United States Department of Labor
Employees' Compensation Appeals Board

S.P., Appellant	)	
and	)	**Docket No. 08-2548**
	)	**Issued: July 10, 2009**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Albany, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 22, 2008 appellant filed a timely appeal from a June 20, 2008 merit decision and a July 29, 2008 nonmerit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of the case and the nonmerit decision.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's medical and wage-loss benefits effective June 20, 2008; and (2) whether the Office properly denied reconsideration of its June 20, 2008 decision.

FACTUAL HISTORY

On April 1, 2003 appellant, a 45-year-old social worker, filed an occupational disease claim (Form CA-2) for ulnar neuropathy in the right hand and fingers. She attributed her right finger numbness to excessive typing and using the mouse in conjunction with a poorly designed

workstation. Appellant first recognized her condition and its relation to her federal employment on November 18, 2002. She submitted medical evidence and her claim was developed. While the Office, by decision dated June 23, 2003, initially denied appellant's claim because the evidence of record was insufficient to establish that she sustained an injury for purposes of the Federal Employees' Compensation Act by decision dated June 30, 2004, the Office accepted appellant's claim for right ulna canal syndrome.

Appellant underwent medical treatment and received compensation. On June 20, 2004 the employing establishment offered her a temporary alternative assignment, as a visit coordinator. Relying on a work capacity evaluation dated June 13, 2006 the position required appellant to engage in repetitive movements using her wrists and elbows for only one hour per day, pushing and pulling two hours a day and operating a motor vehicle three hours per day. By undated note, appellant accepted the amended temporary-duty position.

Appellant alleged that she continued to experience residuals of her accepted condition and on October 26, 2006 she filed a notice of recurrence (Form CA-2). She claimed that since 2002 she experienced severe hand numbness, wrist pain, elbow pain and forearm pain. Appellant alleged that she was unable to drive to and from work without a severe burning sensation in her forearm and fingers, which pain was exacerbated by six to seven hours of computer work per day. She claimed that the date of recurrence was October 9, 2006. Appellant stopped work on October 10, 2006.

Appellant submitted additional medical reports and notes and by decision dated December 21, 2006 the Office accepted appellant's recurrence claim. She filed a compensation claim (Form CA-7) for the period December 11 through 22, 2006. The record reflects that appellant received compensation for the period claimed.

By letter dated May 24, 2007, the employing establishment offered appellant a temporary alternative-duty position as a visit coordinator. She would not have to operate a motor vehicle to get to or from work more than 30 minutes per day and would not have to engage in repetitive wrist or elbow motions for more than one hour per day. Finally, tasks requiring pushing or pulling of objects no heavier than 10 pounds was restricted to two hours per day. Appellant accepted the position and returned to work in a limited-duty capacity on June 4, 2007.

By medical report dated June 12, 2007, Dr. Todd Jorgensen, a Board-certified physiatrist, reported that he felt appellant was not capable of performing the limited-duty position. He increased the repetitive motion restriction to 30 minutes per day. The employing establishment, in a June 12, 2007 letter, acknowledged that the repetitive motion restriction had been increased and requested clarification.

In a handwritten note, dated June 12, 2007 and signed by Ellen Bombard, a certified registered physician's assistant, reported that the repetitive motion restriction was amended because appellant experienced increased bilateral wrist pain and numbness if she engaged in such motion for longer than 30 minutes. She opined that this restriction would include use of computer keyboards and mice, collecting papers by hand, any filing activities and any activity causing wrist and elbow flexion/extension. Ms. Bombard noted that appellant could perform more than one 30-minute period but no greater than 30 minutes per period.

In a June 14, 2007 work capacity evaluation, Ms. Bombard reported that appellant was capable of performing her usual job for eight hours per day with restrictions. She restricted appellant from engaging in repetitive wrist and elbow motions and from pushing or pulling greater than 10 pounds for more than one hour per day. Ms Bombard also listed as a restriction, operating a motor vehicle while at, going to, or going from work for more than 30 minutes per day.

In a subsequent medical report dated June 14, 2007, Dr. Michelle Antiles, a Board-certified internist, reported that appellant experienced severe pain when performing basic tasks such as answering the telephone and checking the computer. Examination of the cervical spine revealed mild discomfort to palpitation of the trapezius at the base of the neck. Examination of the elbow revealed no problems with range of motion but there was pain upon palpitation of the ulnar groove but not on palpitation of the radial groove. Examination of appellant's wrist revealed tenderness to palpitation of the radius and ulnar but none in the mid carpal area. Again, Dr. Antiles diagnosed appellant with chronic cervical spine and upper limb pain and paresthesias likely electromyogram negative carpal tunnel syndrome.

