

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THERESA S. ROUSSEAU and U.S. POSTAL SERVICE,  
POST OFFICE, Tampa, FL

*Docket No. 01-1873; Submitted on the Record;  
Issued July 3, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of total disability commencing February 27, 1997, causally related to her October 19, 1994 bilateral carpal tunnel syndrome.

The Office of Workers' Compensation Programs accepted that on October 19, 1994 appellant, then a 39-year-old letter sorting machine (LSM) operator, developed bilateral carpal tunnel syndrome and bilateral median nerve neuropathy, causally related to keying during her federal employment. Appellant discontinued keying at work and her condition was noted to improve, however, on February 22, 1995 she was found to be totally disabled due to persistent bilateral upper extremity numbness, pain and swelling.

On April 15, 1996 appellant's treating physician, Dr. Debra K. Roggow, an osteopathic physician Board-certified in physiatry, completed a Form CA-17 indicating that appellant could return to work eight hours per day with activity restrictions including sitting for four hours per day, standing for four hours per day, lifting no more than two pounds, minimal simple grasping, occasional reaching above shoulder level, occasional driving and no pulling, pushing, climbing or fine manipulation.

On February 6, 1997 Dr. Roggow reviewed a modified distribution clerk job offer from the employing establishment and found the job to be suitable to appellant's partially disabled condition.

Appellant accepted the limited-duty job offer and returned to work on February 24, 1997. She worked for three days but then stopped work on February 27, 1997 and on March 5, 1997 she claimed a recurrence of total disability. Appellant claimed that she sustained a recurrence "Due to the repetitive motion of processing postage due mail having to stamp each letter with proper ID [identification]/ no matter how slow paced I tried to go it still caused swelling of upper extremities," and that it manifested with "Swelling of hands, arms and shoulders. Which caused nonuse of upper extremities. Hands, fingers had no dexterity swelling and pain in both wrists." The employing establishment noted on appellant's recurrence claim form that she in no way

worked outside her work restrictions and that her work was self-paced and not what could be considered repetitive motion.

In a March 5, 1997 report, Dr. Roggow indicated that, after working three days, appellant had to call in sick as both hands, forearms and neck were significantly swollen and painful and she noted that appellant demonstrated visible inflammation with palpatory tenderness of the forearm extensor muscles and trapezius. Dr. Roggow diagnosed forearm extensor tendinitis and myofascitis aggravated by recent work activities.<sup>1</sup>

On May 15, 1997 the Office denied appellant's recurrence claim.

Appellant requested an oral hearing, but after a preliminary review by the hearing representative, in a decision dated November 26, 1997, he found that Dr. Roggow's March 5, 1997 report was sufficient to require further development of the case record.

On remand the Office referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Patrick A. Cullen, a Board-certified orthopedic surgeon, for a second opinion as to whether appellant became totally disabled beginning on February 27, 1997. On February 26, 1998 Dr. Cullen opined that appellant had no objective evidence of a medical pathology of her neck and/or upper extremities, had no limitations for work and had not been disabled beginning February 27, 1997 from performing her limited-duty position. He concluded that appellant had not sustained injury as the result of her three days of limited-duty work.

By decision dated April 8, 1998, the Office rejected appellant's recurrence claim finding that the medical evidence failed to establish that she was disabled for work due to her three days of limited-duty employment.

Appellant again requested a hearing and on November 20, 1998 a hearing representative remanded the case for further development finding that there existed a conflict in medical opinion evidence between Drs. Roggow and Cullen, which required resolution by an impartial medical examination.

On February 11, 1999 the Office referred appellant together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Neil R. Schultz, a Board-certified physiatrist, for an impartial medical opinion to resolve the existing conflict.

On March 10, 1999 Dr. Schultz found signs suggestive of carpal tunnel syndrome and neuropathy, but stated that he was incapable of commenting on appellant's work capacities beginning February 1997. Dr. Schultz recommend that a functional capacity evaluation (FCE) be conducted to clarify appellant's current work activity restrictions.

