U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MOLLIE BROOKS and DEPARTMENT OF THE NAVY, NAVAL CRIMINAL INVESTIGATIVE SERVICES, Perth Amboy, NJ

Docket No. 00-2083; Submitted on the Record;
Issued September 18, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective June 4, 1999; and (2) whether appellant is entitled to a schedule award for her accepted condition of carpal tunnel syndrome.

On October 23, 1995 appellant, then a 49-year-old administrative assistant, filed a notice of occupational disease, claiming that the repetitive tasks of her job caused her pain in both hands and wrists. Appellant's claim was denied on February 5, 1996 since the evidence failed to establish fact of injury. Appellant, through her representative, requested an oral hearing, which was held on July 23, 1996. By decision dated September 5, 1996, the hearing representative affirmed the Office's decision.

By letter dated January 2, 1997, appellant requested reconsideration. In support of her request appellant submitted reports from Dr. J. Howard Bennett, dated December 10 and 20, 1996. In the December 10, 1996 report, Dr. Bennett diagnosed appellant with "probable post-traumatic carpal tunnel syndrome right and left wrists." In the December 20, 1996 report, he opined that the repetitious nature of appellant's work caused her problems with her upper extremities and again stated with reasonable probability, that appellant had post-traumatic carpal tunnel syndrome of right and left wrists. Appellant also submitted progress notes from Dr. Bennett and a personal statement.

By decision dated February 5, 1997, the Office denied appellant's request for modification of the prior decision.

By letter dated April 22, 1997, appellant again requested reconsideration. In support of her request, appellant submitted a report from Dr. Bennett dated March 10, 1997 and an addendum report dated April 17, 1997. In his March 10, 1997 report, Dr. Bennett recommended that appellant undergo surgery for carpal tunnel release and neurolysis median nerve. In his

April 17, 1997 report, he again opined that appellant's right and left wrist conditions were caused by her repetitious work activities.

By decision dated June 16, 1997, the Office vacated the February 5, 1997 decision and accepted appellant's claim for "bilateral carpal tunnel syndrome" and "surgical release."

On October 15, 1997, appellant filed a claim for a schedule award (Form CA-7). In support of her claim, appellant submitted a report from Dr. Ronald J. Potash, a Board-certified surgeon, dated September 17, 1997. In his report, Dr. Potash diagnosed appellant with "bilateral carpal tunnel syndrome due to chronic micro trauma, with the right being greater than the left." He also rated appellant's percentage of impairment using the American Medical Association, *Guides to the Evaluation of Permanent Impairment,*[1] and stated that she reached maximum medical improvement on August 20, 1997.

Appellant also submitted a report from Dr. Michael A. Meese, a Board-certified orthopedic surgeon, dated February 5, 1998.[2] Dr. Meese stated that he planned to perform carpal tunnel release surgery on appellant and requested that the Office update their previous approval for the surgery. By letter dated February 13, 1998, the Office authorized appellant's surgery for carpal tunnel release. However, in a letter dated March 12, 1998, appellant informed the Office she no longer wishes to proceed with the surgery. Appellant also suggested that since she no longer wished to undergo the surgery she had reached maximum medical improvement.

By letter dated November 25, 1998, the Office referred appellant to Dr. Howard Baruch, a Board-certified orthopedic surgeon, for a second opinion examination. He submitted a report dated December 3, 1998. In his examination notes, Dr. Baruch noted: "she has bilateral positive Tinel's signs and bilateral positive Phalen's signs. She has no evidence of atrophy of her fingers." He continued:

> "Based on my examination and a review of the medical file, no evidence of carpal tunnel syndrome is noted. There were no objective findings noted on this claimant's examination when seen by myself. She did complain of pain when tested with a Tinel's sign and a Phalen's sign, however, no evidence of atrophy was noted and no evidence of muscle weakness was noted."

