United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant	)	
and	)	**Docket No. 18-0123**
	)	**Issued: October 4, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 October 23, 2017 appellant, through counsel, filed a timely appeal from an August 16, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to terminate appellant's medical benefits for the accepted conditions of bilateral carpal tunnel syndrome and exacerbation of right

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

wrist de Quervain's tenosynovitis, and wage-loss compensation and medical benefits for the accepted aggravation of bilateral carpometacarpal (CMC) joint arthritis, effective December 15, 2016.

FACTUAL HISTORY

On September 14, 2011 appellant, then a 46-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that her bilateral carpal tunnel syndrome was caused by her federal employment. OWCP accepted the claim for bilateral carpal tunnel syndrome, and later expanded acceptance of the claim to include exacerbation of right wrist de Quervain's tenosynovitis and aggravation of bilateral hand basilar joint arthritis. It authorized carpal tunnel surgery with right carpal tunnel surgery performed on April 20, 2012 and left carpal tunnel surgery performed on July 6, 2012. OWCP accepted a recurrence of disability beginning February 15, 2013. Appellant returned to work in a modified position on April 5, 2013.

In an April 1, 2013 report, Dr. Rose Ibrahim, a treating physician specializing in family medicine, provided examination findings and diagnosed bilateral carpal tunnel syndrome, osteoarthritis of the hands, and radial styloid tenosynovitis. She noted work restrictions of no pushing, pulling, or lifting more than 20 pounds and no repetitive movement.

On April 1, 2014 OWCP referred appellant, together with a statement of accepted facts (SOAF), the medical record, and a list of questions, to Dr. Emmanuel Obianwu, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the status of her accepted conditions and work capacity.

In an April 15, 2014 report, Dr. Obianwu provided results of an examination conducted on that date. He reviewed the SOAF and appellant's medical record and provided an accurate history of the accepted employment injury. Dr. Obianwu noted her complaints of some pain in her right wrist and thumb. He also noted that the left hand and wrist had improved, although appellant developed left thumb triggering and had occasional numbness. Dr. Obianwu reported that she was currently working with restrictions. A physical examination revealed bilateral negative wrist Tinel's testing, vaguely positive bilateral wrist Phalen's testing, negative Finkelstein's test, no extensor compartment swelling, positive bilateral thumb Grind test, no overt sensory perception discrepancy between the median and ulnar innervated area in either hand, no intrinsic atrophy, and inconclusive sensory perception. Dr. Obianwu diagnosed persistent bilateral carpal tunnel syndrome of the both wrists and hands; de Quervain's tenosynovitis, resolved; and persistent mild bilateral basal joint arthritis. He opined that appellant continued to suffer from bilateral carpal tunnel syndrome based on examination findings and review of diagnostic tests. Based on the negative Finkelstein's test and lack of swelling or tenderness along the first dorsal compartment, Dr. Obianwu concluded the de Quervain's tenosynovitis had resolved. He also opined that aggravation of appellant's bilateral basal joint arthritis continued based on the positive bilateral thumb Grind test. Dr. Obianwu opined that she could not return to her date-of-injury job, but was capable of working with restrictions. In an attached work capacity evaluation form (Form OWCP-5c) he noted permanent work restrictions of 50 pounds of pushing or pulling, up to 30 pounds of lifting, and up to eight hours of repetitive wrist movement.

In a June 6, 2014 Form OWCP-5c, Dr. Ibrahim provided permanent work restrictions of up to eight hours of repetitive wrist movement and up to eight hours of lifting, pushing, or pulling up to 20 pounds. She further noted that appellant could perform tasks with her hands requiring moderate grip, force, and repetition as tolerated.

On November 7, 2014 OWCP referred appellant to an independent medical examination (IME) with Dr. Donald Garver, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence between Dr. Obianwu and Dr. Ibrahim regarding appellant's work restrictions due to residuals of the accepted conditions.

In a report dated January 7, 2015, Dr. Garver, based upon a review of the medical records, SOAF, and physical examination, concluded that the accepted bilateral carpal tunnel syndrome and exacerbation of right wrist de Quervain's tenosynovitis had resolved, but that appellant continued to have residuals from right thumb arthritis and some left thumb arthritis. He provided employment, medical, and injury histories. Dr. Garver reviewed x-rays taken that day revealing significant bilateral hand arthritis with significant bilateral thumb metacarpophalangeal joint space narrowing and spurring. Medical records reviewed and physical examination findings were detailed. Dr. Garver found that, although appellant had positive electromyogram (EMG) studies, he opined that those studies were not conclusive evidence of carpal tunnel syndrome. He opined that she was capable of working with restrictions which included carrying up to 20 pounds, up to two hours of pushing, and up to an hour of pulling/lifting.