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<sup>1</sup> The original copy of this report cannot be found in the case record but its substance is reviewed in the hearing representative's November 26, 1997 decision. Dr. Roggow did note appellant's status as "temporarily off work" on a March 5, 1997 request for authorization form.

An FCE was performed on September 3, 1999 and indicated that appellant was capable of performing light work lifting up to 20 pounds. The FCE also indicated that there were nonphysiological factors interfering with appellant's objective performance during functional testing.

Since Dr. Schultz did not address the issue of appellant's disability beginning February 27, 1997, on January 3, 2000 the Office referred her for a second impartial medical examination to Dr. Andrew M. Wolff, a Board-certified orthopedic surgeon, on January 14, 2000.

By report that date Dr. Wolff recommended repeat electromyography/nerve conduction velocity studies, which were performed on February 24, 2000 by Dr. Michael A. Novak, a Board-certified neurologist,<sup>2</sup> who opined that test results demonstrated evidence of mild carpal tunnel syndrome, but that the work duties for three days in 1997 should not have aggravated her mild carpal tunnel syndrome.

Dr. Wolff submitted a March 23, 2000 supplemental report, in which he concluded that appellant had mild carpal tunnel syndrome and that she was capable of performing light-duty work such as she was assigned in February 1997. He opined that appellant had been capable of performing this light-duty work in February 1997.

On August 23, 2000 the Office denied appellant's recurrence claim for disability beginning February 27, 1997.

Appellant disagreed with this decision and again requested an oral hearing. A hearing was held on February 27, 2001 at which appellant testified. She also submitted some 1994, 1995 and 1996 medical reports from Dr. Silverfield, a Board-certified rheumatologist, Dr. J.J. Dusseau, a Board-certified neurosurgeon and Dr. Michael Jugan, an osteopath.

The employing establishment provided a March 21, 2001 statement, in which it disputed appellant's claims that when she returned to limited duty, the work was not within her restrictions and that she was required to perform repetitive duties "like an assembly line." The employing establishment described her duties and stated that they were self-paced and separate and noted that rubber stamping short paid letters was only one of her assigned functions. In a March 26, 2001 addendum, the employing establishment reiterated that it had made every effort to accommodate appellant's requirements and stressed that appellant's assigned limited duties were to be self-paced and did not involve repetitive flexing and extending of her wrists.

By decision dated May 22, 2001, the hearing representative affirmed the August 23, 2000 decision, finding that the weight of the medical evidence of record demonstrated that appellant did not sustain a recurrence of total disability commencing February 27, 1997.

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<sup>2</sup> The Office formally referred appellant to Dr. Novak for a neurological consultation in support of the impartial medical examination on February 14, 2000.

The Board finds that appellant has failed to establish that she sustained a recurrence of total disability commencing February 27, 1997, causally related to her October 19, 1994 bilateral carpal tunnel syndrome.

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence of record establishes that she can perform a limited-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of disability and to show that she cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature or extent of the injury-related condition or a change in the nature or extent of the limited-duty job requirements.<sup>3</sup>

In this case, the Office accepted that appellant's sustained an employment-related bilateral carpal tunnel syndrome.<sup>4</sup> On March 5, 1997 appellant filed a claim asserting that she sustained a recurrence of disability commencing February 27, 1997 while working in a limited-duty assignment.<sup>5</sup> She, therefore, bears the burden of proof to show that this recurrence of disability resulted from a change in the nature and extent of the injury-related condition or a change in the nature and extent of the limited-duty job requirements.<sup>6</sup>

The Board has reviewed the evidence submitted in support of appellant's claim and finds it insufficient to establish a recurrence of temporary total disability. Appellant asserted that she was required to perform repetitive duties like on an assembly line, but she submitted no factual evidence to support this allegation or to support that her assigned limited duties changed or were any different than those approved by her physician, Dr. Roggow, and listed in the job offer that she accepted. Further, the employing establishment has denied any such allegations of an assembly line assignment, stressing that appellant's varied duties were within her physical restrictions as detailed by Dr. Roggow and were self-paced and performed at her discretion. Therefore, appellant has not established that she experienced any change in the nature or extent of her limited-duty job requirements.

