United States Department of Labor
Employees' Compensation Appeals Board

V.W., Appellant	)	
and	)	**Docket No. 06-1051**
	)	**Issued: September 18, 2006**
DEPARTMENT OF THE ARMY, SIGNAL CENTER, Fort Gordon, GA, Employer	)	

Appearances:
V.W., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 31, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated August 8 and November 22, 2005, terminating her wage-loss compensation and medical benefits, and a February 21, 2006 decision denying her request for reconsideration. 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 met its burden of proof in terminating appellant's wage-loss compensation and medical benefits on September 4, 2005; (2) whether appellant met her burden of proof to establish that she had any disability or medical condition after September 4, 2005 causally related to her employment injury; and (3) whether the Office abused its discretion in denying appellant's request for reconsideration.

FACTUAL HISTORY

On September 27, 2002 appellant, then a 55-year-old dental assistant, filed an occupational disease claim alleging that she developed carpal tunnel syndrome beginning

September 3, 2002 due to her job activities. The Office accepted her claim for bilateral carpal tunnel syndrome and bilateral epicondylitis.

In a February 26, 2003 report, Dr. Hwei Lin, an attending physiatrist, diagnosed bilateral epicondylitis and bilateral de Quervain's tenosynovitis. He indicated that the repetitive motions required in her job aggravated her pain. In an undated report received by the Office on June 2, 2003, Dr. Lin added carpal tunnel syndrome to appellant's diagnoses. He indicated that appellant could not perform her job at the employing establishment which required repetitive upper extremity motion. In a June 6, 2003 work capacity evaluation and an undated report received by the Office on June 19, 2003, Dr. Lin indicated that appellant had permanent work restrictions which included no lifting over 10 pounds, no reaching, pushing, pulling or lifting or repetitive wrist or elbow movement.

The employing establishment terminated appellant as of July 25, 2003 because it was unable to accommodate her medical restrictions.

Effective August 2, 2003 appellant was placed on the periodic rolls in receipt of compensation for temporary total disability.

On January 18, 2005 Dr. Maher Astwani, a Board-certified neurologist, stated that a nerve conduction study revealed decreased amplitude and increased latency of the right and left median sensory nerves. He also provided the test results from an electromyogram (EMG). Dr. Astwani diagnosed moderate bilateral carpal tunnel syndrome.

The Office referred appellant to Dr. Joseph I. Hoffman, Jr., a Board-certified orthopedic surgeon, for a second opinion evaluation. In a January 20, 2005 report, he provided findings on physical examination and stated that appellant's bilateral carpal tunnel syndrome had resolved. Dr. Hoffman found mild lateral epicondylitis in her elbows. He indicated that appellant could perform a job which did not require repetitive hand or wrist motion.

The Office found a conflict in medical opinion between Dr. Lin and Dr. Hoffman. On April 11, 2005 it referred appellant, together with a statement of accepted facts and copies of medical records, to Dr. William J. Vanderyt, a Board-certified orthopedic surgeon, for an examination and evaluation as to whether she had any work-related residual disability or medical condition.

In a May 11, 2005 report, Dr. Vanderyt provided a history of appellant's condition and findings on physical examination. He stated:

> "Exam[ination] of [appellant's] upper extremities demonstrates no remarkable external findings. There is no swelling, redness or warmth over the elbows, forearm, wrist or fingers. She has no thenar or hypothenar atrophy in the hands. [Appellant] has no pattern of numbness in either hand. Tinel's sign over the median and ulnar nerves at the wrist is negative. Assessing her motor-grip strength is difficult because[,] when I ask her to squeeze, she is breathing deeply and says that this causes her exquisite pain, especially in the l[eft] hand.

Movement of the shoulders, elbows, forearm, wrist and fingers is unrestricted, but elicits diffuse subjective pains. While I am examining her hands, I did a Finkelstein's test on both hands without her really knowing I was doing a test and there was absolutely no pain whatsoever on full thumb flexion and full wrist ulnar deviation. No crepitation over the [first] dorsal compartments was noted."