On January 19, 2016 OWCP, as instructed by a hearing representative,[3] referred appellant to Dr. Ronald Lederman, a Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence regarding the status of her accepted bilateral hand conditions.[4]

In an IME report dated February 10, 2016, Dr. Lederman, based upon a review of the medical evidence, SOAF, and physical examination, concluded that appellant no longer had residuals or disability due to the accepted work conditions. He detailed findings from medical reports and diagnostic tests he reviewed. Physical examination findings included nontender and well-healed carpal tunnel incisions, negative Finkelstein's, excellent bilateral wrist, range of motion, negative Tinel's sign and Phalen's test in both wrists, no forearm tenderness or pain, and no wrist soft tissue swelling or tenderness. The only positive examination finding was bilateral thumb CMC joint tenderness, which was worse on the right. Dr. Lederman agreed with Dr. Garver that EMG studies are not proven to be conclusive evidence of carpal tunnel syndrome. The only

[3] On January 16, 2016 an OWCP hearing representative set aside a March 9, 2015 schedule award determination as she found that there was an unresolved conflict in the medical opinion evidence between Dr. Garver and Dr. Obianwu, and appellant's treating physician, Dr. Ibrahim, regarding current work-related conditions. She noted that Dr. Garver had been selected to resolve the conflict between Dr. Obianwu and Dr. Ibrahim regarding disability and work restrictions. The hearing representative found that a new conflict arose as Dr. Garver opined that the accepted carpal tunnel condition had resolved while both Dr. Obianwu and Dr. Ibrahim opined that the condition had not resolved. In addition, Dr. Garver attributed appellant's right thumb CMC osteoarthritis to her employment.

[4] In the questions posed to the IME, OWCP identified the conflict as arising among Dr. Garver, Dr. Obianwu, and Dr. Ibrahim regarding disability and work restrictions. It incorrectly included Dr. Obianwu, an OWCP referral physician, as a conflict under 5 U.S.C. § 8123 cannot exist between OWCP physicians as a conflict can only arise between a physician for the employee and an OWCP physician. *See C.M.*, Docket No. 09-1268 (issued January 22, 2010); *Delphia Y. Jackson*, 55 ECAB 373 (2004).

diagnosis that he found was bilateral thumb CMC joint arthritis, which he noted could be aggravated by repetitive work. However, Dr. Lederman opined that the condition was not attributable to appellant's accepted work factors.

On May 12, 2016 OWCP requested clarification from Dr. Lederman as to whether appellant's employment continued to aggravate the accepted basil joint arthritis or whether the aggravation has ceased.

In June 29, 2016 supplemental IME report, Dr. Lederman advised that he reviewed a video disc provided by OWCP showing mail processing clerk duties. After reviewing the video, he reported that his opinion was unchanged. Dr. Lederman explained that the job duties he reviewed would not have caused the thumb joint arthritis, but some of the maneuvers could aggravate appellant's symptoms.

On July 11, 2016 OWCP issued a letter proposing to terminate appellant's medical benefits for her accepted bilateral carpal tunnel syndrome and exacerbation of right wrist de Quervain's tenosynovitis. It found that the weight of the medical opinion evidence, as represented by the impartial medical examiner,[5] established that the accepted bilateral carpal tunnel syndrome and exacerbation of right wrist de Quervain's tenosynovitis had resolved without disability or continuing residuals. OWCP further determined that there was an unresolved conflict between Dr. Lederman and Dr. Ibrahim regarding whether the accepted aggravation of bilateral thumb CMC joint arthritis continued to be aggravated or caused by work factors.

