

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

A.D., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS AFFAIRS MEDICAL CENTER,)
San Francisco, CA, Employer)

Docket No. 10-2158
Issued: June 15, 2011

Appearances:

Norman F. Nivens, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 24, 2010 appellant, through her attorney, filed a timely appeal from a July 23, 2010 merit decision of the Office of Workers' Compensation Programs terminating her compensation. Pursuant to the Federal Employees' Compensation Act¹ and 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 properly terminated appellant's compensation effective July 23, 2010 on the grounds that she had no further disability due to her accepted employment injury; and (2) whether it properly terminated her authorization for medical treatment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 5, 2006 appellant, then a 43-year-old blind rehabilitation specialist, filed an occupational disease claim alleging that she sustained a repetitive stress injury to her hands, arms, neck and upper back after three days of typing. The Office accepted the claim for strains of the cervical spine and bilateral wrists and bilateral lateral epicondylitis. Appellant worked part-time modified duty until December 15, 2008, when the employing establishment no longer had limited-duty work available. The Office paid her compensation for disability on the periodic rolls beginning March 15, 2009.²

In a report dated January 15, 2010, Dr. Susan Fullemann, an attending physician Board-certified in family practice, diagnosed cervical sprain, wrist sprain and tennis elbow. She found that appellant should “stay with her restrictions” and recommended continued chiropractic treatment.

On March 25, 2010 the Office referred appellant to Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated April 23, 2010, Dr. Hanley reviewed appellant’s history of injury and complaints of pain in the neck, shoulders and upper extremities. On examination, he found normal range of motion of the shoulders and elbows, no loss of strength and tenderness of the shoulder and mid-thoracic spine without spasm. Dr. Hanley further found no upper extremity atrophy and a negative Tinel’s sign. He diagnosed myofascial syndrome without objective findings. Dr. Hanley listed subjective complaints of pain in the upper extremities, neck and shoulder with activities such as writing and typing. He stated, “There are no objective findings and no evidence that [appellant] continues to suffer residuals of any particular condition that was work related. There may well have been activity-related discomfort at the time of appellant’s presentation but there are no residual findings at this time.” Dr. Hanley opined that appellant required no further chiropractic treatment and massage. He asserted, “It is my belief that because of her propensity towards the development of soft tissue symptomatology that the simple accommodation of providing voice recognition software would seem to me to be the better part of valor in managing her condition.” In an accompanying work restriction evaluation, Dr. Hanley indicated that appellant was unable to return to her usual employment as she could not perform repetitive typing. He listed work restrictions of sitting, walking and standing for two hours a day, performing repetitive movements of the wrists and elbows for two hours a day and pushing, pulling and lifting up to 15 pounds for two hours a day.

By decision dated May 18, 2010, the Office notified appellant of its proposed termination of her compensation and authorization for medical benefits. It determined that Dr. Hanley’s opinion constituted the weight of the evidence and established that she had no further employment-related condition or disability.

² By decision dated October 23, 2008, the Office terminated appellant’s compensation effective October 22, 2008 after finding that she refused an offer of suitable work. In another decision dated October 23, 2008, it found that she had not established an employment-related recurrence of disability beginning July 28, 2008. By decision dated February 24, 2009, the Office vacated its October 23, 2008 termination decision and opened her case for wage-loss compensation.

In a report dated June 3, 2010, Dr. Fullemann diagnosed cervical strain, wrist sprain and tennis elbow and recommended continued chiropractic adjustment and massage. On June 6, 2010 she attributed appellant's conditions to repetitive use of her arms at work and related that she continued to have restrictions on keyboarding less than two to three minutes a day. Dr. Fullemann opined that appellant required voice recognition software in order to perform her work.

On July 11, 2010 Dr. Fullemann related that she had treated appellant, who is blind, for 13 years. She noted that she sustained injuries "to her neck, arms and hands from excessive typing without proper accommodations. As a result of these injuries, [appellant] is severely limited in her activities of daily living." Dr. Fullemann opined that the restrictions were permanent and that she sustained reinjuries when she performed activity in excess of her limitations.

By decision dated July 23, 2010, the Office terminated appellant's compensation and authorization for medical treatment effective July 23, 2010.

On appeal, appellant's attorney argues that Dr. Hanley's opinion is insufficiently rationalized to establish that appellant had no further employment-related disability.³ He contends that Dr. Hanley found that she continued to have work restrictions. Counsel also maintains that the record contains a conflict in medical opinion.

LEGAL PRECEDENT -- ISSUES 1 & 2

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁴ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.⁶ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁷

³ Counsel also raised arguments relevant to a prior second opinion examination by Dr. Joel W. Renbaum, a Board-certified orthopedic surgeon. The Office, however, did not rely on Dr. Renbaum's opinion in terminating appellant's compensation benefits.

⁴ *Elaine Sneed*, 56 ECAB 373 (2005); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁵ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

⁶ *T.P.*, 58 ECAB 524 (2007); *Pamela K. Guesford*, 53 ECAB 727 (2002).

⁷ *Id.*

ANALYSIS -- ISSUES 1 & 2

The Office accepted that appellant sustained cervical strain, bilateral wrist strains and bilateral lateral epicondylitis due to factors of her federal employment. It paid her compensation for intermittent total disability in 2007 and for total disability beginning March 15, 2009.

The Office terminated appellant's compensation based on its finding that the opinion of Dr. Hanley, who provided a second opinion examination, represented the weight of the evidence and established that she had no further employment-related disability. As argued on appeal, however, the Board finds that Dr. Hanley's opinion is insufficient to show that appellant had no further employment-related condition or disability after July 23, 2010.

In his April 23, 2010 report, Dr. Hanley found normal range of motion and full strength of the upper extremities. He diagnosed myofascial syndrome and opined that appellant had subjective complaints of pain in the neck and upper extremities without objective findings. Dr. Hanley concluded that there was no objective evidence of any work-related condition. He recommended voice activation software due to appellant's tendency to develop soft tissue symptoms. However, in an accompanying work restriction evaluation, Dr. Hanley asserted that she could not perform her usual employment because she could not repetitively type. He found that appellant could work for eight hours a day with restrictions of sitting, walking and standing for two hours a day, using her wrists and elbows repetitively for two hours a day and lifting, pushing and pulling up to 15 pounds for two hours a day. Dr. Hanley did not explain why he provided work restrictions prohibiting repetitive use of the upper extremities. While he indicated that appellant required voice-activated software to prevent further soft tissue injury, it is not clear whether the work limitations provided in the work restriction evaluation were purely prophylactic in nature or for residuals of the work injury. Consequently, Dr. Hanley's report is insufficiently rationalized to support the Office's termination of compensation.⁸

CONCLUSION

The Board finds that the Office improperly terminated appellant's compensation and authorization for medical treatment effective July 23, 2010 on the grounds that she had no further residuals of her accepted employment injury.

⁸ The Board has held that a medical opinion not fortified by rationale is of little probative value. See *Brenda L. DuBuque*, 55 ECAB 212 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 23, 2010 is reversed.

Issued: June 15, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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