United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 09-926**
	)	**Issued: February 22, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 25, 2009 appellant filed a timely appeal from a January 9, 2009 merit decision of the Office of Workers' Compensation Programs affirming a June 26, 2008 decision terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective June 24, 2008.

FACTUAL HISTORY

On January 3, 2006 appellant, then a 35-year-old manual clerk injured her right wrist and forearm while sorting mail. The Office accepted the claim for right wrist sprain and later

expanded her claim to include bilateral carpal tunnel syndrome. Appellant did not stop work but started a light-duty position.[1]

Appellant came under the care of Dr. John Pollina, a Board-certified physiatrist, from January 17 to May 10, 2006 for left periscapular shoulder pain and numbness and pain in her wrists and hands. She reported working as a manual clerk and noted her work duties included repetitive wrist and hand activities. Dr. Pollina diagnosed left periscapular myofasciitis and mild bilateral carpal tunnel syndrome and opined that they were due to overuse and cumulative trauma which occurred while performing her work duties. Dr. Pollina recommended physical therapy and wrist splints. An x-ray of the right hand dated February 9, 2006 revealed no abnormalities. On June 2, 2006 appellant underwent an electromyogram (EMG) which revealed no evidence of carpal tunnel or radiculopathy.[2]

Appellant submitted a magnetic resonance imaging (MRI) scan of the cervical spine dated June 3, 2006 which revealed scoliosis. A March 23, 2007 EMG revealed moderate bilateral carpal tunnel syndrome and right C5-6 radiculopathy. Appellant came under the care of Dr. Haranath Policherla, a Board-certified neurologist, who treated her from May 18 to August 27, 2007 for left-sided neck pain and carpal tunnel syndrome which appellant developed after lifting trays of mail at work. Dr. Policherla diagnosed cervical radiculopathy and carpal tunnel syndrome. He advised that appellant could not work due to cervical radiculopathy and carpal tunnel syndrome.

On September 5, 2007 the Office referred appellant to Dr. B.J. Page, II, an osteopath and Board-certified orthopedic surgeon, for a second opinion. In a September 19, 2007 report, Dr. Page reviewed the records provided and examined appellant. He diagnosed a history of rotator cuff tendinitis, resolved; subjective evidence of periscapular myositis of the left shoulder, not supported by objective findings; and electrodiagnostic evidence of moderate carpal tunnel syndrome of both wrists. Examination of the neck revealed limitation of motion, full range of motion of both shoulders, elbows, wrists and fingers, no evidence of crepitance in the shoulder or atrophy of the supraspinatus, infraspinatus or in the hands. Dr. Page noted appellant responded appropriately to pinprick and light touch in the axillary nerve dermatome, median, radial and ulnar nerve dermatomes of the bilateral upper extremities. He could not find a similar degree of objective findings to support her subjective complaints involving her left shoulder as there was no crepitance, atrophy or MRI scan findings to support her pain. Dr. Page noted electrodiagnostic evidence of carpal tunnel syndrome which supported her bilateral wrist complaints. He found that appellant's shoulder injury of December 5, 2005 resolved. With regard to her hand complaints, he stated that her symptoms would resolve since she had been off work for three months and he suspected a nonwork-related issue as her symptoms had worsened.

[1] Appellant filed a claim for a traumatic injury occurring on December 5, 2005 which was accepted for left shoulder sprain, File No. xxxxxx412. On July 12, 2006 appellant filed an occupational disease claim which was accepted for left shoulder myofasciitis and bilateral elbow ulnar irritation, File No. xxxxxx642. These claims were consolidated with the current claim before the Board.

[2] On November 30, 2006 appellant filed a claim for recurrence of disability which was denied by the Office on January 10, 2007. Appellant submitted several CA-7, claims for compensation for temporary total disability for the period of March 23, 24 and 30, 2007. On May 30, 2007 the Office denied appellant's claim for compensation for this period.

Dr. Page prepared a work capacity evaluation and indicated that appellant was capable of performing her usual job and identified permanent restrictions.

On October 17, 2007 the Office advised Dr. Page that work restrictions had to be based on measurable objective evidence of active pathology and not be prophylactic in nature. In an October 7, 2007 report, Dr. Page noted the prior restrictions were permanent until appellant underwent carpal tunnel surgery but she needed no restrictions for her shoulder.

In reports dated September 26 and October 22, 2007, Dr. Policherla diagnosed cervical radiculopathy and moderate carpal tunnel syndrome. He opined these conditions were work related. Dr. Policherla advised that appellant was totally disabled and would be reevaluated in four weeks. On December 3, 2007 the Office requested that Dr. Policherla review and comment on the reports of Dr. Page. Dr. Policherla did not respond. On November 26, 2007 he diagnosed cervical radiculopathy and moderate carpal tunnel syndrome and recommended wrist splints and physical therapy.

