United States Department of Labor
Employees' Compensation Appeals Board

P.J., Appellant	)	
and	)	**Docket No. 20-0550**
	)	**Issued: April 26, 2021**
DEPARTMENT OF COMMERCE, U.S. PATENT & TRADEMARK OFFICE, PATENT PUBLICATIONS OFFICE, Arlington, VA, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 13, 2020 appellant filed a timely appeal from a December 17, 2019 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 has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 21, 2019, as she no longer had residuals or disability causally related to her accepted employment conditions; and (2) whether appellant has met her burden of proof to establish continuing residuals or disability causally related to her accepted employment conditions on or after July 21, 2019.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 1, 2001 OWCP accepted that appellant, then a 39-year-old legal instruments examiner, sustained an occupational disease in the form of bilateral carpal tunnel syndrome due to performing the repetitious duties of her job.[2] Appellant had indicated that she first became aware of the condition and its relation to her federal employment on September 7, 1999. She stopped work on March 12, 2001 and OWCP paid her wage-loss compensation for disability from work on the periodic rolls commencing June 16, 2002. Appellant returned to part-time work (four hours per day) on September 4, 2007 and stopped work on September 20, 2007. OWCP paid her appropriate compensation for periods of partial and total disability.

Appellant underwent several OWCP-authorized surgeries in connection with her accepted employment conditions, including right carpal tunnel release on November 4, 1999, left carpal tunnel release on March 5, 2001, and cervical fusion/corpectomy surgery at C5-6 on July 7, 2015.

In a March 20, 2017 report, Dr. Daniel R. Ignacio, a Board-certified physical medicine and rehabilitation physician, indicated that appellant had accepted work-related conditions, including bilateral carpal tunnel syndrome, brachial neuritis, cervical disc syndrome with myelopathy, cervical sprain, and right shoulder sprain. He determined that appellant's work-related conditions had not resolved and that she continued to be disabled from work.

In May 2017 OWCP referred appellant for a second opinion examination with Dr. Chester DiLallo, a Board-certified orthopedic surgeon. It requested that he provide an opinion regarding whether appellant continued to have residuals or disability related to her accepted employment conditions. In a May 30, 2017 report, Dr. DiLallo noted that, on physical examination, appellant complained of tenderness on palpation of the ulnar groove bilaterally, but he indicated that her Tinel's sign was negative bilaterally. He reported that appellant's strength was good throughout both upper extremities in all muscle groups tested, that range of motion was good in the shoulders, elbows, hands and wrists, and that the sensory evaluation was inconsistent with no clear-cut dermatomal or peripheral nerve deficits. Dr. DiLallo determined that appellant did not have any objective residuals of her accepted employment conditions. He indicated that appellant could not return to her regular job, but noted that his recommended work restrictions were not due to a work-related condition. In a May 30, 2017 work capacity evaluation (Form OWCP-5c), Dr. DiLallo detailed work restrictions, including lifting/pushing/pulling no more than 10 pounds, but noted that they were necessitated by the nonwork-related condition of chronic pain syndrome.

On July 12, 2017 Dr. Ignacio requested authorization for appellant to undergo cervical fusion surgery. On August 24, 2017 OWCP referred appellant's case to Dr. Todd Fellars, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), and requested that he evaluate whether Dr. Ignacio's request for authorization to perform cervical fusion surgery should be authorized as medically necessary and causally related to appellant's accepted

[2] OWCP had assigned OWCP File No. xxxxxx548 to appellant's occupational disease claim. Under File No. xxxxxx385, OWCP previously accepted that, due to an April 19, 1999 reaching incident, appellant sustained intervertebral cervical disc disorder with myelopathy, cervical disc herniation at C6-7, cervical sprain, myalgia/myositis, fibromyalgia, brachial neuritis/radiculitis, and right shoulder/upper arm sprain. It administratively combined OWCP File Nos. xxxxxx385 and xxxxxx548, designating the latter file to serve as the master file.

employment conditions. In a September 20, 2017 report, Dr. Fellars opined that the proposed cervical surgery was not medically necessary because appellant did not meet the criteria for such surgery. He indicated that there was no evidence that appellant had a C3-4 or C4-5 radiculopathy or myelopathy, and he opined that, therefore, it was unlikely that the surgery would decrease appellant's symptoms.