On July 27, 2016 OWCP referred appellant to Dr. Paul Drouillard, an osteopathic Board-certified orthopedic surgeon, to resolve the conflict in the medical opinion evidence[6] regarding whether the accepted aggravation of bilateral thumb CMC joint arthritis continued to be aggravated or caused by work factors.[7]

In an August 3, 2016 report, Dr. Ibrahim noted her disagreement with the proposal to terminate appellant's medical benefits for the accepted bilateral carpal tunnel syndrome and exacerbation of right wrist de Quervain's tenosynovitis. She noted that appellant continued to receive care for these conditions. Dr. Ibrahim further noted that the repetitive work appellant performed was the cause of swelling, pain, and discomfort in her hands and wrists.

Dr. Ibrahim, in a form report dated August 3, 2016, provided examination findings and diagnosed carpal tunnel syndrome.

[5] OWCP incorrectly identified Dr. Kwartowitz as the impartial medical examiner when appellant referred to and was seen by his colleague, Dr. Lederman.

[6] OWCP misidentified the conflict as between appellant's treating physician, Dr. Ibrahim, and an OWCP referral physician, Dr. Kwartowitz. Appellant was not referred or seen by Dr. Kwartowitz. The record shows that appellant had been referred to and seen by Dr. Lederman, a colleague of Dr. Kwartowitz.

[7] In the letter to Dr. Drouillard, OWCP identified him as a second opinion physician while in the letter to appellant he was identified as an impartial medical examiner.

On August 10, 2016 an EMG test was conducted by Dr. Ram Garg, a physician specializing in neurology. He interpreted the results of the test as abnormal and evidence of bilateral carpal tunnel syndrome, worse on the right side.

In an August 22, 2016 report, Dr. Drouillard, based upon review of medical records and SOAF, appellant's complaints, and physical examination, diagnosed mild bilateral thumb CMC degenerative joint disease, status post bilateral carpal tunnel releases, and status post tenovaginotomy first dorsal right wrist compartment for de Quervain's disease. He noted successful surgeries for the bilateral carpal tunnel and right wrist de Quervain's disease. Physical findings included no bilateral hand and wrist swelling, skin discoloration, inflammation, or erythema; full bilateral hand and wrist range of motion; negative bilateral Tinel's and Phalen's tests; negative thoracic outlet test, bilateral thumb CMC joint tenderness; and negative Finkelstein test. Dr. Drouillard reported minor arthritic changes in the bilateral CMC thumb joints, which he observed was common among people in appellant's gender and age group. He advised that he did not believe that bilateral CMC arthritic condition was employment related or aggravated by her employment duties. Thus, Dr. Drouillard concluded that the arthritic changes in appellant's thumbs were unrelated to her employment and required no treatment or work restrictions. He opined that her bilateral arthritic thumb conditions were unrelated to her employment as they were degenerative in nature.

On August 25, 2016 OWCP requested that Dr. Lederman review an updated EMG study and provide an opinion of whether review of this test altered his opinion regarding the accepted bilateral carpal tunnel syndrome.

On August 25, 2016 OWCP issued a letter proposing to terminate appellant's wage-loss compensation and medical benefits for the accepted aggravation of bilateral CMC joint arthritis. It found that Dr. Drouillard was entitled to the special weight of the medical evidence accorded to an impartial medical examiner.

On October 11, 2016 OWCP received an August 10, 2016 report from Dr. Garg diagnosing bilateral carpal tunnel syndrome and listing work restrictions. Dr. Garg noted the injury history and provided examination findings, which included normal bilateral upper extremity strength and tone.

In a November 7, 2016 addendum report, Dr. Lederman reviewed an August 10, 2016 EMG as requested by OWCP and that his opinion was unchanged. He explained that, as noted in his initial report, a postoperative positive EMG was not indicative that carpal tunnel syndrome was still present. Dr. Lederman explained that his clinical examination was inconsistent with a finding of carpal tunnel syndrome, and therefore the August 10, 2016 EMG was insufficient evidence to alter his opinion or recommendation.

By decision dated December 20, 2016, OWCP finalized the termination of appellant's medical benefits for bilateral carpal tunnel syndrome and exacerbation of right wrist de Quervain's tenosynovitis, effective December 15, 2016. In a separate decision dated December 20, 2016, it finalized the termination of her wage-loss compensation and medical benefits for the accepted aggravation of bilateral thumb CMC joint arthritis, also effective December 15, 2016.

In a letter dated December 27, 2016, counsel disagreed with the December 20, 2016 decisions and requested a telephonic hearing before an OWCP hearing representative.

