

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA E. VEGA-ROGERS and U.S. POSTAL SERVICE,
SOUTHERN MARYLAND DIVISION, Capitol Heights, Md.

*Docket No. 97-114; Submitted on the Record;
Issued June 22, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of total disability on or after June 23, 1995 causally related to her February 3, 1992 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a recurrence of total disability on or after June 23, 1995 causally related to her February 3, 1992 employment injury.

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 either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹ In the instant case, appellant has failed to establish either a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition.

On March 14, 1992 appellant, then a 28-year-old mark-up clerk, filed an occupational disease claim alleging that she sustained an injury to her right hand which she attributed to factors of her employment. She indicated that she became aware of this condition on February 3, 1992. On February 6, 1992 appellant filed a claim for an injury to her left wrist. The Office of Workers' Compensation Programs has accepted that appellant sustained bilateral carpal tunnel syndrome and trigger finger of the right thumb and left ring finger in the performance of duty. She was assigned to a limited-duty position commencing on February 6, 1992 labeling mail for patrons who had a change of address.

¹ See Cynthia M. Judd, 42 ECAB 246, 250 (1990); Stuart K. Stanton, 40 ECAB 859, 864 (1989).

On June 27, 1995 appellant filed a claim for continuing compensation on account of disability, claiming lost wages for the period June 23 through August 20, 1995.

By decision dated November 1, 1995, the Office denied appellant's claim on the grounds that the evidence of record failed to establish causal relationship between her employment injury occurring on February 3, 1992 and her claimed disability or medical condition subsequent to June 23, 1995.

By letter dated November 18, 1995, appellant requested an oral hearing before an Office hearing representative.

On April 2, 1996 a hearing held before an Office hearing representative at which time appellant testified. She alleged at the oral hearing that the employing establishment had not honored her work restrictions, but she did not provide documentation in support of this allegation.

By decision dated June 14, 1996, an Office hearing representative affirmed the Office's November 1, 1995 decision.

In a report dated September 13, 1994, Dr. Neill S. Cooper, appellant's attending Board-certified orthopedic surgeon, related that appellant had been diagnosed with carpal tunnel syndrome of the right hand in February 1993. He recommended permanent light duty and advised appellant to wear a wrist brace and consider surgery.

In a duty status report dated September 13, 1994, Dr. Cooper provided a list of work restrictions which included use of a computer keyboard limited to one-half hour a day with a five-minute rest each half hour; no more than two hours of writing tasks with a rest each ten minutes; lifting of up to ten pounds limited to two hours a day; bending, stooping, twisting, pulling/pushing, and simple grasping limited to two hours a day, fine manipulation and reaching above the shoulder limited to four hours a day, and no lifting over ten pounds.

In a report dated June 20, 1995, Dr. Cooper diagnosed bilateral carpal tunnel syndrome and indicated that appellant was totally disabled from June 20 through August 20, 1995. In written notes also dated June 20, 1995, Dr. Cooper related that appellant was pregnant and expected to deliver her baby on July 28, 1995. He provided findings on examination and diagnosed carpal tunnel syndrome, "right much more so than the left, aggravated by pregnancy but basically caused by her work as a[n] [employing establishment] clerk this last several years." Dr. Cooper related that appellant had experienced considerable difficulty working and "has not been able to do significant enough light duty to resolve the pain and discomfort." However, this report is not sufficient to establish that appellant sustained an employment-related recurrence of total disability as Dr. Cooper provided insufficient medical rationale explaining whether a change in the nature or extent of appellant's employment injury caused her to be totally disabled commencing on June 20, 1995. Although he stated that appellant "had not been able to do significant enough light duty," to resolve her pain, there is insufficient evidence of record that there had been any change in appellant's light-duty requirements such that she was unable to perform that job.

In notes dated July 25, 1995, Dr. Cooper provided findings on examination and diagnosed right carpal tunnel syndrome, and trigger finger of the right thumb and left ring finger which he stated were work-related conditions. Dr. Cooper stated that appellant would be out of work for at least three more months “since it is expected that she will be delivering within the month.” As Dr. Cooper indicated that appellant would be off work for three months due to childbirth, rather than due to her employment injury, this report does not establish that appellant had an employment-related recurrence of total disability commencing in June 1995.