In February 2018, OWCP determined that there was a conflict in the medical opinion evidence between Dr. Ignacio, the attending physician, and Dr. DiLallo, OWCP's referral physician, on the issue of whether appellant continued to have residuals or disability causally related to her accepted employment conditions. In a February 7, 2018 report, Dr. Ignacio indicated that appellant continued to have residuals of her accepted employment conditions. In order to resolve the conflict, OWCP referred appellant, pursuant to section 8123(a) of FECA, to Dr. Sankara Kothakota, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the issue.

In a March 29, 2018 report, Dr. Kothakota discussed appellant's factual and medical history and reported the findings of the physical examination he conducted on that date. He reported that, on physical examination, appellant exhibited no atrophy involving the shoulders and upper extremity muscles. Dr. Kothakota noted that bilateral grip strength was within normal limits and that bilateral biceps, supinator, and triceps jerks were normal. He advised that appellant's bilateral carpal tunnel incisions had completely healed and that the Tinel's signs were negative at both wrists. Dr. Kothakota diagnosed sprain of the neck, intervertebral disc disorder with myelopathy of the cervical region, and bilateral carpal tunnel syndrome. He indicated that he agreed with Dr. Fellars' September 20, 2017 opinion that appellant did not require any further surgical procedure in the cervical spine, noting that there was not enough evidence to suggest a need for surgical intervention. Dr. Kothakota reported that he had reviewed Dr. DiLallo's May 30, 2017 report and advised that he concurred with the vast majority of the clinical findings and opinions contained in the report. He indicated that, based on his clinical examination/findings and review of the medical records, including recent magnetic resonance imaging (MRI) scans, appellant was capable of going back to full-duty work as a legal instruments examiner without restrictions. Dr. Kothakota indicated that he did not find any evidence on the radiographs or on the MRI scans to restrict appellant from resuming full-duty work status. Appellant did not require any surgical or medical intervention based on the evidence presented, both clinically as well as radiologically. Dr. Kothakota noted that appellant did not sustain any other conditions due to the April 19, 1999 employment injury other than those accepted.[3] He determined that appellant did not have any physical limitations resulting from work-related disability. Dr. Kothakota noted that appellant underwent a cardiac bypass that was not related to the accepted work-related conditions and indicated that he might require some restrictions related to this cardiac condition. He noted that appellant had fairly normal grip strength and full range of motion of the shoulders and neck on clinical examination. Dr. Kothakota indicated that appellant had "no residuals related to work-related injury."

[3] Dr. Kothakota noted that none of appellant's preexisting conditions were aggravated following the work-related injury of April 19, 1999.

In a March 26, 2019 letter, OWCP requested that Dr. Kothakota provide clarification regarding whether appellant had work-related residuals and whether carpal tunnel surgery was warranted. It enclosed a medical report dated October 17, 2018 from Dr. Nigel Azer, a Board-certified orthopedic surgeon; MRI scans dated April 28 and May 5, 2018; Dr. Ignacio's May 21, 2018 report discussing an electromyogram and nerve conduction velocity (EMG/NCV) study; and the operative report from right carpal tunnel surgery performed on December 21, 2018. OWCP requested that Dr. Kothakota review these materials and provide an opinion regarding whether carpal tunnel surgery was warranted and casually related to appellant's accepted employment conditions. It also requested that Dr. Kothakota indicate whether this medical documentation changed his findings with regard to appellant's ability to return to work as a legal instruments examiner on a full-time basis.

In a supplemental report dated June 4, 2019, Dr. Kothakota indicated that he had reviewed the April 28, 2018 MRI scan and noted that the MRI scan's findings were consistent with inflammatory arthropathy of the right wrist. He advised that the MRI scan was consistent with postsurgical changes to the right median nerve and carpal tunnel. Dr. Kothakota indicated that Dr. Ignacio concluded in his May 21, 2018 report that appellant had bilateral carpal tunnel syndrome, but noted that the report was not an actual report of an EMG/NCV study. He advised that he had reviewed Dr. Azer's October 17, 2018 report, recommending revision surgery of the carpal tunnel syndrome of the right hand. Dr. Kothakota indicated that appellant subsequently underwent carpal tunnel release of the right wrist. He noted that, based on his clinical examination on March 29, 2018, appellant had no evidence of recurrent carpal tunnel syndrome at that time. Dr. Kothakota indicated that appellant had negative Tinel's signs. He noted, "[o]nce again I stand by my conclusion based on my examination in March 2018 [that] carpal tunnel surgery [was] not warranted, [and] not causally related to the work-related injury of September 7, 1999. If the patient has required further surgery, I do not believe it is related to the work-related injury."

In a notice dated June 13, 2019, OWCP advised appellant that it proposed to terminate her wage-loss compensation and medical benefits as she ceased to have residuals or disability causally related to her accepted employment conditions. It indicated that the special weight of the medical opinion evidence with respect to employment-related residuals and disability rested with the March 29, 2018 and June 4, 2019 reports of Dr. Kothakota, the impartial medical specialist. OWCP afforded appellant 30 days to challenge the proposed termination action.

Appellant subsequently submitted several progress reports of Dr. Ignacio, including May 14 and July 10, 2019 reports, in which he collectively diagnosed chronic cervical strain and cervical neuritis, chronic progressive cervical disc syndrome with cervical radiculopathy, chronic myalgia and myositis, chronic brachial neuritis, chronic bilateral carpal tunnel syndrome, chronic tenosynovitis of the wrists, status post cervical surgery with residual pain, status post wrist surgery with residual pain, and complex regional pain syndrome. In a July 2, 2019 report, Dr. Ignacio indicated that he disagreed with Dr. Kothakota's opinion that appellant ceased to have residuals of her accepted employment-related conditions. He discussed appellant's findings on physical examination and diagnostic testing and argued that they supported the conclusion that appellant continued to have residuals of her accepted employment-related conditions.

By decision dated July 18, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective July 21, 2019, as she no longer had residuals or disability causally

related to her accepted employment conditions. It found that the special weight of the medical opinion evidence with respect to employment-related residuals and disability rested with the opinion of Dr. Kothakota.

Appellant requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review. She submitted a July 23, 2019 report from Dr. Ignacio who diagnosed chronic cervical intervertebral disc disorder with myelopathy, chronic brachial neuritis, chronic bilateral carpal tunnel syndrome, chronic myalgia/myositis, status post multiple surgeries of the cervical spine and wrists with residual pain, and complex regional pain syndrome. By decision dated December 17, 2019, OWCP's hearing representative affirmed the July 18, 2019 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.[4] 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.[5] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[6]

Section 8123(a) of FECA provides in pertinent part: "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."[7] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[8]

ANALYSIS -- ISSUE 1

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 21, 2019.

OWCP properly determined that there was a conflict in the medical opinion between Dr. Ignacio, an attending physician, and Dr. DiLallo, an OWCP referral physician, on the issue of whether appellant continued to have residuals or disability causally related to her accepted

[4] *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

[5] *See R.P.*, Docket No. 17-1133 (issued January 18, 2018); *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis*, 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

[6] *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[7] 5 U.S.C. § 8123(a).

[8] *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

employment conditions. In order to resolve the conflict, OWCP properly referred appellant, pursuant to section 8123(a) of FECA, to Dr. Kothakota, for an impartial medical examination and an opinion.[9]

In a March 29, 2018 report, Dr. Kothakota reported the findings of his physical examination and diagnosed sprain of the neck, intervertebral disc disorder with myelopathy of the cervical region, and bilateral carpal tunnel syndrome. He indicated that, based on his clinical examination/findings and review of the medical records, including recent MRI scans, appellant was capable of going back to full-duty work as a legal instruments examiner without restrictions. Dr. Kothakota noted that appellant did not require any surgical or medical intervention based on the evidence presented, both clinically as well as radiologically. He determined that appellant did not have any physical limitations resulting from work-related disability. Dr. Kothakota noted that appellant had fairly normal grip strength and full range of motion of the shoulders and neck on clinical examination. He indicated that appellant had "no residuals related to work-related injury."