The Office found that a conflict of medical opinion arose between Dr. Policherla, appellant's treating physician, who found that she had residuals of her accepted carpal tunnel syndrome and cervical radiculopathy and was totally disabled for work, and Dr. Page, an Office referral physician, who determined that appellant's shoulder injury of December 5, 2005 resolved and that she could return to work eight hours per day with restrictions due to her diagnosed carpal tunnel syndrome.

The Office referred appellant to Dr. Michael E. Kosinski, a Board-certified orthopedic surgeon. In a report dated March 10, 2008, he reviewed the medical records provided, performed a physical examination and addressed the history of appellant's work-related injury. He noted findings upon physical examination of no neck stiffness or muscle spasm, pain in the back of the neck radiating along the left trapezius, grip strength, wrist extensors, biceps, triceps and deltoid muscle strengths were symmetrical, equal and normal and biceps, triceps and brachioradialis tendon reflexes were symmetrical, equal and normal. Dr. Kosinski noted a negative Tinel's sign bilaterally over the median nerve and the Phalen's test elicited complaints of pain but no sensory changes in the hands bilaterally. He diagnosed subclinical degenerative disease of the cervical spine that was not radiographically apparent. Dr. Kosinski found no clinical evidence of radicular problems and that the EMG and MRI scan of the cervical spine were negative for any nerve root involvement. As to appellant's carpal tunnel syndrome, she had an atypical presentation with pain in the forearm. Dr. Kosinski recommended repeat EMG and nerve conduction studies. He found no evidence of cervical radiculopathy and recommended appellant return to work but avoid keyboarding.

On March 24, 2008 appellant underwent an EMG which revealed left C5-6 radiculopathy. In a March 24, 2008 report, Dr. Policherla diagnosed cervical radiculopathy and noted appellant continued to have cervical muscle spasms and positive Spurling's sign. He recommended she continue working with restrictions.

On April 9, 2008 the Office requested Dr. Kosinski to review the March 24, 2008 EMG and Dr. Policherla's March 24, 2008 report to address whether appellant's accepted conditions had resolved. In an April 10, 2008 report, Dr. Kosinski noted that the recent testing confirmed

appellant did not have evidence of bilateral carpal tunnel syndrome and did not require treatment or restrictions for her hands and wrists as previously suggested in his original report. He advised that appellant's accepted conditions of left shoulder periscapular myofasciitis, acute right wrist sprain and bilateral ulnar nerve irritation had resolved and any complaints in the left shoulder and scapular area would be related to nonwork activities. Dr. Kosinski found that the degenerative disease of the cervical spine was not work-related.

On May 8, 2008 the Office issued a notice of proposed termination of compensation benefits on the grounds that Dr. Kosinski's reports established no residuals of the work-related left shoulder sprain, right wrist sprain, left shoulder periscapular myofasciitis and bilateral elbow ulnar irritation. It noted that this decision did not effect appellant's entitlement to compensation benefits for the accepted condition of bilateral carpal tunnel syndrome.

In a May 23, 2008 report, Dr. Policherla diagnosed cervical radiculopathy and noted appellant continued to have pain in her neck radiating into her left shoulder with numbness and tingling in both wrists. Dr. Policherla noted that a March 24, 2008 EMG revealed left C5-6 radiculopathy.

By decision dated June 26, 2008, the Office terminated appellant's compensation benefits effective June 24, 2008 for the accepted conditions of left shoulder sprain, right wrist sprain, left shoulder periscapular myofasciitis and bilateral elbow ulnar irritation. It found that the weight of the medical evidence established that she had no continuing disability resulting from her accepted employment injuries.

On July 9, 2008 appellant requested a telephonic oral hearing which was held on November 3, 2008. In reports dated May 23 to December 5, 2008, Dr. Policherla diagnosed cervical radiculopathy and moderate bilateral carpal tunnel syndrome confirmed by EMG. He noted appellant could continue working with restrictions and wrist splints. An EMG dated July 8, 2008 revealed moderate bilateral carpal tunnel syndrome.[3]

In a decision dated January 9, 2009, the hearing representative affirmed the June 26, 2008 Office decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[4] After it has determined that an employee has disability causally related to his or 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.[5] The right to medical benefits for an accepted condition is not limited to the period

[3] Appellant submitted several CA-7's, claims for compensation, for the period of July 25 to July 28, 2008 which was denied by the Office in a decision dated November 10, 2008. The November 10, 2008 decision also denied expansion of the claim to include the condition of cervical radiculopathy. Appellant did not appeal the November 10, 2008 decision.