In a disability certificate dated July 25, 1995, Dr. Cooper diagnosed carpal tunnel syndrome and trigger finger of the left ring finger and right thumb and stated that appellant was totally disabled through November 20, 1995. However, he provided no medical rationale explaining how this disability was caused by a change in the nature or extent of appellant’s employment injury and therefore this report is not sufficient to discharge appellant’s burden of proof.

In a report dated August 22, 1995, Dr. Cooper related that appellant had delivered her child² but still had bilateral carpal tunnel, trigger finger of the left ring finger and tenosynovitis of the right thumb. He indicated that appellant would be out of work until November 20, 1995. However, this report is not sufficient to establish that appellant sustained an employment-related recurrence of total disability as Dr. Cooper did not explain how this period of disability was related to appellant’s employment injury rather than due to her recent childbirth.

In a report dated October 9, 1995, Dr. Cooper diagnosed right and left carpal tunnel syndrome, tenosynovitis of the right thumb, and trigger finger of a left finger and indicated that appellant was totally disabled from June 20 through November 20, 1995. He indicated that these conditions were causally related to appellant’s employment injury. However, he provided insufficient medical rationale explaining how this period of disability was related to appellant’s February 1992 employment injury. Furthermore, he had indicated in his July 25, 1995 report that appellant would be out of work for three months due to her childbirth in August 1995. As Dr. Cooper did not provide a rationalized medical opinion as to how the disability was causally related to a change in the nature or extent of appellant’s employment injury or a change in her light-duty position rather than her pregnancy this report is not sufficient to establish an employment-related recurrence of total disability.

In a report dated November 20, 1995, Dr. Cooper related that he had diagnosed right carpal tunnel syndrome in September 1994 but appellant was reluctant to undergo surgery and that in April 1995 she was pregnant and surgery had to be postponed until after her pregnancy. He stated that in June 1995 appellant was having enough discomfort in her wrist that she felt she should not continue to work and, as a consequence, “we felt that she should stop work for at least

² The record shows that appellant delivered her baby on August 6, 1995.

two months and probably longer if the surgical procedure was carried out at the end of her pregnancy.” Dr. Cooper stated:

“I believe, and it should be stated firmly, that even though the condition of pregnancy produces a retention of water and is a recognized cause of carpal tunnel syndrome, that [appellant] indeed continued to work through her pregnancy almost to term prior to requesting that she be relieved of her duties. It is my feeling that [appellant] has been aggravating her carpal tunnel syndrome with the work that she has been doing, albeit light duty, every since the diagnosis apparently was established as beginning in 1992. I believe that the pregnancy situation could be used as a reason for some aggravation of the situation as I previously stated, but I believe that in [appellant’s] case about 20 [percent] of her disability is the most that I think could be attributed to her pregnancy. I do not believe that there is any question but that her being in and out of work status should be treated as a compensable injury due to carpal tunnel syndrome and due to repetitive work situation in her work at the [employing establishment].”

However, in notes dated July 25, 1995, Dr. Cooper had stated that appellant would be out of work for at least three months due to the delivery of her child, and not due to her employment injury. In subsequent reports, including his November 20, 1995 report, he failed to provide a well-rationalized medical opinion explaining how appellant’s claimed period of disability, which coincided with the latter part of her pregnancy and her delivery, was due to a change in the nature or extent of her employment injury, rather than to her pregnancy. Furthermore, although he indicated that appellant’s light-duty assignment was contributing to her problem, he did not identify any specific change in the nature or extent of appellant’s light-duty job, which she began performing in 1992, such that she was unable to perform that position commencing in June 1995. Therefore, his reports are not sufficient to discharge appellant’s burden of proof to establish that she sustained a recurrence of total disability due to a change in the nature or extent of her employment injury or a change in her light-duty position.

Regarding a change in the nature or extent of appellant’s light-duty requirements, she alleged at the oral hearing that the employing establishment had not honored her work restrictions, but she did not provide any documentation in support of this allegation. Therefore, there is insufficient evidence to establish that she sustained a recurrence of total disability due to a change in the nature or extent of her light-duty requirements.

As the evidence of record does not establish a change in the nature or extent of appellant’s employment injury such that she was totally disabled and as the record also does not establish that there was a change in appellant’s light-duty assignment such that she was rendered totally disabled, the Office properly denied her claim for a recurrence of total disability.

The June 14, 1996 and November 1, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
June 22, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member