, 2001 decision, OWCP accepted her claim for bilateral carpal tunnel syndrome.

Dr. Lawrence A. Bircoll, a Board-certified orthopedic surgeon, performed a left carpal tunnel surgical release on August 14, 2002 and right carpal tunnel surgical release on October 22, 2003. Appellant returned to light-duty work eight hours a day on February 28, 2004. She was involved in a nonemployment-related motor vehicle accident on June 18, 2004 and stopped work on July 31, 2004. In a letter dated August 10, 2004, the employing establishment informed appellant that her light-duty restrictions could not be accommodated. Dr. Bircoll completed an attending physician's report (Form CA-20) on October 19, 2004 and indicated that appellant could perform light-duty work with the restrictions of no throwing, lifting, or bending of the neck.

The employing establishment offered appellant a light-duty position on September 15, 2005. In a letter dated October 7, 2005, OWCP informed appellant that the offered position was found to be suitable work and allowed her 30 days for a response. It finalized the termination of compensation by decision dated November 9, 2005. Appellant requested reconsideration on January 12, 2006 and by decision dated January 25, 2006, OWCP vacated the November 9, 2005 termination decision finding that the position had exceeded appellant's work restrictions. It authorized compensation from November 27, 2005 through January 21, 2006.

Dr. William Render, a Board-certified internist, on March 20 and 25, 2007 diagnosed bilateral carpal tunnel syndrome and cervical disc disease. He noted that appellant required light-duty work due to these conditions. Dr. Render opined that appellant's accepted condition had not resolved.

OWCP referred appellant for a second opinion with Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, on December 20, 2007. In his January 8, 2008 report, Dr. Doman examined appellant and found that nerve conduction velocity studies on that date revealed bilateral residual carpal tunnel syndrome. He also diagnosed cervical spondylosis. Dr. Doman opined that appellant could not return to her date-of-injury position due to her residual carpal tunnel syndrome. He suggested a repeat carpal tunnel release. Dr. Doman, however, noted that appellant was capable of full-time work.

On December 23, 2008 OWCP referred appellant for a second opinion evaluation with Dr. Joseph Tatum, a Board-certified orthopedic surgeon. Dr. Tatum completed a report on January 20, 2009 describing appellant's medical treatment. He noted appellant's 2005 nerve

² Docket No. 10-0248 (issued August 23, 2010).

conduction studies demonstrated “mild bilateral median nerve entrapment at the wrists.” Dr. Tatum opined that appellant’s condition had resolved, that there were no objective findings to support her complaints and that she could return to “any type of work that a person of her sex, age, and build would otherwise be able to do.”

OWCP proposed to terminate appellant’s compensation benefits by letter dated May 18, 2009³ based on the January 20, 2009 report from Dr. Tatum. It afforded her 30 days for a response. As no response was received within the time allotted, by decision dated June 22, 2009, OWCP terminated appellant’s wage-loss compensation and medical benefits effective July 5, 2009 noting that appellant had not responded to the proposed termination. Appellant requested a review of the written record by an OWCP hearing representative on June 30, 2009.

On October 14, 2009 an OWCP hearing representative affirmed OWCP’s June 22, 2009 termination decision, finding that Dr. Tatum’s report was entitled to the weight of the medical evidence and that this report established that appellant’s employment-related condition resolved on July 5, 2009. Appellant appealed to the Board. In its August 23, 2010 decision,⁴ the Board found that Dr. Tatum’s report was insufficient to meet OWCP’s burden of proof to terminate appellant’s wage-loss compensation and medical benefits and reversed the October 14, 2009 OWCP decision.

Following the Board’s August 23, 2010 decision, OWCP paid appellant compensation benefits on the periodic rolls.

On April 9, 2012 OWCP referred appellant for a second opinion evaluation with Dr. Sarveswar I. Naidu, a Board-certified orthopedic surgeon, to determine the status of appellant’s accepted conditions. In his April 26, 2012 report, Dr. Naidu found that appellant had residuals of bilateral carpal tunnel syndrome as well as cervical spondylosis with a herniated disc at C5-6. He opined that appellant’s continued carpal tunnel symptoms were due to scarring of the tissues around the nerve at the site of surgery. Dr. Naidu concluded that appellant could perform sedentary work eight hours a day, but could not return to her date-of-injury position. He further opined that appellant’s cervical disc disease was temporarily aggravated by her employment duties.

In April 2013, appellant’s attending physician, Dr. Kingsley E. Agbeyegbe, a Board-certified internist, diagnosed bilateral carpal tunnel syndrome following bilateral carpal tunnel surgical releases. He further noted that appellant had cervical disc disease which could be causing neuropathy-type symptoms. Dr. Agbeyegbe opined that appellant’s accepted conditions were still present and that her work injury had not resolved. He determined that appellant was totally disabled from work. Dr. Agbeyegbe found that appellant had reached maximum medical improvement.

³ In an *Order Dismissing Appeal* dated April 5, 2010, the Board dismissed appellant’s appeal finding that the letter did not constitute a final decision of OWCP. Docket No. 09-1712 (issued April 5, 2010).

⁴ *Supra* note 2.

In a letter dated April 9, 2013, OWCP informed appellant of a conflict of medical opinion evidence between Drs. Naidu and Agbeyegbe regarding whether appellant remained disabled. It referred appellant for a referee examination with Dr. Stephen McCollam, a Board-certified orthopedic and hand surgeon. In his September 17, 2013 report, Dr. McCollam reviewed appellant's medical history and diagnostic testing. He found that appellant's pain responses were exaggerated with normal ulnar and median -- innervated muscle strength, but decreased effort. Dr. McCollam opined that no further active treatment was necessary. He completed a work capacity evaluation (Form OWCP-5c) and indicated that appellant could perform sedentary work eight hours a day, lifting less than 15 pounds.

On April 2, 2015, April 4, 2016, and March 30, 2017 Dr. Agbeyegbe reported that appellant's accepted bilateral carpal tunnel syndrome was ongoing and found that she was totally disabled from work.

On April 21, 2017 OWCP referred appellant, a statement of accepted facts (SOAF), her date-of-injury job description, and a list of questions to Dr. Raju Vanapalli, a Board-certified orthopedic surgeon, for a second opinion evaluation. In his June 20, 2017 report, Dr. Vanapalli noted appellant's accepted condition and resulting surgeries. On physical examination he noted that pain and tingling occurred in appellant's right little finger and right thumb. Dr. Vanapalli reported that appellant's carpal tunnel scars were not tender nor sensitive. Appellant did not demonstrate wasting of the thenar eminence and had full sensation in all fingers. Dr. Vanapalli found that Tinel's sign and Phalen's test were negative. He determined that there were no objective findings of bilateral carpal tunnel syndrome as there was no wasting of the thenar eminence, and no loss of sensation. Dr. Vanapalli found that appellant exhibited significant symptom magnification. He opined that appellant could return to light-duty work for limited hours due to her prolonged period without work and indicated that appellant could not perform her date-of-injury position. Dr. Vanapalli completed a work capacity evaluation (Form OWCP-5c) and found that appellant could return to sedentary or light-duty work with no lifting, pushing, or pulling over 20 pounds. He also limited repetitive movements of appellant's wrist to two hours a day.

On August 29, 2017 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits based on Dr. Vanapalli's report. It afforded 30 days for appellant to respond. Appellant disagreed with the proposed termination and argued that all the physicians who had previously examined her found that she was unable to return to her-date-of-injury position. She resubmitted medical evidence previously included in the record. By decision dated October 4, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective October 5, 2017 finding that the opinion of Dr. Vanapalli constituted the weight of the medical evidence and established that she had no continuing disability for work or residuals related to her accepted work-related conditions.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.⁵ OWCP may not terminate compensation without

⁵ See *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

establishing that the disability has ceased or that it is no longer related to the employment.⁶ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁷ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁸ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁹

ANALYSIS

The Board finds that OWCP's termination of appellant's wage-loss compensation and medical benefits, effective October 5, 2017 must be reversed because Dr. Vanapalli's medical opinion is of insufficient probative quality to carry the weight of the medical evidence.

The Board finds that Dr. Vanapalli provided insufficient medical rationale for his conclusions that the accepted injuries has ceased without residuals. During his physical examination Dr. Vanapalli noted that appellant reported pain and tingling occurred in her right little finger and right thumb. However he determined that there were no objective findings of bilateral carpal tunnel syndrome as there was no wasting of the thenar eminence, and no loss of sensation. However, these physical findings fail to explain the etiology of appellant's ongoing symptoms.

Furthermore, Dr. Vanapalli opined that appellant could return to light-duty work for limited hours and indicated that appellant could not perform her date-of-injury position. His report does not support OWCP's conclusion that appellant had no disability due to her accepted employment injury and could return to her heavy date-of-injury position lifting up to 70 pounds. Dr. Vanapalli's medical opinion therefore is found to be vague and contradictory and is insufficient to support termination of wage-loss compensation and medical benefits.¹⁰

The Board finds that OWCP erred in relying on Dr. Vanapalli's opinion as the basis to terminate wage-loss compensation and medical benefits for the accepted injuries. Thus, the Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.¹¹

⁶ See *R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

⁷ See *R.P., supra* note 5; *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁸ See *R.P., supra* note 5; *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005); *A.P.*, Docket No. 08-1822 (issued August 5, 2009). *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁹ See *L.G.*, Docket No. 18-0401 (issued August 28, 2018); *R.P., supra* note 5; *James F. Weikel*, 54 ECAB 660 (2003); *Pamela K. Guesford*, 53 ECAB 727 (2002); *Furman G. Peake, id.*

¹⁰ *J.S.*, Docket No. 17-0804 (issued August 10, 2018).

¹¹ *Id.*

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective October 5, 2017.

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2017 decision of the Office of Workers' Compensation Programs is reversed.

Issued: October 15, 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