Dr. Baruch continued:

> "The claimant does have subjective complaints of carpal tunnel syndrome but no objective findings noted with normal EMG [electromyogram] studies from the medical records provided. She does not require any further treatment and has reached maximum medical improvement from all medical modalities and can return to her regular work level with no restrictions."

[1] A.M.A., *Guides* (4th ed. 1993).

[2] Dr. Meese replaced Dr. Bennett when he retired.

By letter dated January 13, 1999, the Office referred appellant to Dr. Robert Morrison for a referee medical examination, finding that there was a conflict in medical opinion between Drs. Potash and Baruch. Dr. Morrison submitted a report dated February 8, 1999, indicating that he examined appellant on January 29, 1999 and that, at that time, appellant complained of constant pain in her whole right arm and in her left arm from her forearm to her hand. Dr. Morrison stated that appellant also had tingling in both arms. In his report, Dr. Morrison opined, in pertinent part:

> "The patient had a positive Tinel['s] sign to percussion over the median and ulnar nerves at the wrist, again more on the right than the left. There was a positive Phalen's test bilaterally which involved 'an increase in tingling of all of the fingers of both hands.' There was no evidence of triggering of any of her fingers."

Dr. Morrison concluded:

> "The patient's findings are nonconclusive. She has tenderness over her brachial plexuson the right with apparent aggravation of subjective symptoms by the performance of tests for thoracic outlet compression syndrome. She also has tenderness over her ulnar nerves at the wrist and left cubital tunnels and has tenderness over both the median and ulnar nerves at the wrist. It is possible that the patient may have a double crush syndrome, which is compression of the nerve at the neck and also at the wrist but is hard to imagine a problem going back seven years that has not left her with weakness or atrophy reflex changes other than during the subjective performance of grasp strength for her to have weakness on a physiological basis and to have normal two-point discrimination would be extremely rare."

He concluded by stating: "Because of the diffuse nature of her symptoms and findings I do not feel that she has a repetitive stress syndrome and pending the neurologist's evaluation and EMG testing, I am not sure that her symptoms are in any way job related."

Appellant was also examined by Dr. Stuart W. Fox, a Board-certified neurologist and internist. In a report dated February 22, 1999, Dr. Fox found: "Tinel's sign is negative at the ulnar grooves, Guyon's canals and carpal tunnels bilaterally. Phalen's maneuver is questionably positive on the right and negative on the left." He continued:

> "Overall, the electrical studies are normal. There is no evidence of carpal tunnel syndrome, ulnar neuropathy, thoracic outlet syndrome, right cervical radiculopathy or peripheral neuropathy."

Dr. Morrison also submitted a supplemental report dated February 26, 1999, in which he stated:

> "Neither I during my examination nor Dr. Stuart Fox, a neurologist, during his examination and performance of EMG's and nerve conduction studies, found any evidence of a repetitive stress syndrome, carpal tunnel syndrome, etc., which could be related to the patient's job. He suspects that the patient's symptomology

has an unclear etiology, but because all of her tests over a period of years have been negative and because these recent tests have been negative, an exact diagnosis of her condition cannot be made. I feel that the patient does not have a clinically significant condition attributable to work, or which would prevent her from working."

By decision dated June 4, 1999, the Office terminated appellant's compensation benefits and denied her claim for a schedule award.

By letter dated June 10, 1999, appellant requested an oral hearing, which was held on February 1, 2000.

By decision dated March 15, 2000, the hearing representative affirmed the Office's June 4, 1999 decision, finding that the weight of the medical opinion rested with Dr. Morrison and that appellant did not have any continuing residuals related to her accepted employment injury.

The Board has reviewed the entire case on appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[3] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation benefits without establishing that the disability has ceased or that it is no longer related to the employment.[4] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.[5] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.[6]

In this case, the Office based its termination of appellant's compensation benefits on the February 8, 1999 report and February 26, 1999 addendum report from the referee physician Dr. Morrison and on the February 22, 1999 report from Dr. Fox. Dr. Morrison examined appellant and addressed her complaints of pain in her whole right arm and in her left arm from her forearm to her hand. Dr. Fox also examined appellant and performed nerve conduction velocity and EMG studies. Both physicians stated that there was no evidence of carpal tunnel syndrome but were unable to make an exact diagnosis of appellant's condition. They also stated that appellant does not have a "clinically significant" condition attributable to work.

