

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNICE M. CURRY and U.S. POSTAL SERVICE,
POST OFFICE, Sicklerville, N.J.

*Docket No. 97-2350; Submitted on the Record;
Issued May 21, 1999*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that she sustained recurrences of disability on July 22 and August 2, 1995, causally related to her July 1991 employment-related injury.

On August 13, 1991 appellant, then a 44-year-old window clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she suffered from bilateral tarsal tunnel syndrome and plantar faciitis as a result of her employment. She indicated that she first became aware of her disease in May 1990 and she attributed this condition to repetitive movements while standing at work for eight hours a day. Appellant ceased working on July 9, 1991 and returned to light-duty status on September 9, 1991. By letter dated October 17, 1991, the Office of Workers' Compensation Programs accepted appellant's claim for aggravation of bilateral tarsal tunnel syndrome.

On December 12, 1991 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she sustained a recurrence of disability on September 16, 1991 causally related to her injury of July 1991. She ceased working on September 16, 1991 and returned to light-duty status on January 21, 1992.¹ By letter dated March 13, 1992, the Office awarded compensation for loss wages for the period of December 26, 1991 through January 20, 1992.²

Appellant subsequently filed another notice of recurrence of disability alleging that she sustained recurrences of disability on July 22 and August 2, 1995. She continued to work during

¹ On March 27, 1992 Dr. Howard P. Richman, a podiatrist, completed a duty status report (Form CA-17) in which he noted that appellant may not stand or walk on concrete floors for any length of time due to both pain and swelling of her feet and bilateral structural deformities. Dr. Richman advised that appellant could work an eight-hour day, five days a week, but she should be limited to four hours standing and four hours sitting, intermittently.

² The Office also advised appellant of her option to repurchase the leave she utilized between July 9, 1991 and December 24, 1991.

the period of July 22 through August 2, 1995, however, she ceased working on August 3, 1995 and subsequently retired from her position with the employing establishment. In support of her claim, appellant submitted an August 8, 1995 report from her podiatrist, Dr. Robert Hilbronner, in which he advised that appellant should be considered totally disabled as of August 3, 1995 due to her employment-related bilateral tarsal tunnel syndrome and plantar faciitis. Dr. Hilbronner also provided numerous attending physician's reports (Forms CA-20 and CA-20a) in which he repeatedly indicated that appellant was totally disabled as of August 1995 due to her employment-related bilateral foot condition. Additionally, appellant submitted the results of a July 12, 1995 electromyography study and various bridging medical evidence covering the period of March 1992 through June 1995. The employing establishment submitted an October 26, 1995 report from Frank A. Mattei, M.D., a Board-certified orthopedic surgeon. Dr. Mattei reviewed certain medical records and examined appellant on October 25, 1995. Based on the information available to him, Dr. Mattei diagnosed, *inter alia*, degenerative changes of the feet. He described appellant's foot condition as a mild pes cavus which becomes pronated, causing a valgus of the calcaneus bone resulting in an imposition of the feet. Dr. Mattei further noted that there was no true evidence of tarsal tunnel syndrome, but more of a strain of the ligamentous structures and the tendon attachments to the navicular bone of the feet. In addressing the specific cause of appellant's condition, he explained that appellant's "constitutional make-up" caused the deformities and degenerative changes of her feet and ankle joints. Dr. Mattei concluded that appellant was not totally disabled and that she could perform her employment duties with proper shoes to support her feet. He further recommended that appellant be placed on a weight reduction program in order to lessen the burden on her feet.

By decision dated November 16, 1995, the Office denied appellant's claim for compensation. In an accompanying memorandum, the Office explained that the medical evidence failed to indicate how appellant's current condition was causally related to the previously accepted condition of aggravation of bilateral tarsal tunnel syndrome. The Office further noted that the evidence instead demonstrated that appellant suffered from a developmental abnormality which was degenerative in nature.