The employing establishment, by letter dated July 18, 2007, responded to appellant's June 14, 2007 work capacity evaluation, which increased the restrictions to include no repetitive movements with the wrists or elbows and no driving to or from work for more than 30 minutes. Because of these new restrictions, the employing establishment notified the Office that it could no longer accommodate appellant and had placed her on leave without pay effective June 14, 2007.

On July 3, 2007 appellant filed a recurrence claim (Form CA-2a). She claimed that she experienced increased numbness and continuous severe pain in her hands, wrists, elbows and arms. Appellant alleged that the pain and numbness began on day one of returning to work and became severe by day six. She asserted that her present symptoms are the same as her previous injury of 2002.

Appellant filed a compensation claim (Form CA-7) for the period June 14 through July 20, 2007. She also filed a compensation claim for the period July 23 through August 3, 2007. The record reflects appellant received compensation for the periods claimed.

In a July 20, 2007 medical report, Dr. Antiles reported that physical examination revealed that appellant was in no acute distress. Examination of the cervical spine revealed full range of motion. Dr. Antiles noted minimal discomfort to palpation of the trapezius at the base of the neck. Examination of the elbow revealed no tenderness to palpation of the ulnar or radial groove, the lateral epicondyle or the tendon insertion at the same. She noted very mild tenderness to palpation over the common extensor mass. Finally examination revealed appellant's wrist was without swelling, deformity, had full range of motion, and she exhibited no discomfort. Dr. Antiles diagnosed appellant with chronic cervical spine and upper limb pain and paresthesias likely electromyogram negative carpal tunnel syndrome. Finally appellant noted that she wanted workers' compensation approval for a magnetic resonance imaging scan of the right elbow and to repeat the electromyogram of bilateral upper extremities. Dr. Antiles also renewed her request for compensation approval for appellant to enter vocational retraining.

By decision dated August 13, 2007, the Office notified appellant that her claimed June 14, 2007 recurrence had been accepted.

In a September 6, 2007 report, Dr. Jorgensen, a Board-certified physiatrist, reiterated his findings upon examination found in his prior reports as well as those from Dr. Antiles' July 10, 2007 medical report. He noted that he wanted workers' compensation approval for a magnetic resonance imaging scan of the right elbow and to repeat the electromyogram of bilateral upper extremities for continued unaddressed and unimproved symptoms.

The Office referred appellant, together with a statement of accepted facts,[1] to Dr. Robert Sellig, a Board-certified orthopedic surgeon, for a second opinion. By report dated December 18, 2007, Dr. Sellig, after reviewing appellant's medical history and conducting a physical examination, reported that appellant had reached maximum medical improvement. He proffered a diagnosis of upper extremity pain but found there were no objective orthopedic findings to corroborate her symptoms. Dr. Sellig noted that, although appellant's claim had been accepted for lesion of the ulnar nerve, he did not know what that lesion was as there was no objective corroboration of this alleged lesion.

Dr. Sellig opined that appellant did have a disability related to the November 18, 2002 employment-related incident and that there was a permanency to this condition. He opined that appellant was capable of returning to work, eight hours a day, provided she limited repetitive motion of the wrist and elbows and reaching above the shoulder, to one hour a day each activity.

The Office identified that a conflict of opinion existed between appellant's physician of record, Dr. Antiles, and the second opinion physician, Dr. Sellig, concerning the degree of continuing residuals/disability due to the June 30, 2004 accepted injury. To resolve this conflict, the Office referred appellant, with a statement of accepted facts, as amended to reflect the second opinion consultation, and a list of questions, to Dr. Kevin Barron, a Board-certified neurologist, for an independent medical opinion.

Dr. Barron, in a report dated May 1, 2008, reported findings after examination and review of appellant's medical history. He found no evidence of structural or pathophysiological disorder of the central or peripheral nervous system. Dr. Barron reported that appellant experienced some tingling when he tapped over her median nerve. He detected the presence of carpal tunnel at her wrist but opined that this was not surprising because a carpal tunnel response can be found in 10 to 15 percent of the population who are asymptomatic for median nerve disease and, in appellant's case, the tingling produced by carpal tunnel tap radiated proximally into the territory that is not supplied by the median nerve. Based on his examination and review of appellant's medical history, Dr. Barron opined that appellant did not have a credible neurological disease or disorder and that she was able to perform her regular duties. He asserted

