U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE L. HOWARD and DEPARTMENT OF THE ARMY, RESERVE PERSONNEL CENTER, St. Louis, MO

Docket No. 97-2590; Submitted on the Record; Issued December 15, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM, BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she was disabled for light-duty work as of December 10, 1996 due to her accepted November 21, 1989 carpal tunnel condition.

On June 27, 1991 appellant, a 44-year-old clerk typist, filed a claim alleging that she had sustained a bilateral carpal tunnel syndrome due to factors of her employment. On August 26, 1991 the employing establishment placed appellant on light duty, effective May 13, 1991.[1] The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome and authorized release surgeries. The surgeries were performed by Dr. S.V. Glogovac, a Board-certified orthopedic surgeon, on September 19 and December 8, 1995. Appellant was placed on the periodic rolls, for which she received appropriate compensation.

In a report dated February 2, 1996, Dr. Glogovac stated that based on his examination of appellant's left hand, which took place on the date of his report, he believed it was probably best if appellant underwent release surgery on the trigger fingers of her left hand before considering a return to work. He stated that otherwise, she would return to light work for a short interval and then have surgery anyway.

In order to determine the nature of appellant's current condition, the Office scheduled a second opinion examination with Dr. Richard E. Crandall, a Board-certified plastic surgeon, for February 12, 1996. In a report issued that date, he stated that appellant complained of trigger finger pain in the mornings, but advised that this was not an indication for surgery, which was not worth the risk. Dr. Crandall stated that appellant needed to return to work and start using her hands. He opined that appellant was capable

[1] This light-duty assignment, which actually took effect on June 20, 1991, relieved appellant of her typing duties.

of working without restrictions and that he did not believe her assertion that she was unable to write. Dr. Crandall further opined that, based on his physical findings, appellant was exaggerating her symptoms.

To resolve the conflict in the medical evidence between the opinions of Drs. Glogovac and Crandall, the Office scheduled appellant for an impartial medical examination with Dr. Richard Coin, a Board-certified surgeon and a specialist in orthopedic hand surgery, on March 14, 1996. After reviewing the statement of accepted facts, appellant's medical records and making findings on examination, he concluded in a May 12, 1996 report that there was evidence of clinical left thumb and left index finger triggering by history only, as this was not indicated by his clinical examination. Dr. Crandall recommended that appellant be treated with additional cortisone injections as opposed to surgery, which he believed should be undertaken only if the cortisone treatment failed. Dr. Coin opined that appellant's trigger condition was related to her job as a clerk-typist, which he felt appellant would have difficulty performing based on her history. He stated, however, that he did not detect any objective physical condition which would disable her from typing, although he stated that, based on her clinical history of difficulty, he would place her on a limited period of light duty. Dr. Coin further stated:

> "I would assign [appellant] to perform nontyping activities at first for the majority of her day perhaps initially 75 [percent] and to allow her to perform typing over a period of initially 10 to 20 [percent] of the day and to determine if she is having clinical difficulty with this. [Appellant] would probably have difficulty performing heavy lifting, perhaps over weights of 5 pounds and I would base my response on liberalizing her activity with typing based on the response on her limited-assignment duty. If [appellant] is able to tolerate this, I would gradually increase [her] typing or hand manipulative duties in response to her success in performing typing."

In a supplemental opinion dated June 13, 1996, Dr. Coin stated that appellant should be restricted from typing 75 percent of the day for 2 weeks, with her restrictions decreasing to her being limited to typing 50 percent of the day for 2 weeks and then restricted from nontyping activities 25 percent of the day for 2 weeks. At that point, appellant could be released to regular duties.

By letter dated July 31, 1996, the employing establishment referred appellant's case file to a vocational rehabilitation counselor. By letter dated September 26, 1996, the vocational counselor advised Dr. Coin that she had completed a job analysis and located a suitable job, automation clerk, which she considered to be within appellant's work tolerance limitations. The vocational counselor stated that the position required an individual to obtain and review an assignment, complete simple keyboarding entries of approximately 25 to 50 strokes, insert a form into a printer and compile and clip the completed paper work. She also stated that the employer had advised that the job was not a full-time transcriptionist position. The vocational counselor attached a job analysis

form, requesting that Dr. Coin review it and indicate whether he approved the recommended position as being within appellant's capabilities.

In a report dated October 9, 1996, Dr. Coin stated that the job appeared to fall within the range of appellant's restrictions, although he noted that the vocational report did not mention how many times per hour appellant would be required to perform the various tasks. He suggested that the employing establishment place appellant in such a position and arrange to have supervisory personnel oversee her and observe how she handled it. Dr. Coin stated, "if [appellant] complained of the inability to do this based on her previous injury then she could be assessed medically for potential revision of this. In summary I feel this would be appropriate to try on a trial basis. If it is tolerated by [appellant] without significant objective evidence of problems than I would continue that assignment."

By letter dated November 14, 1996, the employing establishment offered appellant light-duty work as an office automation clerk, for 40 hours per week, to commence on December 2, 1996. The employing establishment stated that the job was within her work tolerance limitations, as indicated in Dr. Coin's June 13 and October 9, 1996 reports.

In a report dated November 26, 1996, Dr. Glogovac released appellant to return to work on limited duty, with restrictions of no typing, no lifting over five pounds and no repetitive motion activities.

