United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 19-0057**
	)	**Issued: May 16, 2019**
U.S. POSTAL SERVICE, BALTIMORE PERFORMANCE CLUSTER, Baltimore, MD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 9, 2018 appellant filed a timely appeal from a September 21, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the September 21, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective April 13, 2018, because she ceased to have residuals or disability due to her accepted employment condition.

FACTUAL HISTORY

In April 1985 OWCP accepted that appellant, then a 31-year-old letter sorting machine operator, sustained an occupational injury in the form of bilateral carpal tunnel syndrome due to performing the repetitive duties of her job. Appellant underwent OWCP-approved bilateral carpal tunnel release surgery in 1985 and 1986.[3] She stopped work in July 2003 and retired from the employing establishment in February 2009.[4]

Commencing in 1997, appellant received periodic medical treatment for her upper extremity conditions from Dr. Ramana Gopalan, a Board-certified internist.

In a December 20, 2016 report, Dr. Gopalan noted that appellant complained of constant pain in both wrists, forearms, elbow, and shoulders (right worse than left). He advised that, upon physical examination, appellant exhibited bilateral swelling, tenderness, and decreased active range of motion of her wrists. Dr. Gopalan opined that appellant continued to have employment-related bilateral carpal tunnel syndrome and that she was unable to return to work (due to that condition.

OWCP referred appellant for a second opinion examination to Dr. Stuart J. Gordon, a Board-certified orthopedic surgeon, and requested that he provide an opinion regarding whether appellant had residuals or disability due to her employment-related bilateral carpal tunnel syndrome.

In a January 17, 2017 report, Dr. Gordon reported his physical examination findings and diagnosed bilateral carpal tunnel syndrome with evidence of continued presence (status post release), unrelated degenerative disease of the carpometacarpal joints of the hands, and obesity. He found that appellant continued to have employment-related bilateral carpal tunnel syndrome, however, she was capable of working in a limited-duty capacity.

OWCP determined that there was a conflict in the medical opinion evidence between Dr. Gopalan and Dr. Gordon regarding the extent of appellant's disability due to her employment-related bilateral carpal tunnel syndrome. In order to resolve the conflict, it referred appellant, pursuant to section 8123(a) of FECA, to Dr. John F. Perry, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.

In a June 1, 2017 report, Dr. Perry discussed appellant's factual and medical history and reported the findings of the physical examination he conducted on that date. He noted that she

[3] Appellant underwent surgical release of the proximal pulley of her right thumb in January 1987. There is no indication in the case record that OWCP approved this surgery or that appellant has an accepted right thumb condition.

[4] By decision dated March 22, 2011, OWCP granted appellant a schedule award for eight percent permanent impairment of each upper extremity. The award ran for 49.92 weeks for the period April 11, 2010 to March 26, 2011.

presented to the examination with complaints of numbness/swelling in both hands. Dr. Perry indicated that bilateral Phalen's testing did not produce paresthesias (although bilateral median nerve compression did so), sensation was normal to pinprick in both upper extremities, and there was no right thumb triggering or tenderness. He determined that appellant no longer had employment-related bilateral carpal tunnel syndrome, noting that her reported increasing carpal tunnel symptoms were unrelated to her employment as she had not worked since 2003. Dr. Perry opined that appellant's upper extremity problems were due to nonwork-related conditions, including hypothyroidism, obesity, and "constitutional issues." He indicated in the beginning of the impression and comments section of the report that appellant could return to work without restrictions, but noted that in the latter portion of the impression and comments section that she could return to work for eight hours per day with physical restrictions.

On August 14, 2017 OWCP requested that Dr. Perry provide a supplemental report which clarified his June 1, 2017 report with respect to appellant's ability to work. In a September 4, 2017 report, Dr. Perry indicated that appellant could return to unrestricted work. He repeated his earlier opinion that she ceased to have an employment-related medical condition.

OWCP determined that there was a new conflict in the medical opinion evidence between Dr. Gopalan and Dr. Perry regarding the existence of employment-related bilateral carpal tunnel syndrome. Dr. Gopalan had found that appellant had employment-related residuals of bilateral carpal tunnel syndrome in a December 20, 2016 report, whereas Dr. Perry found that appellant had no such residuals in June 1 and September 4, 2017 reports.[5]

On September 22, 2017 OWCP issued a conflict statement and referred appellant to Dr. Sanjiv H. Naidu, a Board-certified orthopedic surgeon, for a new impartial medical examination and opinion regarding whether appellant had continuing residuals, including disability, of her employment-related bilateral carpal tunnel syndrome.

