

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

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A.R., Appellant)	
)	
and)	Docket No. 20-0335
)	Issued: August 7, 2020
U.S. POSTAL SERVICE, LUGONIA STATION)	
POST OFFICE, Redlands, CA, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On November 30, 2019 appellant filed a timely appeal from a July 12, 2019 merit decision and an August 7, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation benefits, effective July 12, 2019, as she no longer had residuals or disability causally related to her accepted left wrist condition; (2) whether appellant has met her burden of proof to establish continuing employment-related disability causally related to her

¹ The Board notes that following the August 7, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

accepted left wrist condition on or after July 12, 2019; and (3) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 24, 2017 appellant, then a 35-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed left wrist pain due to factors of her federal employment including repetitively lifting parcels, grasping, casing, and delivering mail. She indicated that she first became aware of her condition and realized its relationship to her federal employment on October 19, 2017. Appellant stopped work on October 20, 2017. OWCP accepted her claim for left wrist sprain. It paid wage-loss compensation on the supplemental rolls, effective November 1, 2017.

In a March 2, 2018 work status report, Dr. Keith R. Wresch, who specializes in family and occupational medicine, released appellant from his care and reported that she could return to full duty with no restrictions or limitations.

In a March 21, 2018 rehabilitation action report, the vocational rehabilitation counselor indicated that appellant had not yet returned to work because she was on maternity leave as of March 17, 2018.

On September 19, 2018 appellant underwent a left wrist magnetic resonance imaging (MRI) scan, which revealed tenosynovitis of the first extensor compartment tendon or de Quervain's tenosynovitis, a volar ganglion cyst, a small four millimeter (mm) volar ganglion cyst, sprain of ulnar attachment of triangular fibrocartilage, and a five mm area of bone contusion.

In a September 25, 2018 report, Dr. Shaheen Zakaria, who specializes in general surgery, noted appellant's complaints of continued left wrist pain, which was exacerbated by repetitive hand use. She noted that the left wrist MRI scan showed small ganglion cysts, extensor tenosynovitis, and sprain of the triangular fibrocartilage complex. Examination of her left wrist revealed tenderness on the extensor surface. Dr. Zakaria diagnosed left wrist tenosynovitis and left wrist sprain. She recommended that appellant work light duty with restrictions for her left wrist, including no gripping and grasping, limited pushing and pulling up to 10 pounds, and no repetitive motion of the left hand.

In reports dated October 16 and November 13, 2018, Dr. Ramy Elias, a Board-certified orthopedic surgeon, noted appellant's complaints of left wrist pain, numbness, and tingling. He indicated that appellant worked as a letter carrier, which required repetitive work with her left hand. Upon examination of appellant's left wrist, Dr. Elias observed positive tenderness diffusely, no swelling, and full range of motion. He diagnosed left wrist tendinitis and mild carpal tunnel syndrome. Dr. Elias reported that, based on appellant's history and examination, it appeared that she sustained an injury to her left wrist arising out of and caused by her industrial exposure. In the November 13, 2018 status note, he indicated that appellant could return to work with restrictions of working for six hours per day, no gripping and grasping with the left hand, and no commercial driving.

On November 24, 2018 appellant returned to part-time, modified duty working for six hours per day. OWCP paid wage-loss compensation on the supplemental rolls for the remaining two hours of the day beginning November 24, 2018.

In a December 11, 2018 impairment rating and progress report, Dr. Elias reviewed appellant's medical and employment history and noted that he examined her for follow up of a left wrist injury. Upon examination of her left wrist, he observed tenderness over the first dorsal compartment and full range of motion. Dr. Elias diagnosed left de Quervain's tendinitis with failure of conservative treatment. He reported that appellant's condition had reached maximum medical improvement (MMI) as of the date of his report. Dr. Elias indicated that she would be discharged from his care with permanent prophylactic restrictions. He completed a work status note in which he found that appellant could return to work for six hours per day, with no gripping or grasping with the left hand, and no commercial driving.

By notice dated June 6, 2019, OWCP proposed to terminate appellant's wage-loss compensation benefits because she no longer had disability causally related to her accepted left wrist condition. It found that the weight of the medical evidence rested with the December 11, 2018 report of Dr. Elias who indicated that appellant had no objective findings to support ongoing disability. OWCP noted that Dr. Elias provided prophylactic work restrictions, which were not compensable.