[4] *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

[5] *Mary A. Lowe*, 52 ECAB 223 (2001).

of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition, which requires further medical treatment.[6]

ANALYSIS

The Office accepted appellant's claim for left shoulder sprain, right wrist sprain, left shoulder periscapular myofasciitis, bilateral elbow ulnar irritation and bilateral carpal tunnel syndrome. It reviewed the medical evidence and determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Policherla, a Board-certified neurologist, who indicated that appellant sustained residuals of her work-related carpal tunnel syndrome, left shoulder myofasciitis and cervical radiculopathy and was totally disabled from work, and Dr. Page, an Office referral physician, who determined that appellant's conditions except for carpal tunnel syndrome had resolved. Consequently, the Office referred appellant to Dr. Kosinski to resolve the conflict.

The Board finds that the opinion of Dr. Kosinski is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight. Dr. Kosinski found that appellant's work-related left shoulder sprain, right wrist sprain, left shoulder periscapular myofasciitis and bilateral elbow ulnar irritation has ceased without residual.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist 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.[7]

In a March 10, 2008 report, Dr. Kosinski reviewed appellant's history, reported findings and noted that appellant exhibited no objective complaints or definite work-related abnormality in her condition. He noted findings upon physical examination of grip strength, wrist extensors, biceps, triceps and deltoid muscle strengths were symmetrical, equal and normal and biceps, triceps and brachioradialis tendon reflexes were symmetrical, equal and normal with negative Tinel's and Phalen's signs. Dr. Kosinski diagnosed subclinical degenerative disease of the cervical spine and noted that there was no evidence clinically of radicular problems and the EMG and MRI scans of the cervical spine were negative for any nerve root involvement. He opined that based on the absence of objective findings on examination and from a review of the medical records and diagnostic studies, appellant was able to return to work full time with restrictions. In a supplemental report dated April 10, 2008 Dr. Kosinski noted that recent EMG testing confirmed there was no evidence of carpal tunnel syndrome. He opined that appellant's accepted conditions of left shoulder periscapular myofasciitis, acute right wrist sprain and bilateral ulnar nerve irritation had resolved.

After issuance of the pretermination notice, appellant submitted a May 23, 2008 report from Dr. Policherla, who diagnosed cervical radiculopathy and noted appellant continued to have pain in her neck radiating into her left shoulder and both wrists. He noted a March 24, 2008

[6] *Id.; Leonard M. Burger*, 51 ECAB 369 (2000).

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

EMG revealed left C5-6 radiculopathy. Dr. Policherla did not, however, specifically address how her condition or medical restrictions and disability were causally related to the accepted employment injuries. The Board has found that vague and unrationalized medical opinions on causal relationship are of diminished probative value.[8]

After the termination of benefits, appellant submitted additional reports from Dr. Policherla who reiterated the diagnosis of cervical radiculopathy and moderate bilateral carpal tunnel syndrome. Dr. Policherla noted that appellant could continue working with restrictions and wrist splints. He did not explain how her ongoing condition or medical restrictions and disability were causally related to the accepted employment injuries. Additionally, Dr. Policherla's opinion is similar to his prior reports and is insufficient to overcome that of Dr. Kosinski or to create a new medical conflict.[9]

The Board finds Dr. Kosinski had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. Dr. Kosinski offered no basis to support that appellant had no residuals or work-related disability from the accepted left shoulder sprain, right wrist sprain, left shoulder periscapular myofasciitis and bilateral elbow ulnar irritation. His opinion as set forth in his reports of March 10 and April 10, 2008 is found to be probative evidence and reliable. The Board finds that Dr. Kosinski's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits for the accepted conditions of acute right wrist strain, left shoulder periscapular myofasciitis, bilateral elbow ulnar irritation has ceased.[10] There is no other medical evidence sufficient to overcome the opinion of Dr. Kosinski or to create a new medical conflict.

CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective June 24, 2008.[11]

[8] *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett,* 52 ECAB 332 (2001).

[9] *See Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro,* 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell,* 41 ECAB 857 (1990). The Board notes that Dr. Policherla's reports do not contain new findings or rationale upon which a new conflict might be based.

[10] In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber,* 46 ECAB 215, 225 (1994).

[11] The Board notes that appellant is still entitled to appropriate benefits for the accepted condition of bilateral carpal tunnel syndrome which was not included in the termination decision affirmed by the Board.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 9, 2009 and June 26, 2008 are affirmed.

Issued: February 22, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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