United States Department of Labor
Employees' Compensation Appeals Board

T.V., Appellant	)	
	)	
and	)	**Docket No. 06-696**
	)	**Issued: August 9, 2006**
SOCIAL SECURITY ADMINISTRATION, Orlando, FL, Employer	)	

Appearances:
Ronald S. Webster, 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

JURISDICTION

On February 2, 2006 appellant filed a timely appeal from the December 30, 2005 merit decision of the Office of Workers' Compensation Programs, which terminated compensation for her accepted employment injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this termination.

ISSUE

The issue is whether the Office met its burden of proof in terminating compensation for appellant's accepted employment injury.

FACTUAL HISTORY

On September 6, 2000 appellant, a 46-year-old social insurance specialist/claims representative, filed a claim alleging that her bilateral carpal tunnel syndrome was the result of her federal employment:

> "My job requires typing/keying into the computer [eight] h[ou]rs a day, [five] days a week. I have been doing this work since July 1971. Since June 1, 2000, I have felt constant pain in my hands and wrists. I went to the doctor and was diagnosed with carpal tunnel."

The Office initially accepted appellant's claim for left carpal tunnel syndrome. Following a surgical release on the left and then a surgical release on the right, the Office accepted the claim for bilateral carpal tunnel syndrome. The Office also accepted that appellant sustained a recurrence on September 3, 2003.

On October 6, 2003 the employing establishment notified appellant that it was no longer able to accommodate her medical restrictions: "After reviewing the duties of your job description, your allegations and your doctor's statement, we can no longer accommodate your doctor's restriction of 'no repetitive motion.'"

On November 11, 2003 Dr. Scott Gordon, appellant's orthopedic surgeon, commented on her continuing condition:

> "[Appellant] was treated by me for carpal tunnel syndrome and this was placed on workers' compensation. She was also diagnosed at that time to having tend[i]nitis and, although carpal tunnel symptoms have resolved, she is still having a lot of pain in the use of her hands after the surgery. [Appellant] has done the best she can over the past year and a half. She has other doctors, including Dr. [Joanne R.] Werntz in regards to the pain. [Appellant] underwent a fairly significant workup, all of which is pointing in the same direction, which is that she is suffering from tend[i]nitis and maybe a little arthritis also in the cervical spine. These are exacerbated by work and her work conditions are not going to be able to accommodate her for her limitations and exacerbation of pain."

Dr. Gordon recommended evaluation by a rheumatologist to determine the underlying cause for appellant's tendinitis.

On December 5, 2003 the Office issued a notice of proposed termination of compensation for wage-loss and medical benefits on the grounds that the medical evidence established that appellant's bilateral carpal tunnel syndrome had resolved.

On December 23, 2003 Dr. Gordon responded to questions posed by appellant's attorney. Asked whether appellant reported that she had aggravated her carpal tunnel syndrome and tendinitis when she returned to work after February 5, 2002, Dr. Gordon replied: "Patient aggravated her underlying tend[i]nitis." Asked whether there were physical findings to confirm that appellant continued to have residual problems related to her work duties, Dr. Gordon

answered: "[Appellant] has continued tend[i]nitis." He diagnosed tendinitis and indicated that, while appellant's carpal tunnel syndrome was causally related to her work, her tendinitis was "probably not."

The Office referred appellant to Dr. Jack Gresham, a Board-certified orthopedic surgeon, for a second opinion. On April 13, 2004 he found no evidence of neurologic deficit in either hand or wrist. Dr. Gresham diagnosed status post bilateral carpal tunnel surgery without recurrence, psychophysiological musculoskeletal reaction, cervical spondylosis without myelopathy by history and thoracic scoliosis by history. Responding to questions posed by the Office, he reported that appellant's clinical complaints were not causally related to the occupational injury she developed on or prior to June 1, 2000. Dr. Gresham stated that the occupational injury had resolved by approximately February 6, 2002. He added that appellant's current subjective complaints did not correlate to the objective findings and that there was no objective clinical evidence that the occupational injury precluded her from performing her date-of-injury job. Dr. Gresham reported that appellant had no restrictions on her work capabilities due to the accepted condition of bilateral carpal tunnel syndrome.

Finding a conflict in medical opinion between Dr. Gresham and Dr. Gordon, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Robert W. Elkins, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In the meantime, Dr. Gordon reported on April 29, 2004 that he agreed for the most part with Dr. Gresham's assessment:

> "[T]here is no doubt in my mind that [appellant] does have underlying musculoskeletal problems resulting in the pain in her upper extremities. However, patients who suffer from carpal tunnel syndrome as result of their work activities such as [appellant] still comes under the workers' compensation. The determination of final workers' compensation outcome will not include any of the underlying myo-fasciitis and fibromyalgia type of symptoms that [she] seems to display."

Dr. Gordon added that appellant was able to work with restrictions: "[I]f [she] feels that she cannot work with these accommodations because the pain in her upper extremities are persistent, then this would not be falling under the workers' compensation claim of carpal tunnel syndrome."

In a report dated June 10, 2004, Dr. Elkins related appellant's history and complaints. He reviewed the statement of accepted facts and appellant's medical records. Dr. Elkins described his findings on examination and noted that the accepted conditions included bilateral carpal tunnel syndromes and releases. Other conditions included trigger finger, degenerative disc and protruding discs in the neck and spinal stenosis in the neck. He then offered his opinion:

> "There are minimal findings at the present time to suggest ongoing changes in her wrists, although there is a mild Tinel's sign over the right thenar space. Her grip is definitely weak in both hands and there was no definite evidence of an under

effort here. She has difficulty bringing her fingers into a full fist. Her range of motion is slightly decreased in all joints. There is some mild symptom magnification and pain accentuation to light tapping over the spine.