In a November 16, 2017 report, Dr. Naidu detailed appellant's factual and medical history, including the history of her surgical intervention in the 1980's and the electromyogram and nerve conduction velocity (EMG/NCV) testing of her upper extremities between 1997 and 2017. He noted that January 13, 2017 testing of appellant's upper extremities revealed right distal motor latency of 5.1 milliseconds and left distal motor latency of 4.0 milliseconds. Dr. Naidu reported the findings of the physical examination he conducted on November 10, 2017. There was no evidence of carpal instability in either wrist, bilateral wrist motion was full and symmetrical, and bilateral Tinel's, Phalen's, carpal compression, and ulnocarpal impingement tests were negative. Dr. Naidu advised that appellant had 5/5 strength in both upper extremities and that two-point discrimination and sensation were intact in all digits. He diagnosed resolved bilateral carpal tunnel syndrome and resolved right trigger thumb and flexor tenosynovitis.

[5] OWCP considered Dr. Perry to have served as an OWCP referral physician with respect to the existence of employment-related bilateral carpal tunnel syndrome because there had not been a conflict in the medical opinion evidence on this matter at the time of the initial referral to Dr. Perry. The record reflects that Dr. Gopalan found that appellant had employment-related residuals of bilateral carpal tunnel syndrome in a December 20, 2016 report, whereas Dr. Gordon also found that appellant had employment-related residuals of bilateral carpal tunnel syndrome in a January 17, 2017 report.

Dr. Naidu further indicated that appellant had been adequately treated with bilateral carpal tunnel release surgery for the employment injury sustained in the mid-1980s. He noted that appellant's current main complaint was bilateral thumb/wrist pain which would be consistent with her underlying osteoarthritis. Dr. Naidu maintained that with respect to appellant's current complaints of progressive upper extremity numbness/tingling, the numerous EMG/NCV studies obtained since her surgical intervention indicated progression of sensory neuropathy secondary to chronic untreated hypothyroidism and goiter. He opined that appellant's employment-related condition of bilateral carpal tunnel syndrome/entrapment neuropathy had completely resolved and that no further treatment was needed for this employment injury. In an attached work capacity evaluation form (Form OWCP-5c), Dr. Naidu determined that appellant was capable of performing her usual job without restrictions.[6]

By letter dated February 21, 2018, OWCP advised appellant of its proposed termination of her wage-loss compensation and medical benefits because she ceased to have residuals or disability due to her accepted employment condition. It informed appellant that the proposed termination action was based on the November 16, 2017 opinion of Dr. Naidu, the impartial medical specialist. OWCP afforded appellant 30 days to submit evidence and argument challenging the proposed action.

In mid-March 2018 appellant contacted OWCP regarding her request for authorization of right carpal tunnel surgery. However, she did not submit new evidence or argument challenging the proposed termination action.

By decision dated April 13, 2018, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date, because she ceased to have residuals or disability due to her accepted employment condition.

On May 2, 2018 OWCP requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated September 21, 2018, OWCP's hearing representative affirmed the April 13, 2018 decision terminating appellant's wage-loss compensation and medical benefits effective that date. The hearing representative determined that the weight of the medical opinion evidence with respect to employment-related residuals and disability continued to rest with the opinion of Dr. Naidu.

LEGAL PRECEDENT

Under FECA, once OWCP has accepted a claim it has the burden of justifying termination or modification of compensation benefits.[7] OWCP may not terminate compensation without

[6] In attached November 10, 2017 Pennsylvania Department of Labor and Industry form, Dr. Naidu indicated that appellant's bilateral carpal tunnel condition had resolved.

[7] *C.C.*, Docket No. 17-1158 (issued November 20, 2018); *I.J.*, 59 ECAB 408 (2008); *Vivien L. Minor*, 37 ECAB 541 (1986).

establishing that the disability ceased or that it was no longer related to the employment.[8] OWCP's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[9]

Section 8123(a) of FECA 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."[10] In situations where 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.[11]

ANALYSIS

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective April 13, 2018, because she ceased to have residuals or disability due to her accepted employment condition.