Appellant submitted a progress report and work activity status report dated July 2, 2019 by Dr. Elias. He indicated that he was treating appellant for follow-up of left wrist de Quervain's tendinitis. Examination of appellant's left wrist revealed tenderness diffusely and full range of motion. Dr. Elias diagnosed left de Quervain's tendinitis and flexor carpi radialis tendinitis. He noted that appellant was released from his care and could return to modified duty with restrictions of limited use of the left hand up to six hours per day, lifting up to five pounds, pushing and pulling up to five pounds, no commercial driving, and no gripping or grasping of the left hand.

Appellant also continued to submit claims for wage-loss compensation (Form CA-7) dated June 5 to July 5, 2019.

By decision dated July 12, 2019, OWCP finalized the termination of appellant's wage-loss benefits, effective that date. It found that the weight of medical evidence rested with Dr. Elias, appellant's treating physician, who concluded in his December 11, 2018 report that appellant no longer had continuing disability causally related to her accepted left wrist injury.

On July 24, 2019 appellant requested reconsideration.

OWCP received a work status report from a physician assistant dated November 8, 2017, which indicated a diagnosis of left wrist tendinitis. Appellant provided a handwritten notation explaining that this note was when the diagnosis changed to tendinitis of the left wrist.

Appellant also resubmitted a March 2, 2018 work status report by Dr. Wresch, which indicated a diagnosis of left wrist tendinitis. She included a handwritten notation that the diagnosis remained throughout this date when she was released from care.

By decision dated August 7, 2019, OWCP denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it bears the burden of proof to justify termination or modification of benefits.² It may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³ OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation, effective July 12, 2019.

OWCP accepted appellant's occupational disease claim for a left wrist sprain. Appellant stopped work and returned to part-time, modified duty working six hours per day on November 24, 2018. By decision dated July 12, 2019, OWCP terminated her wage-loss compensation benefits based on the opinion of Dr. Elias, appellant's treating physician, who reported that appellant would be discharged from his care with permanent prophylactic restrictions.

In a December 11, 2018 impairment rating and progress report, Dr. Elias reviewed appellant's medical and employment history. He conducted an examination and diagnosed left de Quervain's tendinitis. Dr. Elias reported that appellant had reached MMI that date and would be discharged from his care with permanent prophylactic restrictions. He completed a work status note, which reported that appellant could work with restrictions of working six hours per day, no gripping or grasping with the left hand, and no commercial driving.

The Board has held that the weight of a medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.⁵ Herein, the Board finds that Dr. Elias did not provide any medical reasoning or explanation for why appellant's partial disability had ceased. Although Dr. Elias reported that appellant was released from his care with prophylactic work restrictions, he offered no supporting medical rationale to establish that appellant's work restrictions of working up to six hours per day, with no gripping or grasping with the left hand, and no commercial driving were no longer related to her accepted left wrist condition.

² *A.D.*, Docket No. 18-0497 (issued July 25, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

³ *A.G.*, Docket No. 18-0749 (issued November 7, 2018); *see also I.J.*, 59 ECAB 408 (2008); *Elsie L. Price*, 54 ECAB 734 (2003).

⁴ *R.R.*, Docket No. 19-0173 (issued May 2, 2019); *T.P.*, 58 ECAB 524 (2007); *Del K. Rykert*, 40 ECAB 284 (1988).

⁵ *J.J.*, Docket No. 15-0475 (issued September 28, 2016).

Thus, the Board finds that Dr. Elias' opinion on disability is conclusory in nature and lacks sufficient medical rationale to justify termination of appellant's wage-loss compensation benefits.⁶

The Board thus finds that OWCP has not met its burden of proof to establish that appellant was no longer partially disabled, effective July 12, 2019, due to her accepted condition.⁷

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation, effective July 12, 2019.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 7, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁶ See *L.D.*, Docket No. 19-0308 (issued July 24, 2019); see also *S.W.*, Docket No. 18-0005 (issued May 24, 2018).

⁷ In light of the disposition of the first issue, the second issue regarding appellant's continuing disability and the third issue regarding denial of appellant's reconsideration request are moot.