"At the present time, I see no evidence of a tenosynovitis of her tendon sheath, see no evidence of a trigger thumb and her neck exam[ination] may show mild radicular changes, however, she has generalized changes of degenerative arthritis. I do not feel her neck problems are related to her carpal tunnel at the present time and feel these are two separate incidences and two separate problems.

"Multiple questions have been asked by the Department of Labor. I feel her current diagnosis is as stated above. I feel the only causally related occupational injury is the bilateral carpal tunnel releases. I feel these have resolved. However, she does have some loss of grip strength and weakness in pinch, which are chronic sequelae of these two accepted problems. I feel she has reached [m]aximum [m]edical [i]mprovement on the same dates that her treating physician has, as far as her wrists go, which is February 5, 2002.

"I do not feel her diagnosis of neck problems and trigger fingers is necessarily related to her carpal tunnel syndrome. She seems to have more subjective complaints than objective findings in her wrists. There is objective evidence that will restrict her somewhat in her job description. I do not feel she should do repetitive keying or writing, but certainly can do some. I do not feel a functional capacity evaluation is required at this time. I feel she has reached [m]aximum [m]edical [i]mprovement as stated above."

Dr. Elkins reported that appellant had a five percent permanent impairment of each hand due to weakness related to her accepted bilateral carpal tunnel releases. He recommended no treatment.

In a decision dated September 15, 2004, the Office terminated appellant's compensation benefits effective October 2, 2004. Appellant requested an oral hearing before an Office hearing representative, which was held on October 25, 2005.

In a decision dated December 30, 2005, the hearing representative affirmed the termination of appellant's compensation. He found that the weight of the medical opinion evidence rested with Dr. Elkins, the impartial medical specialist.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of proof in terminating or modifying compensation benefits.[1] After it has determined that an employee has disability causally related

[1] *Harold S. McGough*, 36 ECAB 332 (1984).

to her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[2]

Section 8123(a) of the Federal Employees' Compensation Act provides in 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."[3]

When 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.[4]

ANALYSIS

Appellant's attending physician, Dr. Gordon, reported that carpal tunnel symptoms had resolved but appellant was still experiencing pain in the use of her hands after the surgery. He indicated that she needed to be accommodated for her limitations. The Office referral physician, Dr. Gresham, reported that none of appellant's clinical complaints were causally related to the occupational injury she developed on or prior to June 1, 2000, which had resolved by approximately February 6, 2002. Dr. Gresham reported that appellant had no restrictions on her work capabilities.

To resolve this conflict, the Office properly referred appellant to Dr. Elkins, a Board-certified orthopedic surgeon, for an impartial medical evaluation. He noted minimal findings: a mild Tinel's sign over the right thenar space, grip that was definitely weak in both hands, difficulty bringing fingers into a full fist. Dr. Elkins reported no definite evidence of an under-effort by appellant. He concluded that, although appellant's bilateral carpal tunnel releases had resolved, she did have "chronic sequelae of these two accepted problems" in the form of loss of grip strength and weakness in pinch. Further, Dr. Elkins reported that there was objective evidence that would restrict appellant somewhat in her job description: "I do not feel she should do repetitive keying or writing, but certainly can do some." He added that appellant had reached maximum medical improvement by February 5, 2002 and was left with a five percent permanent impairment of each hand due to weakness related to her accepted bilateral carpal tunnel releases.

The Office provided Dr. Elkins with a statement of accepted facts and appellant's medical record so that he could base his opinion on a proper factual and medical background. The Board finds that his opinion is sufficiently well rationalized that it is entitled to special weight. Dr. Elkins' opinion establishes that the bilateral carpal tunnel releases have resolved. But his opinion also establishes that appellant continues to experience residuals of her accepted surgeries that limit her capacity to performing repetitive keying and writing. Because the

[2] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

[3] 5 U.S.C. § 8123(a).

[4] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

employing establishment advised on October 6, 2003 that it was no longer able to accommodate a medical restriction of "no repetitive motion," the Board finds that the Office has not met its burden of proof to terminate appellant's compensation for wage loss. The June 10, 2004 report of the impartial medical specialist constitutes the weight of the medical evidence. The Board will therefore reverse the Office's December 30, 2005 decision on this aspect of the claim. The Office met its burden of proof in terminating medical benefits for the accepted employment injury. Dr. Elkins reported that appellant's wrists had reached maximum medical improvement, meaning her condition had stabilized and was not expected to improve. He recommended no medical treatment. The Board will therefore affirm the Office's December 30, 2005 decision on the termination of medical benefits.

CONCLUSION

The Board finds that the Office has not met its burden of proof in terminating appellant's compensation for wage loss. The Board finds, however, that the Office has met its burden in terminating medical benefits for the accepted employment injury. Although the Office correctly determined that the opinion of the impartial medical specialist constituted the weight of the medical evidence, it misread his opinion on injury-related residuals and work limitations.

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2005 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.[5]

Issued: August 9, 2006
Washington, DC

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

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

[5] On or about October 6, 2003 appellant filed a claim for a schedule award. As this matter was not adjudicated by Office, it is not before the Board in the present appeal. *See* 20 C.F.R. § 501.2(c).