

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

D.H., Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Cleveland, OH, Employer**

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**Docket No. 07-1211
Issued: November 9, 2007**

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 3, 2007 appellant, through her attorney, filed a timely appeal from a March 1, 2007 decision of a hearing representative of the Office of Workers' Compensation Programs affirming the termination of her compensation. 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 are: (1) whether the Office properly terminated appellant's compensation effective February 23, 2006 on the grounds that she had no further disability due to her accepted left medial epicondylitis; and (2) whether the Office properly terminated authorization for medical treatment.

FACTUAL HISTORY

On July 26, 1995 appellant, then a 34-year-old automation clerk, filed an occupational disease claim alleging that she sustained left medial tendinitis due to repetitive motion and heavy

lifting in the course of her federal employment. The Office accepted the claim, assigned file number 090405085, for left medial epicondylitis.

Appellant filed a notice of recurrence of disability on February 21, 1996 causally related to her October 14, 1995 employment injury. As she alleged new work factors, the Office developed the notice of recurrence of disability as a claim for an occupational disease. The Office accepted the claim, assigned file number 090413064, for recurrent left medial epicondylitis.

Appellant worked with restrictions until April 23, 1996, when she was removed from duty from April 23 to May 8, 1996 for unbecoming conduct. She did not return to work on May 8, 1996.¹ On April 22, 1999 appellant underwent a left flexor pronator mass debridement with a partial medial epicondylectomy. The Office placed her on the periodic rolls beginning May 2, 1999. She returned to work for one hour per day as a modified custodian on January 2, 2001. The Office accepted that appellant sustained a recurrence of disability on February 19, 2002.²

In a report dated December 23, 2003, Dr. Oscar F. Sterle, a Board-certified orthopedic surgeon and Office referral physician, opined that appellant had no residuals of her left medial epicondylitis based on his findings on examination and review of the medical evidence. He found that appellant could resume her usual employment without restrictions and required no further medical treatment.

The Office requested that appellant's attending physician, Dr. Mark F. Hendrickson, a Board-certified surgeon, review and comment on Dr. Sterle's report. On October 13, 2004 Dr. Hendrickson opined that she required permanent restrictions for her left upper extremity "to minimize further problems." He found that appellant could not resume her regular employment duties and also diagnosed right lateral epicondylitis and bilateral carpal tunnel syndrome.

The Office determined that a conflict arose between Drs. Sterle and Hendrickson regarding whether appellant had any further employment-related condition and disability. The Office referred her to Dr. Kim Stearns, a Board-certified orthopedic surgeon, for an impartial medical examination. On January 15, 2005 Dr. Stearns examined appellant and found that she had no swelling or tenderness of the elbow. Regarding whether she had residuals of appellant's left medial epicondylitis, the physician stated: "She has symptoms with excessive use. There are no specific objective findings on physical exam[ination] at this time. I do believe that the

¹ By decision dated September 10, 1998, the Office denied her claim for compensation beginning May 9, 1996 on the grounds that she refused suitable work under 5 U.S.C. § 8106(c). On February 22, 1999 a hearing representative vacated the September 10, 1998 decision after finding that the Office improperly applied the provisions of section 8106. By decisions dated April 14, 1999 and January 6, 2000, the Office denied appellant's claim for compensation from May 9, 1996 to January 23, 1999 on the grounds that the medical evidence was insufficient to establish that she was disabled from employment due to her accepted work injury. In a decision dated November 8, 2001, the Board affirmed the January 6, 2000 and April 14, 1999 decisions. *Debbie A. Henkhuzens*, Docket No. 00-1302 (issued November 8, 2001).

² The Office referred appellant for vocational rehabilitation in January 2003. By decision dated October 29, 2003, the Office denied her claim for a consequential injury to her right wrist from taking computer classes.

accepted work[-]related condition had resolved.” Dr. Stearns found that appellant could work “with some restrictions on her ability to perform repetition and lifting for fear of recurrence of her condition. This certainly did correct the condition, but she could have a recurrence [if] she were to return without restrictions and I do believe that she does have permanent restrictions.” Dr. Stearns opined that she required no further medical treatment. She completed an accompanying work restriction evaluation and indicated that appellant could work full time with restrictions.

On October 25, 2005 the Office requested that Dr. Stearns clarify whether appellant had residuals of her employment injury, whether she could perform her date-of-injury employment and whether the listed work restrictions were prophylactic in nature. In an addendum dated November 30, 2005, Dr. Stearns related:

“There were no demonstrable symptoms at the time of the exam[ination]. Subjectively, the claimant did state that, with excessive use, she developed pain in the medial aspect of her left elbow. There was no evidence on physical exam[ination] that showed excessive use and again this statement was based upon the subjective complaints of the claimant.”