Further, the weight of the medical evidence of record fails to support that on February 27, 1997 appellant sustained a change in the nature or extent of her injury-related conditions. Appellant submitted a March 5, 1997 report from Dr. Roggow, which six days after the alleged recurrence, noted that appellant complained of painful swelling of both hands, forearms and neck, identified the presence of visible inflammation with palpatory tenderness of her forearm

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<sup>3</sup> See *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>4</sup> The bilateral condition was found to be due to the bilateral use of her hands during keying on an LSM.

<sup>5</sup> Appellant claimed a recurrence of bilateral symptomatology, yet medical reports indicate that she was right-handed and much of what was involved in her limited-duty assignment was performed using primarily one hand, presumably her dominant one.

<sup>6</sup> This case is distinguishable from *Janice F. Migut*, 50 ECAB 166 (1998), in which the Board found that the burden of proof remained with the Office, where appellant returned to light-duty work for only two days and her inability to work was supported by her physician, with no evidence that her inability to perform the light-duty position was due to any factor other than her employment-related condition.

extensor muscles and her trapezius, diagnosed forearm extensor tendinitis and myofascitis and causally related the symptoms to appellant's "recent work activities."

The Board notes, however, that on March 5, 1997 Dr. Roggow diagnosed disability due to forearm extensor tendinitis and myofascitis, but notes that the Office has not accepted that appellant sustained employment-related myofascitis, nor any pathology involving her trapezius or her neck, causally related to her employment activities. Therefore, any disability noted on March 5, 1997 due to these myofascitis, neck or trapezius conditions would not now be compensable under the Federal Employees' Compensation Act.<sup>7</sup> In this case, no rationalized medical opinion was included, which identified specifically what "work activities" were implicated in causing appellant's alleged total disability due to bilateral tendinitis or which explained the pathophysiology or biomechanics of how and why these specific activities caused the bilateral forearm extensor tendinitis after only three days of self-paced work.

Follow-up examination by Dr. Cullen resulted in a medical opinion in conflict with Dr. Roggow's opinion. Dr. Cullen found that appellant had no objective evidence of a medical pathology of her neck and/or upper extremities, had no limitations for work and had not been disabled beginning February 27, 1997 from performing her limited-duty position and he concluded that appellant had not sustained injury as the result of her three days of limited-duty work.

The Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a 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."

In this case, the Office correctly determined that a conflict in medical opinion evidence existed between Drs. Roggow and Cullen, on the existence of employment-related disability and it referred appellant, together with an accurate statement of accepted facts and specific questions to be resolved, to Dr. Wolff, an orthopedic surgeon, with a consult by Dr. Novak, a neurologist, for impartial medical examination to resolve the existing conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>8</sup>

By reports dated January 14 and March 23, 2000, Dr. Wolff reviewed appellant's factual and medical background and the statement of accepted facts; he and Dr. Novak both performed thorough physical examinations, including electrodiagnostic testing, analyzed the results and provided well rationalized conclusions, which established that appellant had mild carpal tunnel syndrome that was not and had not been totally disabling in February 1997. Dr. Novak concluded that appellant's limited-duty work activities for three days in February 1997 should not have aggravated her mild carpal tunnel syndrome and Dr. Wolff concluded that appellant remained capable of performing light-duty work activities such as she was assigned and indeed

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<sup>7</sup> 5 U.S.C. §§ 8101-8193.

<sup>8</sup> *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

performed in February 1997. As these impartial medical examiner's reports, supported by Dr. Novak's neurology consult and testing results, were sufficiently well rationalized and were based upon a proper factual background, they are entitled to that special weight. According them that weight results in these reports constituting the weight of the medical opinion evidence and establishing that appellant was not totally disabled on February 27, 1997 due to her accepted employment-related bilateral carpal tunnel syndrome and bilateral median nerve neuropathy conditions and was medically capable of performing her assigned limited-duty work activities on February 27, 1997.

Therefore, the May 22, 2001 and August 23, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
July 3, 2002

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member