* * *

"LAB[ORATORY]: Nerve conduction studies performed in 2005 shows that there was a decreased amplitude and increased latency in the right and left median branches. All motor nerves were normal.

"DIAGNOSIS: [Appellant] has a multitude of subjective arm complaints typical of an idiopathic arm pain. It is difficult to define any specific lesion here. I do not think she has symptomatic carpal tunnel disease and would agree with Dr. Hoffman that this does not warrant any type of intervention. I would disagree with Dr. Hoffman that [appellant] has de Quervain's tenosynovitis. I think she has wrist pain, but her exam[ination] today would argue strongly, in my opinion, against her having de Quervain's tendinitis and would argue very strongly, in my opinion, against any type of operative intervention. The multitude of her complaints and the fact that she has not responded to [one and one-half] years of not working would indicate to me that the likelihood of her improving with any type of operative intervention is remote at best.

"PLAN: At this point … I doubt that [appellant] will resume any previous employment. I can think of no other tests that need to be run or any further interventional rehab[ilitation] that is warranted."

In a May 16, 2005 report, Dr. Vanderyt stated:

"My objective findings in [appellant] are that she has no objective findings. In my opinion, all of her complaints are subjective in nature. The only objective data that we have is a nerve conduction [study] and EMG report which shows findings compatible with a mild sensory conduction deficit of the median nerve bilaterally. There is, however, no objective basis to confirm a carpal tunnel syndrome.

"It is my opinion that [appellant's] diagnosis is an idiopathic arm pain. This has become an accepted term for nonlesional aches and pains affecting the upper extremity, common in people working with their arms and hands.

"I believe that [appellant's] subjective symptoms were provoked by her previous employment as a dental technician. A rationale for this is that there is no ongoing pathology. She does not have any rheumatological disorder[;] she does not have any arthritic disease and there has been no acute traumatic event.

"[Appellant's] subjective complaints, in my opinion, are out of proportion to her objective findings. I found that her aches and pains are subjectively more than I would anticipate, particularly for a patient who has not worked in a year and a half.

"There are again no current objective residuals attributable to her work injury. Her subjective pain is still causing her disability. I consider it unreasonable to expect her to return as a dental assistant. She has been retired for over a year and a half and her subjective symptoms are ongoing.

"I do not find any objective problems in [appellant] to in any way warrant consideration of surgical treatment."

On June 3, 2005 the Office asked Dr. Vanderyt to clarify whether appellant had any medical condition causally related to her September 3, 2002 employment injury. Dr. Vanderyt responded that appellant had no residuals from her September 3, 2002 employment injury.

On June 28, 2005 the Office proposed the termination of appellant's wage-loss compensation and medical benefits based on Dr. Vanderyt's report.

In a July 18, 2005 report, Dr. John D. Marshall, an attending family practitioner, stated that he treated appellant in 2003 for bilateral wrist pain and referred her to Dr. Astwani who diagnosed bilateral carpal tunnel syndrome. He stated:

"Historically, after twenty three years as a practicing physician, I have never relied on an orthopedic surgeon to give me an opinion on carpal tunnel syndrome."

* * *

"I have several patients with [carpal tunnel syndrome] in my practice and this is the first time that I have seen so much debate when objective evidence is present.

"What you are doing is allowing Dr. Vanderyt to use only his clinical skills and you are dismissing other doctors and the nerve conduction studies.

"[Appellant] does not need to continue injuring her wrists when all the evidence shows she has carpal tunnel syndrome."

By decision dated August 8, 2005, the Office terminated appellant's wage-loss compensation and medical benefits effective September 4, 2005.

