United States Department of Labor
Employees' Compensation Appeals Board

D.W., Appellant	)	
and	)	**Docket No. 20-0885**
	)	**Issued: June 11, 2021**
DEPARTMENT OF DEFENSE, DEFENSE COMMISSARY AGENCY, McGUIRE AIR FORCE BASE, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 16, 2020 appellant, through counsel, filed a timely appeal from a September 23, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the September 23, 2019 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 additional evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether OWCP properly determined that appellant's radial styloid tenosynovitis (de Quervain's) and left trigger thumb conditions had resolved as of March 26, 2019.

FACTUAL HISTORY

This case has previously been before the Board.[4] The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are set forth below.

On September 27, 2012 appellant, then a 51-year-old sales associate/cashier, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome (CTS) in the performance of duty on or about February 10, 2010. She explained that her sales associate position entailed lifting food items of various weights, such as canned goods, uncooked meats, gallons of beverages, animal food, and cat litter weighing 10 to 50 pounds.

In an October 1, 2010 report, Dr. Raymond Ragland, III, a Board-certified hand surgeon, diagnosed left thumb trigger finger. In a report dated July 30, 2012, he diagnosed bilateral carpal tunnel syndrome and de Quervain's "tendinitis." On November 9, 2012 Dr. Ragland performed an endoscopic right carpal tunnel release and a left carpal canal intervention procedure.

By decision dated December 31, 2012, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the claimed events(s) occurred as described.

On January 7, 2013 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated June 12, 2013, an OWCP hearing representative modified the December 31, 2012 decision to find that appellant had established that the claimed events occurred as alleged. However, he affirmed the denial of benefits, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed upper extremity conditions and the accepted work factors of lifting items, scanning items, and keying data into the register.

On August 8, 2013 appellant, through counsel, filed a timely appeal to the Board of OWCP's June 12, 2013 decision. By decision dated March 13, 2014, the Board affirmed the hearing representative's June 12, 2013 decision.

On March 13, 2015 appellant, through counsel, requested reconsideration. Counsel submitted a September 5, 2013 left upper extremity electromyogram and nerve conduction velocity (EMG/NCV) study that revealed evidence of moderate left median nerve neuropathy consistent with a clinical diagnosis of CTS. OWCP also received a March 24, 2015 report from Dr. Ragland, wherein he discussed appellant's bilateral carpal tunnel syndrome history.

By decision dated June 9, 2015, OWCP denied modification.

[4] Docket No. 17-1884 (issued November 8, 2018); Docket No. 13-1873 (issued March 13, 2014).

On June 16, 2015 Dr. Ragland performed a left carpal tunnel release on appellant's left upper extremity, which was completed without complications. By letter dated September 17, 2015, he opined, "To a reasonable degree of medical certainty, the patient's bilateral CTS symptoms are work related."

By decision dated July 15, 2016, OWCP denied modification.

On October 17, 2016 appellant, through counsel, requested reconsideration of OWCP's July 15, 2016 decision. Attached to the request was a September 16, 2016 report from Dr. Ragland, who explained, in part, "A review of her job history shows relevant exposure risk with regard to significant intermittent peak hand force use, forceful hand repetition rates and percentage of time in forceful hand exertions." He noted that these factors were clinically significant risks in the development of CTS.

December 7, 2016 EMG/NCV studies revealed bilateral median nerve impairments at the wrists, moderate at the right and mild on the left. The EMG/NCV studies further revealed severe left bilateral ulnar nerve impairment and significant right bilateral ulnar nerve impairment, as well as moderate right posterior interosseous nerve impairment at the dorsal elbow/radial tunnel level.

By decision dated December 20, 2016, OWCP denied modification.

OWCP subsequently received a functional capacity evaluation (FCE) dated November 29, 2016, wherein Dr. Scott M. Fried, an osteopathic physician specializing in orthopedic surgery, noted that appellant was employed as a military cashier and had sustained repetitive strain injuries to her upper extremities resulting in right radial neuropathy, bilateral median neuropathy, brachial plexopathy, and right cervical radiculopathy while at work. Dr. Fried reviewed appellant's history of treatment with Dr. Ragland and noted that she had not worked since shortly after her first carpal tunnel surgery. He performed a hand function evaluation, administration of standardized tests, and observation of performance of physical demands with job simulation. Dr. Fried concluded that appellant was unable to perform repetitive activities including simple grasping, fine manipulation, firm grasping, pushing/pulling, or overhead/shoulder-level reaching with her upper extremities. He noted that she was unable to lift more than two pounds or carry more than one pound of weight without complaining of nerve symptoms.

