U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA L. HUGHES and U.S. POSTAL SERVICE, POST OFFICE, Chicago, Ill.

Docket No. 95-3002; Submitted on the Record;
Issued January 13, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether appellant had disability after September 15, 1989 due to her employment injuries, a left wrist strain and ganglion on her left wrist.

The Board has reviewed the case record in the present appeal and finds that appellant did not have disability after September 15, 1989 due to her employment injuries, a left wrist strain and ganglion on her left wrist.

This is the second appeal in the present case. In the prior appeal, the Board issued a decision and order[1] on April 15, 1991 in which it affirmed the September 15 and December 28, 1989, April 4 and August 9, 1990 decisions of the Office of Workers' Compensation Programs on the grounds that the Office met its burden of proof to terminate appellant's compensation effective September 15, 1989 because she no longer had disability due to her employment injuries after that date. The Board found that the Office properly relied on the opinion of Dr. Michael R. Treister, a Board-certified orthopedic surgeon who served as an impartial medical examiner. The facts and circumstances of the case up to that point are set forth in the Board's prior decision and are incorporated herein by reference.

Under the Federal Employees' Compensation Act,[2] when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.[3] However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.[4] Once the Office has accepted a claim, it has the burden of justifying termination or

---

[1] Docket No. 90-1696.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

[4] *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

modification of compensation benefits.[5] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[6] After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant 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.[7]

The Board notes that the Office met its burden of proof to terminate appellant's compensation effective September 15, 1989 by determining that the weight of the medical evidence rested with the well-rationalized opinion of the impartial medical examiner, Dr. Treister.[8] After the Board's April 15, 1991 decision, appellant submitted additional medical evidence which she felt showed that she was entitled to compensation after September 15, 1989 due to residuals of her employment injuries. By decision dated April 3, 1992, the Office denied appellant's claim for compensation after September 15, 1989 and, by decisions dated August 10, 1992, August 31, 1993, June 10, 1994, March 3 and June 17, 1995, it denied modification of its April 3, 1992 decision.

Given that the Board has found that the Office properly relied on the opinion of the impartial medical examiner, Dr. Treister, in terminating appellant's compensation effective September 15, 1989, the burden shifted to appellant to establish that she was entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had residuals of her employment injury after September 15, 1989.

Appellant submitted a February 10, 1992 report in which Dr. Orhan Kaymakcalan, an attending Board-certified surgeon, diagnosed bilateral carpal tunnel syndrome and stated:

> "Carpal tunnel syndrome is usually the result of repetitive use of the hands and the wrists. Patient gives history that while at work she has been doing repetitive use of her hands and wrists. If it is so her symptoms arose from the work she had been doing."

---

[5] *Charles E. Minniss,* 40 ECAB 708, 716 (1989); *Vivien L. Minor,* 37 ECAB 541, 546 (1986).

[6] *Id.*

[7] *Wentworth M. Murray,* 7 ECAB 570, 572 (1955).

[8] 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 U.S.C. 8123(a). 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. *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain a clear opinion that appellant's employment injuries, a left wrist strain and ganglion on her left wrist, caused disability after September 15, 1989.[9] The Office has not accepted that appellant sustained employment-related carpal tunnel syndrome and the medical evidence does not otherwise contain medical evidence supporting such a finding. Dr. Kaymakcalan did not describe the history of appellant's accepted employment injuries or provide medical rational explaining the medical process through which they could have caused disability after September 15, 1989. Dr. Kaymakcalan's opinion is of limited probative value for the further reason that it is equivocal and speculative in nature.[10] He premised his opinion on causal relationship on an assessment of whether appellant engaged in repetitive wrist movement at work; the record reveals that since 1984 appellant worked in a light-duty position which did not require repetitive wrist movement.

Appellant also submitted reports, dated August 16 and October 25, 1994, in which Dr. Sidney J. Blair, an attending Board-certified orthopedic surgeon, noted that she had bilateral tenosynovitis. Dr. Blair indicated that appellant's "symptoms of swelling and pain in her upper extremities" were due to the "repetition and the activities she engaged in." In a report dated March 7, 1995, Dr. Blair indicated that appellant had engaged in repetitive wrist movement at work between 1974 and 1984, diagnosed bilateral tenosynovitis, and stated:

> "It is my opinion that in many patients, including [appellant], these symptoms have become permanent and they continue to have these symptoms with use of their hands. I feel that the condition is permanent and that it will exacerbate with excessive use of her hands."

These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain a clear opinion that appellant's employment injuries caused disability after September 15, 1989. The Office has not accepted that appellant sustained employment-related tenosynovitis and the medical evidence does not otherwise contain medical evidence supporting such a finding. Dr. Blair did not explain how appellant could have continued to have tenosynovitis more than a decade after she last engaged in repetitive wrist movement at work. He did not describe the history of appellant's accepted employment injuries or provide medical rational explaining how they could have caused disability after September 15, 1989. Appellant submitted other medical evidence but none of this evidence contained a rationalized medical opinion indicating that she had employment-related disability after September 15, 1989.

The decisions of the Office of Workers' Compensation Programs dated June 17 and March 3, 1995 are affirmed.

---

[9] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[10] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship).

Dated, Washington, D.C.
January 13, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member