

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

A.C., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, Phoenix, AZ, Employer)

**Docket No. 12-1445
Issued: December 4, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 26, 2012 appellant filed a timely appeal from the May 7, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which affirmed OWCP's September 30, 2011 decision denying continuing compensation benefits. 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.

ISSUE

The issue on appeal is whether appellant met his burden of proof to establish that he had any disability after September 26, 2010 causally related to the accepted conditions.

FACTUAL HISTORY

On June 17, 2007 appellant, then a 56-year-old transportation securities officer, filed an occupational disease claim for pain and weakness in the right arm due to repetitive use of his arm

¹ 5 U.S.C. § 8101 *et seq.*

at work. He alleged that he became aware that the condition was caused or aggravated by his employment on May 27, 2007. OWCP accepted appellant's claim for bilateral/lateral epicondylitis. Appellant stopped work on or about October 29, 2007. He received appropriate compensation benefits.

In a letter dated November 6, 2009, OWCP requested that appellant provide an updated report from his treating physician.

In a November 17, 2009 report, Dr. Kent H. Chou, a Board-certified orthopedic surgeon and treating physician, examined appellant and noted elbow findings which included full range of motion, minimal to no tenderness at the epicondyles and minimal discomfort with resisted wrist extension. He found that appellant had mild discomfort when squeezing in extension. Dr. Chou noted that appellant was doing well and had mild residual symptoms consistent with his previously assigned diagnosis of lateral epicondylitis. He opined that appellant reached maximum medical improvement, although he advised that his condition may "wax and wane over the years." Dr. Chou indicated that appellant would be a candidate for lateral epicondylar debridement if his symptoms progressively worsened. He completed a work capacity evaluation advising that appellant could work for eight hours per day with restrictions of no more than two hours of reaching above the shoulder, twisting, wrists, elbow, pushing, pulling and lifting.

In a July 6, 2010 report, Dr. Chou noted that appellant complained of rare discomfort which he associated with grabbing, heavy lifting and discomfort with activities of daily living. He examined appellant and advised that examination of the upper extremities demonstrated no obvious skin lesions, no varicosities, cyanosis or clubbing. Dr. Chou indicated that range of motion of the elbows was full, with no crepitus, deformity or instability. Appellant had point tenderness at his lateral epicondyles, right greater than left, which was exacerbated by resisted wrist extension. Sensation to light touch was intact in the radial, median and ulnar nerve distributions bilaterally. Dr. Chou indicated that appellant had longstanding bilateral/lateral epicondylitis and indicated that his work status and restrictions were unchanged.

OWCP referred appellant for a second opinion to Dr. Ronald M. Lampert, a Board-certified orthopedic surgeon. In a July 26, 2010 report, Dr. Lampert noted appellant's history and examined him. He determined that examination of both elbows revealed full flexion, extension, pronation and supination without pain and no obvious swelling or discoloration around either elbow. Grip strength on the right was consistent and slightly better than on the left, that there was no tenderness over the lateral epicondyle of either elbow, although appellant indicated that he had some discomfort with pressure over the extensor muscle. Dr. Lampert advised that forced extension or flexion of the wrist against resistance did not produce any elbow pain and there was no ligamentous instability of either elbow. He stated that appellant's examination was normal. Dr. Lampert explained that there were no objective findings to support his subjective complaints on examination. He opined that appellant could perform the duties of a pharmacy technician or a customer service clerk without any reservations based upon his normal

examination with no objective findings.² Further, Dr. Lampert opined that appellant reached maximum medical improvement in September 2007.

On August 11, 2010 OWCP proposed to terminate appellant of his compensation benefits based on Dr. Lampert's report.

In an August 13, 2010 letter, appellant disagreed with the proposed notice. In an August 17, 2010 report, Dr. Chou responded to the notice and agreed that appellant had maximum medical improvement and "currently has no significant objective physical examination findings." However, he explained that a magnetic resonance imaging (MRI) scan would be helpful. Dr. Chou stated that he was providing continued work restrictions based upon appellant's current history of recurrent pain exacerbations with heavy use of the upper extremities, including lifting. He explained that this was a characteristic of the diagnosis of lateral epicondylitis. Dr. Chou opined that "allowing the patient to return to heavy use of the upper extremities would almost certainly result in recurrence of his lateral epicondylitis, requiring reopening of his case, further conservative treatments and possibly surgery."

By decision dated September 15, 2010, OWCP terminated appellant's medical and wage-loss compensation effective September 26, 2010.