By decision dated August 16, 2017, an OWCP hearing representative affirmed the December 20, 2016 decision terminating appellant's medical benefits for the accepted bilateral carpal tunnel syndrome and exacerbation of right wrist de Quervain's tenosynovitis. She also affirmed the December 20, 2016 decision terminating wage-loss compensation and medical benefits for the accepted aggravation of bilateral CMC joint arthritis.

LEGAL PRECEDENT

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify modification or termination of an employee's benefits.[8] 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.[9] The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.[10] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition, which would require further medical treatment.[11]

Section 8123(a) provides that, 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.[12] When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.[13]

ANALYSIS

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome. It authorized carpal tunnel surgery with right carpal tunnel surgery performed on April 20, 2012 and left carpal tunnel surgery on July 6, 2012. OWCP subsequently accepted additional conditions of exacerbation of right wrist de Quervain's tenosynovitis and aggravation bilateral hand basilar joint arthritis. By decision dated December 20, 2016, it terminated medical benefits for the accepted conditions of bilateral carpal tunnel syndrome and exacerbation of right wrist de Quervain's tenosynovitis, finding that these conditions had resolved with or without residuals based on the

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

[9] *I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

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

[11] *Kathryn E. Demarsh, id.*; *James F. Weikel*, 54 ECAB 660 (2003).

[12] 5 U.S.C. § 8123(a). *See S.R.*, Docket No. 09-2332 (issued August 16, 2010); *Y.A.*, 59 ECAB 701 (2008); *Darlene R. Kennedy*, 57 ECAB 414 (2006).

[13] *A.R.*, Docket No. 09-1566 (issued June 2, 2010); *M.S.*, 58 ECAB 328 (2007); *Bryan O. Crane*, 56 ECAB 713 (2005).

opinion of IME Dr. Lederman. In a separate decision dated December 20, 2016, OWCP finalized the termination of her wage-loss compensation and medical benefits for the accepted aggravation of bilateral thumb CMC joint arthritis, also effective December 15, 2016. By decision dated August 16, 2017, an OWCP hearing representative affirmed both December 20, 2016 termination decisions. The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 15, 2016, for the accepted conditions of bilateral carpal tunnel syndrome and exacerbation of right wrist de Quervain's tenosynovitis,

Dr. Obianwu, acting as a second opinion physician on behalf of OWCP, opined in an April 15, 2014 report, that the accepted condition of exacerbation of right wrist de Quervain's tenosynovitis had resolved, but that appellant continued to have residuals from the accepted bilateral carpal tunnel and aggravation bilateral hand basilar joint arthritis. In an April 1, 2013 report, appellant's attending physician, Dr. Ibrahim, opined that appellant continued to have residuals and disability due to bilateral carpal tunnel syndrome, osteoarthritis, and radial styloid tenosynovitis. OWCP identified a conflict in the medical opinion evidence between Dr. Obianwu, the second opinion physician, and Dr. Ibrahim on the issue of appellant's work restrictions. It selected Dr. Garver, a Board-certified orthopedic surgeon, as impartial specialist on this specific issue. Dr. Garver reviewed the medical record and SOAF. After examining appellant, he opined that the accepted conditions of bilateral carpal tunnel syndrome and exacerbation of right wrist de Quervain's tenosynovitis had resolved, but she continued to have residuals of her bilateral thumb arthritis. Since Dr. Garver was not asked to address whether her accepted conditions had resolved, his opinion was not entitled to the special weight of the medical evidence afforded to an IME on that specific issue.[14] His opinion however was entitled to its own intrinsic value as that of a second opinion examiner. Thus, a new conflict was created between Dr. Ibrahim, appellant's treating physician, and Dr. Garver, as a second opinion physician, regarding the issue of whether appellant's accepted conditions of bilateral carpal tunnel syndrome and exacerbation of right wrist de Quervain's tenosynovitis had resolved.

OWCP properly referred appellant to Dr. Lederman for an impartial medical examination to resolve the newly created conflict. In his February 10, 2016 report, Dr. Lederman reviewed appellant's history of injury and history of medical treatment. Appellant's findings on physical examination were reported as normal, except for bilateral CMC joint tenderness. Based on physical examination findings, Dr. Lederman concluded that she had no residuals due to the accepted bilateral carpal tunnel syndrome and exacerbation of right wrist de Quervain's tenosynovitis.