Appellant requested reconsideration and submitted additional evidence. In a July 19, 2005 report, Dr. John I. Waldrop, a Board-certified orthopedic surgeon, stated that appellant had numbness, tingling and pain in her hands. He stated:

> "[Appellant has] [g]ood distal pulses. No peripheral edema. Good muscle tone. She has slight decrease in sensation in the median nerve distribution. [Appellant] has positive Tinel's, positive Phalen's in both wrists. She also has some proximal pain."
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> "[Appellant's] symptoms are fairly classic for a carpal tunnel [syndrome]. Her physical exam[ination] is fairly classic for a carpal tunnel and her nerve conduction studies show a bilateral moderate [G]rade 2 carpal tunnel. [Appellant] has failed all conservative therapy. I personally think she does have carpal tunnel syndrome. I think [appellant] needs to have these [surgically] released because of the difficulties with everything that has been done…. [She] was a dental assistant and she has not been at work because of this in two years. [Appellant] says it is a repetitive job."

By decision dated November 22, 2005, the Office denied modification of the August 8, 2005 decision.

Appellant requested reconsideration and resubmitted the January 18 and July 11, 2005 reports of Dr. Astwani.

By decision dated February 21, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant further merit review.[1]

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[2] The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.[3] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[4] Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To

[1] Appellant submitted additional evidence subsequent to the Office decision of February 1, 2006. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

[2] *Barry Neutach*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

[3] *Id.*

[4] *See Del K. Rykert*, 40 ECAB 284 (1988).

terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.[5]

Section 8123(a) of the Federal Employees' Compensation Act provides that, "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination."[6] Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.[7]

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral epicondylitis sustained on September 3, 2002. Effective September 4, 2005, the Office finalized its termination of her wage-loss compensation and medical benefits on the grounds that the accepted condition had resolved. The Office, therefore, bears the burden of proof to justify a termination of benefits.[8]

Due to the conflict in medical opinion between Dr. Lin and Dr. Hoffman, the Office referred appellant to Dr. Vanderyt for an impartial medical evaluation.

Dr. Vanderyt stated that appellant had no residuals from her September 3, 2002 employment-related bilateral carpal tunnel syndrome. Regarding the accepted condition of bilateral epicondylitis, he indicated that the Finkelstein's test for epicondylitis was negative. Dr. Vanderyt indicated that appellant had subjective arm complaints typical of an idiopathic (unexplained) arm pain. He stated that the only objective data was a nerve conduction study and EMG report which showed findings consistent with a mild sensory conduction deficit of the median nerve bilaterally. However, Dr. Astwani diagnosed moderate carpal tunnel syndrome, not mild. Medical opinions based on an incomplete or inaccurate history are of little diminished value.[9] Dr. Vanderyt stated that there was no objective basis to confirm residuals attributable to her work injury and her ongoing disability was caused by her subjective arm pain. However, the nerve conduction study was an objective neurological test with measurable results which were interpreted by a Board-certified neurologist, Dr. Astwani, as being consistent with moderate carpal tunnel syndrome. Dr. Vanderyt failed to provide sufficient rationale explaining why he did not consider that the nerve conduction study constituted objective evidence of an ongoing carpal tunnel problem.

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[5] *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

[6] 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

[7] *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

[8] *Willa M. Frazier*, 55 ECAB ___ (Docket No. 04-120, issued March 11, 2004).

[9] *Douglas M. McQuaid*, 52 ECAB 382 (2001); *Patricia M. Mitchell*, 48 ECAB 371 (1997).

The Board finds that the report of Dr. Vanderyt is not entitled to special weight and is insufficient to resolve the conflict in the medical evidence as to whether appellant had any continuing medical condition or disability causally related to her accepted bilateral carpal tunnel syndrome and epicondylitis. Consequently, the Office did not meet its burden of proof in terminating appellant's compensation and medical benefits.[10]

CONCLUSION

The Board finds that the Office did not meet its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective September 4, 2005.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 21, 2006 and November 22 and August 8, 2005 are reversed.

Issued: September 18, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[10] In light of the Board's resolution of the first issue, the second and third issues are moot.