Appellant subsequently requested an oral hearing before the Office, which was conducted on June 19, 1996.³ At the hearing, appellant testified regarding the physical requirements of her light-duty assignment. She explained that while her prior position as a window clerk required her to constantly stand and pivot back and forth during an eight-hour shift her light-duty assignment required her to perform several different tasks, which entailed a combination of sitting, standing and walking. Appellant further explained that despite the change of assignment, she continued to work primarily on her feet. She also testified that while the employing establishment did its best to accommodate her, there were no strictly sedentary positions available. Appellant further testified that she continued to experience pain in her feet after her retirement, but the pain was "not as bad as when [she] was working." Finally, she indicated that

³ Subsequent to the hearing, appellant's counsel submitted several items of evidence, the majority most of which was already a part of the record at the time the Office issued its November 16, 1995 denial. The only new evidence submitted consisted of a March 2, 1995 report from Dr. Hilbronner in which he stated that appellant's degenerative foot condition had progressively worsened while she continued to work. He further noted that appellant was not expected to fully or partially recover from her degenerative condition.

approximately every three months she receives treatment for her foot condition, and in her opinion the condition has not improved since she ceased working in August 1995, but has become “more stable,” particularly with respect to the degree of pain associated with standing and walking.

In a decision dated August 29, 1996 and finalized on August 30, 1996, the hearing representative affirmed the Office’s November 16, 1995 decision denying compensation. The hearing representative explained that appellant, having been returned to light-duty status, must demonstrate either a change in the nature and extent of her light-duty assignment or a change in the nature and extent of her employment-related condition such that she could no longer perform her light-duty assignment. The hearing representative concluded that appellant failed to meet this burden, and consequently, she denied benefits.

On October 11, 1996 appellant filed a request for reconsideration. In support of this request, appellant submitted an October 2, 1996 report from Dr. Hilbronner, in which he again stated that appellant should be considered totally disabled due to her foot condition. He further explained that appellant may not stand for any length of time without experiencing pain and swelling in her feet and that if she were to return to work, her work conditions would only aggravate her condition. Finally, Dr. Hilbronner stated that appellant’s bilateral tarsal tunnel syndrome and plantar faciitis were the result of her working conditions inasmuch as there was no evidence of this condition prior to her commencing work with the employing establishment.

In a merit decision dated December 19, 1996, the Office denied appellant’s request to modify the prior decision denying compensation. The Office explained that the record failed to demonstrate either a change in the nature and extent of appellant’s light-duty assignment or a change in the nature and extent of her employment-related condition. The Office further noted that Dr. Hilbronner’s October 2, 1996 report did not constitute a rationalized medical opinion.

Appellant filed a second request for reconsideration on February 4, 1997, along with a January 28, 1997 report from Dr. Hilbronner. In his most recent report, Dr. Hilbronner explained that appellant’s bilateral tarsal tunnel syndrome and plantar faciitis were a definite result of standing for eight hours on concrete floors over a long period of time. He further explained that despite years of treatment, appellant’s condition had not improved, and therefore, she is unable to perform her job duties for even four hours per day. Dr. Hilbronner concluded that appellant should be considered totally disabled. The Office again denied reconsideration in a merit decision dated April 11, 1997. In denying modification, the Office noted that Dr. Hilbronner failed to adequately explain why appellant was no longer capable of performing her light-duty assignment. Appellant subsequently filed an appeal with the Board on July 2, 1997.

The Board has duly reviewed the case record on appeal and finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on July 22 and August 2, 1995, causally related to her July 1991 employment-related 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 of

establishing 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 employment-related condition or a change in the nature and extent of the light-duty job requirements.⁴ In the instant case, appellant has failed to establish either a change in the nature or extent of her light-duty assignment or a change in the nature or extent of her accepted employment-related condition.

The record indicates that a few months after appellant returned to work in January 1992, her podiatrist at the time, Dr. Richman, informed the employing establishment that appellant could not stand or walk on concrete floors for any length of time due to both pain and swelling of her feet and bilateral structural deformities. Dr. Richman further advised that appellant could work an eight-hour day, five days a week, but she should be limited to four hours standing and four hours sitting, intermittently. As previously noted, appellant's hearing testimony indicates that whereas her prior position as a window clerk required her to constantly stand and pivot back and forth during an eight-hour shift, her light-duty assignment required her to perform several different tasks, which entailed a combination of sitting, standing and walking. Appellant also testified that despite the change of assignment, she continued to work primarily on her feet and that while the employing establishment did its best to accommodate her, there were no sedentary positions available.