In a memorandum dated November 26, 1996, the Office indicated that appellant had accepted the suitable job offer. Appellant reported for work at the light-duty position as scheduled on December 2, 1996, but quit working on December 10, 1996. On December 10, 1996 appellant filed a Form CA-2 claim for benefits, seeking benefits as of December 10, 1996 and continuing. She alleged that she attempted to return to work on December 2, 1996, but was forced to quit because the job required her to type.

In a report dated December 10, 1996, Dr. Glogovac stated that he had seen appellant on December 10, 1996, at which time appellant had returned to work, but that she had again developed notable problems. He found on examination that appellant had severe tenderness and swelling in the area of the A1 pulley involving the left index, long, ring and small fingers, in addition to the right index finger and both thumbs. Dr. Glogovac stated that this was indicative of multiple areas of tenosynovitis. He reiterated that his recommendations remained as before and that surgical releases of the A1 area and of her digits would probably be beneficial. On December 10, 1996 Dr. Glogovac also completed a disability slip indicating that appellant was unable to work due to severe bilateral tenosynovitis.

Appellant also submitted a handwritten statement, dated December 10, 1996, in which she asserted that she attempted to perform the light-duty position but that when she began to type on December 5, 1996, she began to experience intense pain in her hands after approximately 30 minutes. She told her supervisor that she had already received several injections to reduce the pain in her thumb and hand joints, but that Dr. Glogovac

had informed her that only surgery would successfully alleviate the pain. Appellant also stated that, over the weekend of December 7 through 8, 1996 her hand joints became swollen and painful.

In response to an Office request that appellant provide a detailed description of the work-related activities she believed contributed to her condition, appellant submitted another statement dated January 10, 1997. In her January 10, 1997 statement, appellant stated that she returned to work on December 2, 1996 in the "same position as before," even though she was to be placed in a different position within her physician's restrictions. Appellant stated that she was required to type four hours a day on December 5 and 6, 1996.

In a decision dated February 24, 1997, the Office denied appellant additional compensation, finding that the medical evidence of record indicated she was able to perform the suitable job located by the employing establishment and that therefore, she was not disabled for work. The Office stated that Dr. Glogovac failed to provide a detailed history, made no reference to the limited amount of repetitive work performed by appellant from December 2 through 10, 1996 and failed to provide a medical rationale discussing the relationship between appellant's condition on December 10, 1996 and the November 21, 1989 work injury. The Office further stated that Dr. Glogovac failed to provide an explanation for his opinion that appellant was totally disabled. The Office concluded that appellant failed to provide evidence sufficient to establish that the claimed recurrence was causally related to her November 21, 1989 employment injury.

The Board finds that the case is not in posture for decision.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[2]

In the present case, appellant has asserted that following her return to work on December 2, 1996 there was a change in the nature and extent of the light-duty job requirements and that there was a change in the nature of her injury-related condition.

Regarding the change in the nature of the light-duty requirements, the employing establishment was to provide appellant a position within Dr. Coin's restrictions. Dr. Coin had stated that appellant should be assigned nontyping activities for at least 75 percent of her workday, during her first two weeks of return to work. Appellant has asserted she was required to type up to four hours a day, or 50 percent of the workday on December 5

[2] *Terry R. Hedman,* 38 ECAB 222 (1986).

and 6, 1996, during her first week back at work. Moreover, Dr. Coin had qualified his acceptance of the automation clerk position by recommending that the employing establishment return her to the light-duty job only on a trial basis and arrange to have supervisory personnel monitor her ability to perform her assigned duties. He had stated that if appellant tolerated the job duties without "significant objective evidence of problems," he would have her continue the assignment; however, he also advised that in the event appellant complained of an inability to perform the light-duty job based on her previous injury, she might have to be medically reevaluated for a potential revision of her work tolerance limitations. This evidence, which indicates that the requirements of the light-duty job may have exceeded her work tolerance limitations, is unrefuted. Based on this unrefuted information, the Office should have developed the record and determined the precise light-duty job requirements of appellant and whether they exceeded her work limitations as outlined by Dr. Coin.[3] Only by developing this information could the Office determine the actual light-duty job requirements and whether they were in accordance with appellant's medical restrictions.

Regarding the change in the nature and extent of the injury-related condition, appellant asserted that she attempted to perform the light-duty position but began to experience intense pain in her hands after typing on December 5, 1996 and that her hand joints became swollen and painful on the weekend following her return to work. Dr. Glogovac did find severe tenderness and swelling of both appellant's hands upon his examination on December 10, 1996, which he stated was indicative of tenosynovitis and which he opined disabled appellant from work. While Dr. Glogovac's reports are generally supportive of appellant's claim, they are not sufficiently well rationalized to establish a recurrence of total disability.

On remand, the Office should determine whether a change occurred in the nature and extent of the light-job requirements, rendering appellant unable to perform the job and entitling her to continuing compensation for total disability. The Office should require the employing establishment to address the light-duty-job of automation clerk, as described by the vocational counselor and determine whether the duties exceeded appellant's work tolerance limitations, as described by Dr. Coin. The Office shall thereafter further develop the medical evidence as necessary to determine whether appellant sustained a recurrence of total disability on December 10, 1996.

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[3] *See Cloteal Thomas,* 41 ECAB 310 (1989); *see also Carl W. Putzier,* 37 ECAB 691 (1986). (The Board found that appellant had not refused suitable work where he submitted affidavits, disputed by the employing establishment, that his actual job duties exceeded those described in the job offer).

The February 24, 1997 decision of the Office of Workers' Compensation Programs' is hereby set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
December 15, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate