United States Department of Labor
Employees' Compensation Appeals Board

DOLORES CLAUDE, Appellant	)	
and	)	**Docket No. 05-1178**
	)	**Issued: September 15, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 2, 2005 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs' hearing representative dated December 6, 2004 which affirmed an Office's August 22, 2003 decision terminating compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues on appeal are: (1) whether the Office properly terminated appellant's compensation benefits effective August 22, 2003; and (2) whether appellant met her burden of proof to establish that she had any residuals or disability after August 22, 2003 causally related to the February 3, 1979 employment injury.

FACTUAL HISTORY

On August 28, 2001 appellant, then a 55-year-old clerk, filed a claim alleging that she developed carpal tunnel disease due to keying and repetitive work on the letter sorting machines at the employing establishment.[1] She did not stop work.[2]

The Office accepted appellant's claim for bilateral carpal tunnel syndrome. It subsequently authorized a right carpal tunnel release, which was performed on November 19, 2001 by Dr. Cato Laurencin, a Board-certified orthopedic surgeon and appellant's treating physician.[3] The Office also authorized a left carpal tunnel release, which he performed on March 1, 2002. Appellant was paid appropriate compensation for an injury-related disability.

By letter dated May 2, 2002, the Office referred appellant for a second opinion examination with Dr. Anthony Salem, a Board-certified orthopedic surgeon.

In a June 20, 2002 report, Dr. Salem noted appellant's history of injury and treatment. He conducted a physical examination and determined that she had normal sensation and normal range of motion of her wrists; a negative Tinel's sign and full motion in her shoulders, neck and elbows. Dr. Salem advised that appellant did have swelling on the dorsum of both wrists. He indicated that an x-ray of both wrists revealed some deossification and opined that it might be due to surgery and disuse; however, Dr. Salem indicated that it might also be due to arthritis and advised that there was some narrowing of the intercarpal bones in the joint spaces. He indicated that appellant had nicely healed scars, which were now soft and were almost painless from the carpal tunnel surgeries. Dr. Salem indicated that she no longer had residuals of her carpal tunnel syndrome and could resume work without limitations.

By letter dated July 9, 2002, the Office requested that Dr. Laurencin review the report of Dr. Salem and provide an opinion with regard to whether appellant could return to full duty.

In email correspondence dated July 10, 2002, the Office noted that Dr. Laurencin indicated that appellant could return to light duty and continue with therapy. In a duty status report dated July 9, 2002, he advised that she could return to work for eight hours a day, with physical restrictions. In a report dated July 10, 2002, Dr. Laurencin noted that appellant had a normal examination with residual tenderness in her dorsal extensor area and diagnosed left and right carpal tunnel syndrome, left de Quervain's tenosynovitis. He indicated that appellant could return to work in August.

Appellant returned to full-time light duty on August 16, 2002.

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[1] The record reflects that appellant had preexisting diabetes, mellitus, hypothyroidism and osteoarthritis bilateral knees.

[2] Appellant also filed a second occupational disease claim for the same condition of carpal tunnel syndrome to both wrists on August 28, 1992.

[3] Appellant stopped work on November 19, 2001.

In reports dated August 16, October 30 and December 4, 2002, Dr. Laurencin determined that appellant had a normal circulation, sensation and motion with residual tenderness, a positive Finkelstein's test and negative Phalen's and Tinel's signs. He diagnosed left and right carpal tunnel syndrome and left de Quervain's tenosynovitis and advised that she should continue her light-duty activities.

Appellant filed a claim for a recurrence of disability commencing on December 6, 2002. In support of her claim, she submitted an undated report from Dr. Laurencin, indicating that she could only work light duty for four hours a day. The Office accepted appellant's claim for a recurrence on February 7, 2003.[4]

Appellant subsequently began treatment with Dr. Scott Fried, a Board-certified orthopedic surgeon and osteopath, after Dr. Laurencin relocated. The Office approved appellant's change of physicians on March 7, 2003.

In reports dated March 12 and 14, 2003, Dr. Fried noted appellant's history of injury and treatment and diagnosed repetitive strain injury secondary to keying at the employing establishment, traumatically-induced medial and radial neuropathy bilaterally with flexor tenosynovitis, de Quervain's with tenosynovitis on the right, brachial plexitis with proximal radiculitis left side greater than the right and postbilateral carpal tunnel release. He opined that appellant could only work four hours a day, recommended therapy and an electromyography (EMG) report to assess her current status.

On March 25, 2003 the Office authorized an EMG and physical therapy through May 2, 2003.

The Office continued to develop the claim and referred appellant to Dr. Richard Mandel, a Board-certified orthopedic surgeon, for a second opinion examination.

In an April 17, 2003 report, Dr. Mandel noted appellant's history of injury and treatment. He noted her present complaints, included intermittent pain in both forearms and hands, with numbness greater on the right, soreness between the shoulders and base of the neck, more so on the left. Dr. Mandel also noted that appellant related increased symptoms with driving, lifting, carrying, reaching, overhead gripping, writing and exposure to the cold. He conducted a physical examination and determined that appellant had minimal thenar atrophy on the right and well-healed bilateral longitudinal scars from carpal tunnel release. Dr. Mandel advised that there were no trophic changes, no swelling, no alteration or abnormality in skin cooler, temperature and the arm circumferences were equal bilaterally. Dr. Mandel also determined that appellant had full range of motion of all upper extremity joints with the exception of the right wrist, which lacked five degrees of dorsiflexion. He advised that her grip strength was nonphysiologic bilaterally and intrinsic function was intact. Dr. Mandel indicated that provocative maneuvers for carpal tunnel syndrome were negative bilaterally, light touch was essentially normal and

[4] Appellant began working four hours a day on December 6, 2002 and received compensation for four hours per day for the period of December 6, 2002 to March 29, 2003. She retired on March 31, 2003.

there was no evidence of ongoing carpal tunnel syndrome or radiculopathy. He indicated that appellant had fully recovered from her carpal tunnel syndrome condition. Dr. Mandel noted that there were no findings of any ongoing carpal tunnel syndrome, despite her subjective complaints. He also indicated that appellant did not put forth a maximum effort. Dr. Mandel also noted that the results of additional EMG testing would not be helpful, as "electrodiagnostic tests frequently remain abnormal indefinitely after successful carpal tunnel release and complete resolution of the condition." Dr. Mandel further noted that appellant could return to regular-duty work without restriction.

By letter dated May 8, 2003, the Office provided Dr. Fried with a copy of Dr. Mandel's April 17, 2003 report and requested that he provide a response as to whether he concurred with Dr. Mandel's opinion.

No response was received from Dr. Fried regarding Dr. Mandel's report. However, he continued to request authorization for continuing physical therapy and for a "spa program.[5]"

By letter dated May 14, 2003, appellant's representative enclosed a copy of an April 7, 2003 EMG, read by Richard L. Read, a physical therapist.

On July 8, 2003 the Office issued a notice of proposed termination of compensation. The Office proposed to terminate appellant's compensation and medical benefits on the basis that the weight of the medical evidence, as represented by the report of Dr. Mandel, established that she had no continuing disability and had fully recovered from her accepted condition carpal tunnel syndrome.

In response, appellant's representative submitted a letter dated August 5, 2003 in which he asserted that she had continued residuals of the work injury that were disabling. He also noted that Dr. Mandel did not comment on the findings contained in the EMG.

By decision dated August 22, 2003, the Office terminated appellant's compensation benefits, effective that same date, on the grounds that she had no continuing residuals of her employment injury.

On August 26, 2003 appellant requested a hearing, which was held on September 28, 2004.

On September 12, 2003 the Office received an August 21, 2003 report from Dr. Fried. He related that appellant continued with complaints of tingling in the right hand and numbness on the left, with intermittent pain in the bilateral forearms into the elbows and left wrist with swelling and decreased range of motion. He advised that appellant related that her symptoms increased with attempts at gripping, grasping, pinching, turning, supinating and shoulder abduction and that her sleep was difficult. On physical examination she was irritable over the left infraclavicular plexus area and tender over the bilateral long thoracic nerve and the superior traps with mild spasming. Dr. Fried indicated that appellant was also tender over the axillary

[5] The Office did not authorize these treatments or procedures.

nerve in the deltoid distribution on the right and that Roos testing yielded tingling in the bilateral hands through all of her digits. He noted that a Hunter high reproduced pain at the bilateral wrist and left shoulder with associated numbness in the right hand into the first digit with tingling and burning dysesthesias in the remaining digits on the right and that a Hunter low reproduced pain at the right elbow with tingling through her bilateral hands to all of her digits. Phalen's testing produced tingling in the left hand through digits three through five and the right hand through digits two through five with a pounding and aching in the right first digit. Dr. Fried indicated that the distal upper extremity examination was notable for irritability over the left median wrist, a positive right radial forearm with compression testing and irritability over the right radial sensory nerve. He also indicated that appellant had decreased range of motion of her left wrist with pain on flexion and extension and a slightly positive cross finger test on the left as well as a positive Froment's on the left. Dr. Fried reported that appellant had good range of shoulder motion, although she had pain with abduction, more so in the right shoulder. He diagnosed repetitive strain injury secondary to keying at the employing establishment, traumatically induced median and radial neuropathy bilaterally with flexor tenosynovitis, de Quervain's with tenosynovitis on the right, brachial plexitis with proximal radiculitis on the left side greater than the right. Dr. Fried advised that appellant was post bilateral carpal tunnel release in 2002, with a recurrence on the left side greater than the right. He opined that she remained symptomatic and disabled and requested six to eight more weeks of therapy. Dr. Fried further indicated that, if she were not retired, he would recommend job descriptions for a modified position which could be based on a functional capacity evaluation.

By decision dated December 6, 2004, the Office hearing representative affirmed the August 22, 2003 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.[6] Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.[7] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[8] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[9]

[6] *Curtis Hall,* 45 ECAB 316 (1994).

[7] *Jason* C. *Armstrong,* 40 ECAB 907 (1989).

[8] *Furman* G. *Peake,* 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.,* 32 ECAB 1019 (1981).

[9] *Calvin* S. *Mays,* 39 ECAB 993 (1988).

ANALYSIS-ISSUE 1

At the time of the Office's August 22, 2003 termination decision, the Board finds that the weight of the medical evidence was represented by the second opinion physician, Dr. Mandel, a Board-certified orthopedic surgeon, who submitted a well-rationalized opinion based on a complete and accurate factual and medical history.[10]

In an April 17, 2003 report, Dr. Mandel noted that appellant's present complaints included intermittent pain in both forearms and hands, with numbness greater on the right, soreness between the shoulders and base of the neck, more so on the left and increased pain with activities. He conducted a physical examination and noted minimal thenar atrophy and well-healed bilateral scars from carpal tunnel release, with no trophic changes, no swelling, no alteration or abnormality in skin cooler or temperature. Dr. Mandel also determined that appellant essentially had full range of motion of all upper extremity joints with the exception of the right wrist, which lacked five degrees of dorsiflexion. He explained that there was no evidence of ongoing carpal tunnel syndrome or radiculopathy and opined that there were no findings of any ongoing carpal tunnel syndrome, despite appellant's subjective complaints. Dr. Mandel also explained that she did not elicit a full effort on the grip strength and opined that appellant could return to regular full-duty work without limitation or restriction. Regarding the EMG results, he explained they were not helpful as these types of test remained abnormal for an indefinite period after carpal tunnel release. The Board finds that at the time the Office terminated appellant's compensation benefits, the weight of the medical evidence rested with the report of Dr. Mandel, who submitted a thorough medical opinion based on a complete and accurate factual and medical history. He performed a complete examination, reviewed the record and advised that appellant had no continued disability from her accepted employment injury and that she was capable of performing her usual employment. Dr. Mandel advised that further medical treatment for the accepted condition was unnecessary. Thus, the Board finds that his report established that appellant ceased to have any disability or condition causally related to the accepted employment, thereby justifying the Office's August 22, 2003 termination of benefits, including medical benefits.[11]

The Board notes that the Office, in a letter dated May 8, 2003, requested that Dr. Fried review Dr. Mandel's report and provide his opinion with respect to whether appellant continued to experience residuals of her accepted employment injuries. However, Dr. Fried did not respond, but rather continued to submit requests for additional therapy and spa programs.

[10] As noted previously, appellant was originally seen by Dr. Salem, a Board-certified orthopedic surgeon and second opinion physician, on June 20, 2002, who opined that appellant's residuals from her accepted injuries had resolved and that she could return to regular duty. She subsequently, had a recurrence of her original conditions on December 6, 2002, which was accepted. Appellant began treatment with Dr. Fried, a Board-certified orthopedic surgeon, who also diagnosed several conditions, which were not accepted by the Office and which included medial and radial neuropathy bilaterally with flexor tenosynovitis, de Quervain's, brachial plexitis with radiculitis and port bilateral carpal tunnel release and opined that appellant could only work four hours a day, recommended therapy and an EMG.

[11] *See Joe Bowers*, 44 ECAB 423 (1993).

Appellant's representative also alleged that EMG findings were not considered. However, as explained by Dr. Mandel in his report, additional EMG testing would not be helpful as they usually remained abnormal for an indefinite period following a successful carpal tunnel release and complete resolution of the condition.

In these circumstances, the Office properly accorded the weight of the evidence to Dr. Mandel's April 17, 2003 findings.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment related disability, which continued after termination of compensation benefits.[12]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the appellant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the appellant.[13]

ANALYSIS -- SUE 2

Following the termination of compensation, appellant submitted an additional report from Dr. Fried dated August 21, 2003, which was received by the Office on September 12, 2003.

In his report, Dr. Fried related that appellant continued with numerous subjective complaints which included tingling in the right hand and numbness on the left and intermittent pain in the bilateral forearms into the elbows and left wrist along with swelling and decreased range of motion. He reported examination findings and diagnosed repetitive strain injury secondary to keying at the employing establishment, traumatically induced median and radial neuropathy bilaterally with flexor tenosynovitis, de Quervain's with tenosynovitis on the right, brachial plexitis with proximal radiculitis on the left side greater than the right. Dr. Fried noted that appellant was post bilateral carpal tunnel release in 2002, with a recurrence on the left side greater than the right and opined that appellant remained symptomatic and disabled and requested six to eight more weeks of therapy.

The Board notes that Dr. Fried described appellant's complaints of pain and listed several diagnoses, some of which were not accepted by the Office. Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she

[12] *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

[13] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

bears the burden of proof to establish that the condition is causally related to the employment injury.[14] Dr. Fried either did not identify objective findings to support those diagnoses or did not provide medical rationale to explain why the accepted condition continued or how any of the additional conditions were causally related to the accepted employment injury. For example, while he indicated that appellant remained symptomatic and disabled, he did not explain how any particular diagnosed condition with accompanying objective findings were attributable to her accepted employment injuries. Dr. Fried report was of little probative value.[15]

Thus, the report received from Dr. Fried subsequent to the termination of appellant's compensation was insufficient to establish an ongoing condition and disability causally related to the work injury of February 3, 1979. He did not provide any findings and rationale sufficient to overcome or create a conflict with the opinion of Dr. Mandel.

Consequently, appellant has not established that her condition on and after August 22, 2003 was causally related to her accepted employment injury.

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective August 22, 2003. Further, the Board finds that appellant did not meet her burden of proof to establish that she had any injury related disability or residuals after August 22, 2003 causally related to the accepted employment injuries.

[14] *Jaja K. Asaramo*, 55 ECAB ___ (Docket No. 03-1327, issued January 5, 2004).

[15] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

ORDER

IT IS HEREBY ORDERED THAT the December 6, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 15, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board