On October 12, 2010 appellant requested a telephonic hearing, which was held on February 8, 2011. He disagreed with Dr. Lampert's findings and noted that Dr. Chou recommended additional treatment and an MRI scan.

Appellant provided additional evidence in support of his claim. In a January 26, 2011 report, Dr. Edward Lee, an orthopedist specializing in the upper extremities, diagnosed bilateral epicondylitis and recommended MRI scans of both elbows to evaluate the soft tissues and bone. A February 2, 2011 MRI scan of the right elbow read by Dr. Bilal Mian, a Board-certified diagnostic radiologist, revealed minimal signal abnormality along the proximal attachment of the ulnar collateral ligament, which might represent mild strain. Dr. Mian noted that appellant had mild tendinitis/tendinosis of the common extensor origin and otherwise the examination was unremarkable. She also read an MRI scan of the left elbow of the same date that showed mild tendinitis/tendinosis of the common extensor origin and was otherwise unremarkable. Dr. Lee reviewed the MRI scans and provided an opinion on February 7, 2011 that appellant had bilateral elbow lateral epicondylitis, with the left slightly more symptomatic than the right. He stated that, while certain physical activities could aggravate symptoms, he was not placing appellant under specific activity restrictions. Also submitted was an October 20, 2010 bilateral elbow x-ray report, read by Dr. Aaron Greeley, a Board-certified diagnostic radiologist and osteopath, which was unremarkable.

On February 21, 2011 appellant provided comments in response to the hearing transcript. In a February 22, 2011 letter, he also expressed his disagreement with Dr. Lampert's findings.

² OWCP previously referred appellant for vocational rehabilitation where the positions of pharmacy technician and customer service clerk were considered as jobs for which appellant was qualified.

In a February 25, 2011 statement, the employing establishment noted that appellant was removed on October 30, 2007 due to his inability to perform the essential functions of his position. It also noted that any aggravation of his condition was now due to his duties as a pharmacy technician, the position for which he was vocationally trained.

In an April 21, 2011 decision, a hearing representative affirmed the prior decision. In a statement dated April 27, 2011, appellant asserted that OWCP had not reviewed the documentation submitted by Dr. Lee.

By decision dated May 24, 2011, the hearing representative amended the April 21, 2011 decision. He affirmed the September 15, 2010 termination decision but also found that the new evidence from Dr. Lee required additional review from OWCP and a second opinion examination regarding continued disability after September 26, 2010.³

On June 23, 2011 OWCP referred appellant to Dr. Lampert for a second opinion. In a July 31, 2011 report, Dr. Lampert noted appellant's history, examined him and presented findings. Both elbows showed full extension, pronation and supination. The left elbow showed slight tenderness over the lateral epicondyle and extensor mass. Pain was increased with extension of the hand against resistance. For the right elbow, Dr. Lampert found minimal tenderness over the lateral epicondyle and that flexion of the right wrist against resistance caused pain laterally while extension of the right wrist against resistance did not cause pain. He opined that there was no aggravation of appellant's condition secondary to work. Dr. Lampert, however, noted that appellant related that he engaged in activities at home that included landscaping and using pruning shears that would be consistent with the ongoing subjective complaints. He noted that the recent MRI scan of the left elbow revealed mild tendinitis/tendinosis of the common extensor origin, and while the MRI scan of the right elbow revealed changes of the ulnar collateral ligament, which were not consistent with a lateral epicondylitis. There were changes of a mild tendinosis of the common extensor origin. Dr. Lampert opined that the activities appellant did subsequent to his injuries would be more consistent with these changes since, if indeed he was not working, the MRI scan taken some three to four years subsequent to his injury would not have indicated these conditions. He opined that appellant continued to have problems as well as those changes noted by MRI scan three and a half years after the injury but they were secondary to his activities after stopping work on October 29, 2007. Dr. Lampert advised that no treatment was indicated as it related to the accepted injury and that appellant was not disabled and could return to his date-of-injury job as a transportation screener. He noted that Dr. Lee in his February 7, 2011 report also indicated that appellant could return to work without restrictions.

In a letter dated July 13, 2011, appellant indicated that he continued to experience residuals from his work-related condition.

In a decision dated September 30, 2011, OWCP denied continuing benefits as the weight of medical evidence of record established that appellant had no disabling residuals of his accepted work injury.

³ On June 30, 2011 OWCP reissued the May 24, 2011 amended decision as the second page of the amended decision was not included in the initial mailing.