On December 23, 2016 Dr. Fried reviewed the November 29, 2016 FCE. He noted that appellant had increased symptoms with work simulation activities, diminished ability to manipulate small objects, and increased symptoms with lifting and carrying activity and recommended work restrictions.

By decision dated April 25, 2017, OWCP denied modification.

On September 6, 2017 appellant, through counsel, filed a timely appeal to the Board of OWCP's April 25, 2017 decision. By decision dated November 8, 2018, the Board set aside OWCP's April 25, 2017 decision and remanded the case to OWCP for further development, including a second opinion evaluation with an appropriate Board-certified specialist for examination, diagnosis, and a rationalized opinion as to whether appellant sustained an employment-related occupational disease.

On January 31, 2019 OWCP referred appellant for a second opinion examination with Dr. Frank Corrigan, a Board-certified orthopedic hand surgeon. It provided him with the case record, a current statement of accepted facts (SOAF), and a series of questions. The SOAF noted that an EMG/NCV study had been performed on October 10, 2012.

In a February 21, 2019 report, Dr. Corrigan reviewed the medical record, including the December 7, 2016 EMG/NCV study. On physical examination of appellant's left wrist and thumb he observed, *inter alia*, that a Finkelstein's test for de Quervain's tenosynovitis was negative, and that appellant had full thumb strength on flexion and extension. On physical examination of the right wrist Dr. Corrigan observed that a Finkelstein's test for de Quervain's tenosynovitis was negative. He noted that this diagnostic testing supported bilateral CTS, bilateral cubital tunnel syndrome, and moderate right posterior interosseous nerve compression at the radial tunnel, but that there was no evidence on that day's examination of cubital tunnel syndrome or nerve compression at the radial tunnel. Dr. Corrigan explained that the portion of the December 7, 2016 EMG/NCV study demonstrating bilateral cubital tunnel syndrome and nerve compression at the radial tunnel was an incidental finding, as "false/negatives do occur with electrodiagnostic testing," and that the examination on February 21, 2019 did not demonstrate these conditions. He noted that appellant had been treated for right de Quervain's tenosynovitis and that the treatment led to complete resolution of her symptoms, as the examination on February 21, 2019 did not demonstrate any evidence of this condition. Similarly, Dr. Corrigan noted that appellant had been treated for left trigger thumb and that symptoms had resolved. He opined that the conditions of right de Quervain's tenosynovitis and left trigger thumb were causally related to her work-related activities, maximally medically improved, and did not require any further treatment. Dr. Corrigan further opined that appellant had work-related bilateral CTS with residuals.

By decision dated April 8, 2019, OWCP accepted appellant's claim for bilateral CTS, de Quervain's tenosynovitis, resolved as of March 26, 2019, and left trigger thumb, resolved as of March 26, 2019. The initial acceptance letter did not include appeal rights.

In a report dated May 9, 2019, Dr. Fried diagnosed right radial neuropathy, bilateral median neuropathy, right neurogenic cervical radiculopathy/brachial plexopathy with long thoracic neuritis, work-related bilateral CTS, bilateral flexor tenosynovitis, and right lateral epicondylitis. On examination of the bilateral upper extremities he observed positive Tinel's signs bilaterally, bilateral radial tunnel tenderness, and positive Roos and Hunter tests with appropriate arm radiation bilaterally. Dr. Fried noted that appellant was currently off work due to the documented injuries. He recommended neuromusculoskeletal ultrasound testing.

By decision dated May 23, 2019, OWCP issued a superseding decision which accepted the same conditions as those noted in the April 8, 2019 decision, but included appeal rights.

On May 30, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a report dated June 4, 2019, Dr. Fried diagnosed right radial neuropathy, bilateral median neuropathy, right neurogenic cervical radiculopathy/brachial plexopathy with long thoracic neuritis, work-related bilateral CTS, bilateral flexor tenosynovitis, and right lateral epicondylitis. On examination of the bilateral upper extremities he observed positive Phalen's testing, positive Tinel's signs bilaterally, positive compression testing of the radial nerve of the bilateral elbows, and positive Roos and Hunter tests with appropriate arm radiation bilaterally.

Dr. Fried recommended that she remain off work and undergo neuromusculoskeletal ultrasound testing, as well as further EMG/NCV testing. On June 20, 2019 he observed positive bilateral Phalen's, Roos, Tinel's, and compression testing of the upper extremities. Dr. Fried rendered the same diagnoses as on June 4, 2019.

A July 10, 2019 EMG/NCV study demonstrated continued bilateral median nerve impairments, significant on the right and moderate on the left. It also demonstrated continued bilateral ulnar nerve impairments across elbow levels, significant on the right and severe on the left.