OWCP properly determined that there was a conflict in the medical opinion evidence between Dr. Gopalan, an attending physician, and Dr. Perry, an OWCP referral physician, on the issue of whether appellant continued to have residuals of her accepted employment injury.[12] Dr. Gopalan found that appellant had employment-related residuals of bilateral carpal tunnel syndrome in a December 20, 2016 report, whereas Dr. Perry found that appellant had no such residuals in June 1 and September 4, 2017 reports. In order to resolve the conflict, OWCP properly referred appellant, pursuant to section 8123(a) of FECA, to Dr. Naidu for an impartial medical examination and an opinion on the matter.[13]

[8] *A.D.*, Docket No. 18-0497 (issued July 25, 2018). In general the term disability under FECA means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of such injury. *See* 20 C.F.R. § 10.5(f).

[9] *See C.C., supra* note 7.

[10] 5 U.S.C. § 8123(a).

[11] *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).

[12] The Board notes that, while initially Dr. Perry served as an impartial medical specialist regarding the matter of the extent of appellant's disability, he actually served as an OWCP referral physician with respect to the existence of employment-related bilateral carpal tunnel syndrome because there had not been a conflict in the medical opinion evidence on this matter at the time of the initial referral to Dr. Perry. There was no such conflict at that time because Dr. Gopalan found that appellant had employment-related residuals of bilateral carpal tunnel syndrome in a December 20, 2016 report, and Dr. Gordon also found that appellant had employment-related residuals of bilateral carpal tunnel syndrome in a January 17, 2017 report. *See R.H.*, Docket No. 17-1477 (issued March 14, 2018) (finding that, due to the lack of a conflict in the medical opinion evidence regarding the underlying issue at the time of referral to a physician for an impartial medical examination, the physician actually served as an OWCP referral physician with respect to that issue).

[13] *See supra* note 10.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Naidu, the impartial medical specialist selected to resolve the conflict in the medical opinion.[14] The report of Dr. Naidu establishes that appellant no longer had residuals or disability due to her accepted employment condition.

In his November 16, 2017 report, Dr. Naidu detailed appellant's factual and medical history, and reported the findings of the physical examination he conducted on November 10, 2017, noting that there was no evidence of carpal instability in either wrist, bilateral wrist motion was full and symmetrical, and bilateral Tinel's, Phalen's, carpal compression, and ulnocarpal impingement tests were negative. Dr. Naidu provided a diagnosis which indicated that appellant's employment-related bilateral carpal tunnel syndrome had resolved and explained that appellant had been adequately treated with bilateral carpal tunnel release surgery for the employment injury sustained in the mid-1980s. He noted that appellant's current main complaint was bilateral thumb/wrist pain which would be consistent with her underlying osteoarthritis.[15] Dr. Naidu opined that appellant's employment injury had fully resolved and no further treatment was needed for an employment-related condition. In an attached form report, he determined that appellant was capable of performing her usual job without restrictions.

The Board has reviewed the opinion of Dr. Naidu and notes that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Naidu provided a thorough factual and medical history and accurately summarized the relevant medical evidence. He provided medical rationale for his opinion by explaining appellant had no objective findings of bilateral carpal tunnel syndrome upon physical examination or diagnostic testing. Dr. Naidu also explained that appellant's continuing bilateral upper extremity symptoms were not related to her accepted employment condition, but rather were related to nonwork-related factors, including underlying osteoarthritis and hypothydroidism.[16]

CONCLUSION

The Board finds that OWCP properly terminated appellant's wage-loss compensation and medical benefits, effective April 13, 2018, because she ceased to have residuals or disability due to her accepted employment condition.

[14] *See supra* note 11.

[15] Dr. Naidu further maintained that, with respect to appellant's current complaints of progressive upper extremity numbness/tingling, the numerous EMG/NCV studies obtained since her surgical intervention indicated progression of sensory neuropathy secondary to chronic untreated hypothyroidism and goiter.

[16] *See W.C.*, Docket No. 18-1386 (issued January 22, 2019); *Melvina Jackson*, 38 ECAB 443 (1987) (regarding the importance, when assessing medical evidence, of such factors as a physician's knowledge of the facts and medical history, and the care of analysis manifested and the medical rationale expressed in support of the physician's opinion).

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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