In a March 26, 2019 letter, OWCP requested that Dr. Kothakota provide clarification regarding whether appellant had work-related residuals and whether carpal tunnel surgery was warranted. It enclosed additional medical evidence, including several diagnostic testing studies and the operative report from right carpal tunnel surgery performed on December 21, 2018. OWCP requested that Dr. Kothakota indicate whether this medical documentation changed his opinion with regard to appellant's ability to return to work and with regard to the need for carpal tunnel surgery. In a supplemental report dated June 4, 2019, Dr. Kothakota indicated that he had reviewed the newly provided medical evidence. He noted that, based on his clinical examination on March 29, 2018, appellant had no evidence of recurrent carpal tunnel syndrome at that time. Dr. Kothakota noted, "Once again I stand by my conclusion based on my examination in March 2018 [that] carpal tunnel surgery [was] not warranted, [and] not causally related to the work-related injury of September 7, 1999. If the patient has required further surgery, I do not believe it is related to the work-related injury."[10]

The Board finds that the opinion of Dr. Kothakota is not sufficiently well rationalized to resolve the conflict in the medical opinion evidence regarding continuing work-related residuals and disability.[11] The March 29, 2018 and June 4, 2019 reports of Dr. Kothakota do not establish that appellant had no residuals or disability causally related to her accepted employment conditions after July 21, 2019.

The Board notes that OWCP accepted numerous conditions as employment-related, including bilateral carpal tunnel syndrome, intervertebral cervical disc disorder with myelopathy, cervical disc herniation at C6-7, cervical sprain, myalgia/myositis, fibromyalgia, brachial neuritis/radiculitis, and right shoulder/upper arm sprain. Dr. Kothakota only made one brief reference to the resolution of appellant's accepted employment conditions when he noted that

[9] *See supra* note 7.

[10] The Board notes that, although OWCP requested that Dr. Kothakota discuss appellant's need for carpal tunnel surgery, the question of whether carpal tunnel surgery should be authorized is not currently before the Board as the case record does not contain a final decision on this issue. *See* 20 C.F.R. § 501.2(c).

[11] *See supra* note 8.

appellant had "no residuals related to work-related injury." His opinion is of limited probative value regarding employment-related residuals/disability because he did not provide any notable discussion of appellant's accepted employment conditions or provide medical rationale describing the pathophysiological process through which they would have resolved. In fact, Dr. Kothakota did not provide any individualized discussion of how and when the above-noted conditions had resolved. The Board has held that a report is of limited probative value regarding a given medical matter if it does not contain adequate medical rationale explaining that matter.[12] Dr. Kothakota's opinion contains an equivocal element in that he diagnosed sprain of the neck, intervertebral disc disorder with myelopathy of the cervical region, and bilateral carpal tunnel syndrome. He did not adequately discuss these diagnoses in the context of his statement that appellant's "work-related injury" had resolved. Dr. Kothakota did not sufficiently explain why these diagnosed conditions would not have been related, at least in part, to the accepted medical conditions. The Board has held that an opinion which is equivocal in nature is of limited probative value regarding the medical matter addressed.[13] In addition, Dr. Kothakota did not adequately explain why the right carpal tunnel surgery performed on December 21, 2018 was not necessitated, at least in part, by residuals of appellant's accepted carpal tunnel syndrome.

Because OWCP relied on the opinion of Dr. Kothakota to terminate appellant's wage-loss and medical benefits effective July 21, 2019 without having resolved the existing conflict in the medical opinion evidence, OWCP failed to meet its burden of proof in terminating appellant's wage-loss compensation and medical benefits.[14]

CONCLUSION

The Board finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective July 21, 2019.

[12] *See T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[13] *See E.B.*, Docket No. 18-1060 (issued November 1, 2018); *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962).

[14] *See Gail D. Painton*, 41 ECAB 492, 498 (1990). In light of the Board's finding with regard to Issue 1, Issue 2 is moot.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 26, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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