On October 25, 2011 appellant requested a telephonic hearing which was held on February 17, 2012. During the hearing, he indicated that he provided additional medical evidence. Appellant explained that he was working full time since January 2012 for a local casino in a security position. He indicated that he had continued medical restrictions from his elbow condition. In a February 1, 2012 letter, appellant provided additional medical evidence and indicated that he had a 25-pound restriction on each arm. The new evidence included reports dated October 25, 2011, January 23 and 31, 2012 from Dr. David Martineau, a hand surgeon, who examined appellant and provided findings which were normal. Dr. Martineau diagnosed bilateral/lateral epicondylitis. He provided a return to work note with restrictions to include no lifting/carrying and no pushing/pulling over 25 pounds and no repetitive motions. By letter dated February 22, 2012, appellant again noted that he disagreed with Dr. Lampert's findings. By letter dated March 8, 2012, he provided corrections to the hearing transcript.

By decision dated May 7, 2012, an OWCP hearing representative affirmed the September 30, 2011 decision. She found that the weight of the medical evidence resided with Dr. Lampert, the second opinion physician, and that appellant had no residuals of his accepted condition which would entitle him to compensation for disability or ongoing medical care.

LEGAL PRECEDENT

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.⁴

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 the 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 appellant.⁵

ANALYSIS

At the time of OWCP's September 15, 2010 termination decision, the weight of the medical evidence was represented by Dr. Lampert, a Board-certified orthopedic surgeon, who determined no residuals of the accepted conditions. Appellant disagreed with OWCP's finding that he no longer suffered from residuals of his work-related residuals and provided additional medical evidence, including reports from Dr. Lee and reports of diagnostic testing. Thereafter, OWCP determined that, although it had met its burden of proof to terminate compensation

⁴ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁵ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

benefits, evidence submitted by appellant warranted further medical development on whether appellant had residuals of his accepted conditions after September 26, 2010.

On June 23, 2011 OWCP referred appellant to Dr. Lampert for a second opinion to determine whether he had any residuals of his work-related condition. In a July 13, 2011 report, Dr. Lampert noted findings which included full extension, pronation and supination of the elbows. He noted some tenderness over the lateral epicondyle and extensor mass of the left elbow and minimal tenderness on the right elbow. Dr. Lampert determined that there was no aggravation of appellant's condition secondary to his work. He noted that appellant engaged in activities at home, including landscaping and using pruning shears, which were consistent with the ongoing subjective complaints. Dr. Lampert reviewed recent MRI scans of the elbows and explained that the changes were not consistent with lateral epicondylitis but were consistent with appellant's activities at home, subsequent to his injuries. He advised that no treatment was indicated for the accepted conditions and that appellant could return to his date-of-injury job as a transportation screener. Dr. Lampert also noted that appellant's physician, Dr. Lee's February 7, 2011 report, indicated that appellant did not have restrictions.

In a letter dated February 1, 2012, appellant provided new medical evidence dated October 25, 2011, January 23 and 31, 2012 from Dr. Martineau who indicated that he had examined appellant and provided findings which were normal. Dr. Martineau diagnosed bilateral/lateral epicondylitis. He provided a return to work note with restrictions to include no lifting/carrying and no pushing/pulling over 25 pounds and no repetitive motions. The Board notes that these reports are insufficient as they do not provide any opinion regarding the cause of appellant's condition, such that his employment condition continued after termination of his benefits. This is especially important in light of the fact that appellant did not work at the employing establishment since October 2007. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁶ The Board finds that, as Dr. Martineau did not specifically address how and why appellant continued to be disabled due to his work-related injury, his reports do not establish a continuing employment-related condition or disability. Likewise, Dr. Lee's reports diagnosed bilateral elbow lateral epicondylitis but did not specifically address how any continuing condition was employment related.

Appellant did not provide a report from a physician who provided sufficient medical rationale explaining how and why the accepted condition of bilateral/lateral epicondylitis would cause or aggravate any disability after September 26, 2010. Thus, appellant has failed to meet his burden of proof.

On appeal, appellant argues that Dr. Chou supported that his condition continued. The Board notes that Dr. Chou's report of August 17, 2010 indicates that appellant had reached maximum medical improvement and that he "currently has no significant objective physical examination findings." His report does not offer any opinion on the issue of whether appellant continued to have any injury-related disability or residuals after September 26, 2010 causally related to the May 27, 2007 employment injury. Appellant has not provided a more recent report from Dr. Chou.

⁶ *Michael Smith*, 50 ECAB 313 (1999).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

Further, the Board finds that appellant did not meet his burden of proof to establish that he had any injury-related disability or residuals after September 26, 2010 causally related to the May 27, 2007 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2012 decision of the Office of the Workers' Compensation Programs is affirmed.

Issued: December 4, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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