[1] The Board notes that appellant's claim was accepted for right ulna canal syndrome, and nothing else. However, the statement of accepted facts submitted to the Office's second opinion physician and its impartial medical examiner (IME) identified the accepted condition as "LESION OF ULNAR NERVE, RIGHT," which, though similar, is a neurological condition that the record reflects, had never been diagnosed or formally accepted. (Emphasis in the original.) For purposes of analytical clarity, because of the similarities in theses two separate conditions, the Board will utilize right ulna canal syndrome, in lieu of lesion of ulnar nerve, as the accepted condition because this is the only condition formally accepted by the Office.

that appellant had no neurological disorder. Dr. Barron opined that appellant should return to work in the social worker field as she had no residual conditions related to her November 18, 2002 injury and that the injury-related condition had resolved. He opined that vocational training would be inappropriate.

Based upon Dr. Barron's report, by decision dated May 16, 2008, the Office proposed to terminate appellant's medical benefits and compensation for wage loss because the weight of the medical evidence of record demonstrated that appellant was no longer disabled or experienced residuals of her accepted employment-related condition.

Appellant disagreed and by letter dated June 10, 2008 she asserted that Dr. Barron's opinion was incorrect because she was nonsymptomatic on the day he examined her. She reported that some days her arms and hand hurt and other days they do not. Appellant also took offense to Dr. Barron's conclusion that her symptomology might be psychological in nature. She questioned his professional competence, experience and independence. Appellant argued that, if she was forced to return to work as a social worker without accommodations, it would have detrimental consequences on her ulna nerve syndrome. With this letter, she submitted a calendar containing a log of days when her arms were symptomatic. Appellant also submitted a copy of a webpage containing a professional profile of Dr. Barron as well as results from an internet search engine concerning him.

By decision dated June 20, 2008, the Office terminated appellant's claim for medical and wage-loss benefits effective June 20, 2008.

Appellant disagreed and, on July 7, 2008, requested reconsideration. In support of her request, she submitted a June 6, 2008 medical report signed by Dr. Antiles who reported that examination of appellant's cervical spine revealed a full and comfortable range of motion. There was tenderness to palpitation. Appellant's wrist exhibited no swelling, deformity or discomfort to range of motion. She exhibited 5/5 muscle strength in the upper extremities. Dr. Antiles reported that appellant's chronic neck pain was resolving and her right upper limb pain and paresthesias was of questionable etiology. She opined that appellant's disability was partial, at the mild to moderate level, and reiterated her recommendation that work restrictions include no computer work and no driving more than 30 minutes per day.

Appellant submitted duplicate copies of a webpage containing a professional profile of Dr. Barron, her June 10, 2008 letter and a duplicate copy of the calendar she submitted as an exhibit in her June 10, 2008 letter. She also submitted search results from an internet search engine.

Appellant also submitted a letter, dated July 7, 2008 in which she asserted that this evidence was relevant and urged the Office to consider it in support of her claim.

By decision dated July 29, 2008, the Office denied reconsideration of its June 20, 2008 decision because the evidence appellant submitted in support of her request, unsubstantiated allegations and a medical report that repeated evidence already in the record, was insufficient to entitle appellant to a merit review.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted 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 was no longer related to the employment.[3] After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the employee. In order to prevail, the employee must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.[4]

Section 8123(a) of the Act provides in pertinent 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.[5] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME 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.[6]

ANALYSIS -- ISSUE 1

The Board finds that the Office properly terminated appellant's medical benefits and compensation for wage loss on June 20, 2008 on the grounds that she had no further employment-related disability or residuals of her accepted condition. In order to terminate compensation and medical benefits the Office must establish that the accepted condition had ceased or is no longer related to the employment incident.[7] As the Office had accepted appellant's claim for right ulna canal syndrome, it bears the burden to establish either that the right ulna canal syndrome had resolved or that this condition is no longer related to the November 18, 2002 employment incident. It terminated appellant's compensation on June 20, 2008, finding that the weight of the medical opinion evidence rested with Dr. Barron, the Office's IME.

On December 4, 2007 the Office referred appellant to Dr. Sellig to secure an opinion concerning whether appellant's accepted condition, right ulna canal syndrome, remained active and continued to produce objective symptoms. Dr. Sellig diagnosed upper extremity pain because there were no objective orthopedic findings to corroborate her symptoms. He opined

[2] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Anna M. Blaine*, 26 ECAB 351, 353-54 (1975)*; see Fred Foster*, 1 ECAB 127, 132-33 (1948).