The Board finds that Drs. Morrison and Fox's conclusions regarding the issue of whether appellant suffers from any continuing residuals related to her accepted condition of carpal tunnel

[3] *Harold S. McGough*, 36 ECAB 332 (1984).

[4] *Vivien L. Minor*, 37 ECAB 541 (1986).

[5] *Marlene G. Owens*, 39 ECAB 1320 (1988).

[6] *See Calvin S. Mays*, 39 ECAB 993 (1988).

syndrome are not sufficient to meet the Office's burden of proof to terminate appellant's compensation benefits. First, while Dr. Morrison stated that, all of appellant's test results for years had been negative, he found that appellant did have a positive Tinel's sign over the median and ulnar nerves at the wrist, more on the right than the left. He also found that appellant tested positive for Phalen's test bilaterally, which involved an increased tingling sensation of all of her fingers of both hands. Dr. Morrison further stated that appellant's findings are nonconclusive, but did find that appellant had tenderness over both the median and ulnar nerves at the wrist. Lastly, he stated that, because of the diffuse nature of appellant's symptoms, he is "not sure" that her symptoms are job related. Second, Dr. Fox found that Tinel's sign was negative at the ulnar grooves, but that Phalen's maneuver was questionably positive on the right. Drs. Morrison and Fox disagreed on the Tinel's sign, but both found that appellant tested positive for Phalen's maneuver on the right. In Dr. Morrison's addendum report dated February 26, 1999, he stated that neither he nor Dr. Fox found any evidence of repetitive stress or carpal tunnel syndrome, but acknowledged that they were unable to make an exact diagnosis of appellant's condition. Dr. Morrison also stated that appellant does not have a "clinically significant" condition attributable to work. Drs. Morrison and Fox's reports are not sufficient to meet the Office's burden of proof because they do not rule out that appellant has continuing residuals related to her carpal tunnel syndrome. They conclude that appellant does not suffer from carpal tunnel syndrome itself, but do find that she tests positive for Tinel's sign at the wrists and Phalen's maneuver on the right, tests which are both closely related to carpal tunnel syndrome. Dr. Morrison did not address Dr. Meese's reports from 1998, which recommend carpal tunnel release surgery nor did he address Dr. Baruch's findings of bilaterial Tinel's and Phalen's signs. Dr. Morrison clearly states that he "is not sure" whether appellant's symptoms are job related and later states that she does not have a "clinically significant" condition attributable to work. He did not explain why medically the accepted conditions were not related to the employment. These statements finding that appellant's condition is not linked to her employment are inconclusive and speculative and thus their probative value is limited.

The Board also finds that the issue of whether appellant is entitled to a schedule award for her carpal tunnel syndrome is not in posture for decision.

Appellant's treating physician, Dr. Potash, submitted a report dated September 17, 1997, in which he provided a detailed description of appellant's work-related impairment, which included the findings of tests of range of motion, grip strength and sensory examination. Dr. Potash diagnosed appellant with bilateral carpal tunnel syndrome and related her conditions to factors of her employment. He also applied his findings to the A.M.A., *Guides*. He determined that appellant had reached maximum medical improvement on August 20, 1997.

The Federal (FECA) Procedure Manual states that, after obtaining all necessary medical evidence, appellant's file should be routed to the Office medical adviser for an opinion concerning the nature and percentage of impairment using the A.M.A., *Guides*.[7] As the Office did not forward appellant's file to the Office medical adviser to determine appellant's percentage of permanent impairment, the issue is not in posture for decision.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.080.8 (April, 1995).

The issue of termination of appellant's compensation benefits in the March 15, 2000 decision of the Office of Workers' Compensation Programs is hereby reversed and the issue of the schedule award is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
September 18, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member