Initially, it is noted that Dr. Richman did not indicate that appellant's foot condition required that she be provided a sedentary position. Dr. Richman's March 27, 1992 duty status report clearly indicates that appellant was capable of working an eight-hour day, with the caveat that her time be equally divided among sitting and standing. Based on appellant's testimony, it does not appear that her light-duty assignment strictly conformed to the guidelines provided by Dr. Richman in March 1992. At the hearing, appellant did not specifically quantify the amount of time she spent on her feet in comparison to the amount of time she performed her duties in a sitting position. She did, however, testify that she continued to work primarily on her feet and that her light-duty assignment required less standing, but more walking than her previous position as a window clerk. Arguably, appellant's light-duty assignment was not entirely consistent with her podiatrist's recommendation. The fact remains, however, that appellant continued to perform her modified duties on a regular basis for a period of more than three and a half years prior to her alleged recurrence of disability in July and August 1995. Inasmuch as the record fails to indicate a change in appellant's light-duty assignment, the Office properly determined that appellant failed to demonstrate a change in the nature and extent of her light-duty assignment.

While appellant alleged that she sustained a recurrence of disability on July 22, 1995, the record indicates that she continued to work through August 2, 1995. Appellant's allegation of a recurrence of disability on July 22, 1995 is further undermined by the reports submitted by her current podiatrist, Dr. Hilbronner, who consistently indicated that appellant should be considered totally disabled as of early August 1995. Consequently, the record does not support appellant's allegation that she sustained a recurrence of disability on or about July 22, 1995.

⁴ *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

With respect to appellant's alleged recurrence of disability on August 2, 1995, the Office denied compensation due to the lack of rationalized medical opinion evidence demonstrating a change in appellant's previously accepted employment-related condition. While Dr. Hilbronner has consistently stated that appellant should be considered totally disabled as of August 1995 due to her employment-related bilateral tarsal tunnel syndrome and plantar fasciitis, his various opinions fail to adequately explain the basis for his conclusion that appellant is currently totally disabled. In a March 2, 1995 narrative report, Dr. Hilbronner indicated that appellant's condition had "gradually gotten progressively worse since she continued to work, due to her degenerative condition." He further noted that appellant was not expected to fully or partially recover from her degenerative condition. Dr. Hilbronner, however, failed to adequately explain the progression of appellant's condition. Additionally, his August 8, 1995 narrative report provides little insight regarding the basis of his conclusion that appellant should be considered totally disabled as of August 3, 1995. In this particular report, Dr. Hilbronner noted that appellant was performing light duties only at her job and that she was not expected to recover from her degenerative condition. Without explanation, he concludes that appellant has "seen a more rapid decline in her condition" and that she cannot perform her job duties effectively. In another narrative report, dated October 2, 1996, Dr. Hilbronner indicated that despite having pursued every avenue of treatment, appellant continued to experience constant pain and swelling in her feet. He attributed appellant's condition to her employment and further indicated that there was no permanent correction for her condition. Without explanation, Dr. Hilbronner concluded that appellant should be considered totally disabled. Finally, in his most recent report dated January 28, 1997, Dr. Hilbronner indicated that appellant's condition had not "improved" during her years of treatment, and therefore, she was unable to perform her job for even four hours a day. Once again, other than concluding that appellant's condition rendered her unable to perform her job duties, Dr. Hilbronner failed to adequately explain how appellant's previously accepted condition of aggravation of bilateral tarsal tunnel syndrome had changed to the extent that it currently renders her totally disabled.⁵ A physician's mere conclusion without explanation or medical reasoning does not rise to the level of rationalized medical opinion evidence.⁶ Accordingly, Dr. Hilbronner's various opinions are insufficient to satisfy appellant's burden. Inasmuch as the remainder of the record is similarly insufficient to establish that appellant sustained a recurrence of disability on August 2, 1995, causally related to her July 1991 employment-related injury,⁷ the Office properly denied compensation.

The April 11, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

⁵ In addition to the above-noted narrative reports, Dr. Hilbronner submitted numerous other medical reports on Forms CA-20 and CA-20a, all of which similarly fail to provide a detailed explanation of the basis for his conclusion that appellant should be considered totally disabled as of August 1995.

⁶ *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁷ Dr. Mattei's October 26, 1995 report does not assist appellant in meeting her burden inasmuch as he concluded that appellant was not totally disabled and that she could perform her employment duties with proper shoes to support her feet.

Dated, Washington, D.C.
May 21, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member