The Board finds that Dr. Lederman provided insufficient medical rationale for his conclusion that appellant no longer required medical treatment for her accepted conditions of bilateral carpal tunnel syndrome and exacerbation of right wrist de Quervain's tenosynovitis. Dr. Lederman's opinion is conclusory in nature. In determining the probative value of an impartial medical examiner's report, the Board considers such factors as the opportunity for and thoroughness of examination performed by the physician, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the

[14] *See J.C.*, Docket No. 16-0952 (issued October 24, 2016).

medical rationale expressed by the physician on the issues addressed to him or her by OWCP.[15] Dr. Lederman failed to explain why the objective findings of record established the accepted conditions had resolved. He rejected appellant's EMG studies, which showed evidence of continued bilateral carpal tunnel syndrome, without a medical explanation supported by rationale, as to why these test findings were of no importance, while finding that his own limited physical examination of appellant's hands were conclusive. When an IME fails to provide medical reasoning to support his or her conclusory statements about a claimant's condition, it is insufficient to resolve a conflict in the medical evidence.[16]

Because Dr. Lederman's report lacks probative value, the Board finds that OWCP erred in relying on his opinion as the basis to terminate medical benefits for the accepted bilateral carpal tunnel and right wrist tenosynovitis conditions. He provided conclusions without sufficient medical rationale to support his findings. The Board shall reverse the termination of medical benefits, effective December 15, 2016 as OWCP has not met its burden of proof.[17]

The Board further finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective December 15, 2016, for the accepted aggravation of bilateral CMC joint arthritis.

Appellant was referred to Dr. Drouillard to resolve the conflict of medical evidence regarding this condition. OWCP did not meet its burden of proof because his opinion was inconsistent with the SOAF. OWCP accepted that appellant's bilateral CMC joint arthritis was work related.[17] It is well established that a physician's opinion must be based on a complete and accurate factual and medical background. When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on these accepted conditions.[18]

As noted, in his August 22, 2016 report, Dr. Drouillard opined that appellant's mild bilateral thumb CMC degenerative joint disease was common among people of her gender and age group. He further opined that her employment did not aggravate or cause her bilateral CMC arthritis as any changes were degenerative in nature and unrelated to her employment.

[15] *James T. Johnson*, 39 ECAB 1252 (1988).

[16] *See A.R.*, Docket No. 12-0443 (issued October 9, 2012); *see also P.F.*, Docket No. 13-0728 (issued September 9, 2014); *T.M.*, Docket No. 08-0975 (issued February 6, 2009) (a medical report consisting solely of conclusory statements without supporting rationale is of little probative value).

[17] *See Willa M. Frazier*, 55 ECAB 379 (2004).

[18] *V.C.*, Docket No. 14-1912 (issued September 22, 2015).

Medical opinions based on an incomplete or inaccurate history are of diminished probative value.[19] When OWCP has accepted an employment condition as occurring in the performance of duty, the physician must base his opinion on the accepted facts.[20]

In *Paul King*,[21] the Board found that the report of an impartial medical examiner who disregarded a critical element of the SOAF was of diminished probative value. In *King*, the impartial medical examiner also disagreed with the medical basis for acceptance of a condition. The Board found that this defective report was insufficient to resolve an existing conflict of medical opinion evidence.[22]

Dr. Drouillard likewise disregarded the SOAF and, as in *King*, did not rely on the SOAF regarding the accepted conditions. The Board therefore finds his report to be of diminished probative value. The Board notes that it is the function of a medical expert to give an opinion only on medical questions, not to find facts.[23]

The Board therefore finds that Dr. Drouillard's opinion is of limited value on the relevant issue in this case, and OWCP improperly relied on his opinion to terminate appellant's wage-loss compensation and medical benefits for the accepted aggravation of bilateral CMC joint arthritis.

Thus OWCP failed to meet its burden of proof.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's medical benefits for the accepted conditions of bilateral carpal tunnel syndrome and exacerbation of right wrist de Quervain's tenosynovitis, and wage-loss compensation and medical benefits for the accepted aggravation of bilateral CMC joint arthritis, effective December 15, 2016.

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

[20] *J.H.*, Docket No. 16-0590 (issued September 12, 2016).

[21] 4 ECAB 356 (2003).

[22] *Id.*

[23] *Roberta L. Kaaumoana,* 54 ECAB 150 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 16, 2017 is reversed.

Issued: October 4, 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