An oral hearing was held on August 20, 2019. Counsel argued that Dr. Corrigan's February 21, 2019 report could not carry the weight of the medical evidence because it was based on an incomplete SOAF that omitted the EMG/NCV testing of December 7, 2016. He further argued that a conflict of medical opinion evidence existed because Dr. Fried had indicated that appellant remained significantly symptomatic. The hearing representative held the case record open for submission of additional evidence for at least 30 days.

In a report dated September 16, 2019, Dr. Fried noted that appellant's symptoms continued at a severe level and that her fingers were so numb that she could not maintain a grip. Appellant's fingers locked and triggered and the hands cramped painfully. On physical examination of the upper extremities Dr. Fried observed positive bilateral Phalen's, Roos, Tinel's, and compression testing of the upper extremities. He rendered the same diagnoses as on June 20, 2019.

By decision dated September 23, 2019, the hearing representative affirmed OWCP's May 23, 2019 decision, finding that the medical evidence of record established that appellant's accepted radial styloid tenosynovitis (de Quervain's) and left trigger thumb had resolved.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty. Once OWCP accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits.[5] After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[6] The fact that OWCP accepted an employee's claim for a specified period of disability does not shift the burden of proof to the employee. The burden of proof is on OWCP to demonstrate an absence of employment-related disability or residual in the period subsequent to the date of termination or modification.[7]

Under OWCP procedures, if a case is accepted as resolved, but continued as an open case, OWCP must address the medical evidence upon which it determines the condition has resolved

[5] *M.M.*, Docket No. 17-1264 (issued December 3, 2018).

[6] *E.B.*, Docket No. 18-1060 (issued November 1, 2018).

[7] *See R.H.*, Docket No. 12-1085 (issued April 9, 2013); *Elsie L. Price*, 54 ECAB 734 739 (2003); *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

and provide appellant appeal rights.[8] Where multiple conditions have been accepted, the medical evidence may support that one or more condition has resolved while residuals are ongoing for remaining accepted conditions. Such cases should be open for benefits related to the ongoing accepted conditions while finding no further entitlement for those conditions which have resolved.[9]

ANALYSIS

The Board finds that OWCP properly determined that appellant's radial styloid tenosynovitis (de Quervain's) and left trigger thumb had resolved as of March 26, 2019.

On February 21, 2019 Dr. Corrigan noted that appellant had been treated for right de Quervain's tenosynovitis and that the treatment led to complete resolution of her symptoms, as the examination on February 21, 2019 did not demonstrate any evidence of this condition. Similarly, he noted that appellant had been treated for left trigger thumb and that symptoms had resolved. Dr. Corrigan opined that the conditions of right de Quervain's tenosynovitis and left trigger thumb were causally related to her work-related activities, had reached maximum medical improvement, and did not require any further treatment. He further opined that appellant had work-related bilateral CTS with residuals.

The Board finds that OWCP properly relied upon Dr. Corrigan's opinion that appellant's right de Quervain's tenosynovitis and left trigger thumb were causally related to her work-related activities and had resolved.[10] Dr. Corrigan's opinion was sufficiently rationalized and based on physical examination as well as review of the medical records.

While Dr. Ragland initially diagnosed appellant's de Quervain's tenosynovitis and left trigger thumb conditions, his reports predate Dr. Corrigan's February 21, 2019 finding that appellant's work-related right de Quervain's tenosynovitis and left trigger thumb had resolved. In a series of reports dating from November 29, 2016 through September 16, 2019, Dr. Fried did not specifically address appellant's right de Quervain's tenosynovitis and left trigger thumb. Therefore, these reports are insufficient to overcome the weight accorded to Dr. Corrigan.

As such, OWCP met its burden of proof to establish that, while appellant's right de Quervain's tenosynovitis and left trigger thumb were work related, they had resolved as of March 26, 2019.

Accordingly, the Board finds that OWCP met its burden of proof to establish that appellant's accepted radial styloid tenosynovitis (de Quervain's) and left trigger thumb had resolved as of March 26, 2019.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[8] *See R.H., id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Acceptance, Resolved Conditions*, Chapter 2.806(5) (June 2011).

[9] *Id.*

[10] *See M.L.*, Docket No. 13-0442 (issued September 3, 2013).

CONCLUSION

The Board finds that OWCP properly determined that appellant's radial styloid tenosynovitis (de Quervain's) and left trigger thumb had resolved as of March 26, 2019.

ORDER

IT IS HEREBY ORDERED THAT the September 23, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board