Dr. Stearns reiterated that appellant could perform her usual employment as an automation clerk but did have restrictions on repetitive lifting, pushing and pulling of the left upper extremity. She opined that her surgery “corrected [appellant’s] problem. However, this does not make her immune to recurrence.” Dr. Stearns concluded that appellant could work but “would be at increased risk if she would return to the same job without restrictions.”

On January 13, 2006 the Office notified appellant that it proposed to terminate her compensation and entitlement to medical benefits on the grounds that she had no further residuals of her left medial epicondylitis. In a February 7, 2006 response, appellant contended that her claim assigned file number 090413064 should be expanded to include right lateral epicondylitis. She submitted chart notes dated 1998 and 1999 from Dr. Hendrickson regarding her right medial epicondylitis.

In correspondence dated February 22, 2006, the Office noted that appellant filed an occupational disease claim in January 2003 alleging that work factors caused a right upper extremity condition. The Office accepted the claim, assigned file number 092030906, for right lateral and medial epicondylitis.

By decision dated February 23, 2006, the Office terminated appellant’s compensation and entitlement to medical benefits for the accepted condition of left medial epicondylitis. The Office explained that her right elbow condition was not a consequential injury but instead was accepted as an occupational disease because she attributed it to work factors. The Office noted that appellant could request compensation and submit supporting medical evidence if she believed that she was unable to work due to her right elbow condition.

On February 25, 2006 appellant, through her attorney, requested an oral hearing, which was held on January 22, 2007. At the hearing, the attorney specified that the issue of her right lateral epicondylitis was separate from the current issue. In a decision dated March 1, 2007, an

Office hearing representative affirmed the February 23, 2006 decision after finding that the weight of the evidence, as represented by the impartial medical examiner, established that the accepted condition of left lateral epicondylitis had resolved.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

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.⁵ The implementing regulations states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.⁶ 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.⁷

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained left lateral epicondylitis due to factors of her federal employment. Appellant underwent a left flexor pronator mass debridement with a partial medial epicondylectomy on April 22, 1999. The Office placed her on the periodic rolls beginning May 2, 1999. Appellant resumed work for one hour per day as a modified custodian on January 2, 2001. On February 19, 2002 she stopped work due to a recurrence of disability.

Dr. Sterle, an Office referral physician, opined that appellant could perform her usual employment duties and required no further medical treatment due to her left medial epicondylitis. Dr. Hendrickson, her attending physician, opined that she required permanent work restrictions for her left medial epicondylitis. The Office referred appellant to Dr. Stearns for an impartial medical examination to resolve the conflict in opinion.

³ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁵ 5 U.S.C. § 8123(a).

⁶ 20 C.F.R. § 10.321.

⁷ *David W. Pickett*, 54 ECAB 272 (2002); *Barry Neutuch*, 54 ECAB 313 (2003).

Where there exists a conflict in medical opinion 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 The Board finds that the opinion of Dr. Stearns, a Board-certified orthopedic surgeon selected to resolve the conflict in opinion, is well rationalized and based on a proper factual and medical history. Dr. Stearns indicated that she had reviewed the medical evidence, provided findings on examination and reached conclusions about appellant's condition which comported with hers findings.⁹ On examination, she found no swelling or tenderness of the elbow. Dr. Stearns opined that appellant's work injury had resolved and explained that she had no objective findings on physical examination. She found that appellant could work with restrictions to prevent a recurrence and determined that she required no further medical treatment. In a January 15, 2005 addendum, Dr. Stearns opined that appellant could work as an automation clerk but would have a increased risk of recurrence if she worked without restrictions. She listed limitations that were prophylactic in nature to prevent future injury; however, the possibility of a future injury does not form a basis for the payment of compensation under the Federal Employees' Compensation Act.¹⁰ As Dr. Stearns report is detailed, well rationalized and based on a proper factual background, her opinion is entitled to the special weight accorded an impartial medical examiner and is sufficient to meet the Office's burden of proof to terminate appellant's compensation benefits.¹¹

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹² 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.¹³

ANALYSIS -- ISSUE 2

The Office met its burden of proof to terminate authorization for medical benefits, through the opinion of Dr. Stearns, the impartial medical examiner, who found that appellant had no residuals of her accepted condition of left lateral epicondylitis. Dr. Stearns explained that she had no objective evidence of left lateral epicondylitis on examination. She concluded that appellant required no additional medical treatment.

⁸ *Id.*

⁹ *Manual Gill*, 52 ECAB 282 (2001).

¹⁰ *Andy J. Paloukos*, 54 ECAB 712 (2003).

¹¹ *See Manual Gill*, *supra* note 9.

¹² *Pamela K. Guesford*, 53 ECAB 727 (2002).

¹³ *Id.*

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective February 23, 2006 on the grounds that she had no further disability due to her accepted left medial epicondylitis. The Board further finds that the Office properly terminated authorization for medical treatment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 1, 2007 is affirmed.

Issued: November 9, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board