[3] *Id.*

[4] *Gary R. Sieber*, 46 ECAB 215, 222 (1994); *see Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

[5] 5 U.S.C. § 8123(a).

[6] *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

[7] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

that appellant was capable of performing her normal job for eight hours per workday with restrictions: one hour per day restriction for employment tasks that required appellant to engage in repetitive movements involving the wrist and elbow and, furthermore, for activities involving reaching above the shoulder and twisting.

The Act provides that, if there is a 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 the examination.[8] Where there exists a conflict of medical opinion and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.[9] Accordingly, the Office referred appellant to Dr. Barron, a Board-certified neurologist, for an independent medical examination. The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Barron. After conducting a physical examination and reviewing appellant's complaints, medical and factual history and the medical records, Dr. Barron reported finding no evidence of structural or pathophysiological disorder of the central or peripheral nervous system. He detected the presence of carpal tunnel at her wrist but opined that this was not surprising because a carpal tunnel response can be found in 10 to 15 percent of the population who are asymptomatic for median nerve disease and, in appellant's case, the tingling produced by carpal tunnel tap radiates proximally into the territory that is not supplied by the median nerve. Based on his examination and review of appellant's medical history, Dr. Barron opined that appellant did not have a credible neurological disease or disorder and that she was able to perform her regular duties. He asserted that appellant had no neurological disorder. Dr. Barron opined that appellant should return to work in the social worker field because she had no residual conditions related to her November 18, 2002 injury as the injury-related condition had resolved.

The Board finds that Dr. Barron's report is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight. The Board finds that Dr. Barron's report represents the weight of the medical opinion evidence, establishing that appellant's accepted condition had resolved and that appellant is able to return to full duty.

Thus, the Office properly found that appellant had no disability or residuals due to the accepted injury and terminated her compensation benefits on June 20, 2008.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[10] the Office regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously

[8] 5 U.S.C. § 8123(a). This is called a referee examination according to 20 C.F.R. § 10.321 (2008).

[9] *Solomon Polen*, 51 ECAB 341 (2000).

[10] 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

considered by the Office.[11] To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.[12] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.[13]

ANALYSIS -- ISSUE 2

Appellant's July 7, 2008 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law; rather, in her June 10, 2008 letter, she merely made unsubstantiated allegations against Dr. Barron, the Office's IME. Additionally, it did not advance a relevant legal argument not previously considered by the Office. Therefore, appellant is not entitled to a review of the merits of her claim based upon the first and second above-noted requirements under section 10.606(b)(2).[14]

Appellant also failed to satisfy the third requirement under section 10.606(b)(2). She did not submit any relevant and pertinent new evidence with her July 7, 2008 request for reconsideration. In support of appellant's reconsideration request, appellant's treating physician, Dr. Antiles, in a June 6, 2008 medical report, asserted that she was partially disabled at the mild to moderate level and that work restrictions must include no computer work and no driving greater than 30 minutes. But the Board finds that Dr. Antiles June 6, 2008 was repetitive of her earlier reports, which created the conflict of medical opinion, and did not provide new evidence sufficient to overcome the special weight accorded Dr. Barron or to create a new conflict.

Appellant also submitted duplicate copies of a webpage containing a professional profile of Dr. Barron published on the internet, search results from an internet search engine, and a duplicate copy of the calendar documenting the symptoms she experienced on particular dates.

The Board has held that articles such as newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.[15] As such, the web-published professional profile of Dr. Barron and the search engine results are of no evidentiary value in establishing a causal relationship between appellant's claimed condition and her federal employment as they are not relevant to the underlying medical issue in appellant's claim and therefore do not constitute a basis for reopening this claim for merit review.

[11] 20 C.F.R. § 10.606(b)(2).

[12] *Id*. at 10.607(a).

[13] *Id*. at § 10.608(b).

[14] *Id*. at § 10.606(b)(2)(i) and (ii).

[15] *Dominic E. Coppo*, 44 ECAB 484 (1993).

Finally, the copy of the calendar is of no probative or evidentiary value as it merely duplicates evidence already of record. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[16]

Appellant was not entitled to a review of the merits of her claim under the three requirements of section 10.606(b)(2). Therefore the Board finds that the Office properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation on June 20, 2008. The Board also finds that the Office properly denied appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the July 29 and June 20, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: July 10, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[16] *Richard Yadron*, 57 ECAB 207 (2005); *Eugene Butler*, 36 ECAB 393 (1984).