

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBBIE A. HILL and U.S. POSTAL SERVICE,
POST OFFICE, Bellmawr, NJ

*Docket No. 02-313; Submitted on the Record;
Issued January 8, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective March 27, 2000.

On October 13, 1988 appellant, then a 34-year-old clerk, filed a notice of occupational disease and claim for compensation Form CA-2 alleging that her employment duties, consisting of keying mail eight hours per day, caused pain in her right hand.

On October 20, 1988 Dr. Edwin A. Jensen, an osteopath, diagnosed carpal tunnel syndrome, right and tendinitis and related appellant's condition to her employment duties.

On December 12, 1988 appellant underwent nerve conduction studies of the right median nerve that showed "definite mild prolongation of the right median and palmar sensory."

On January 9, 1989 appellant returned to work, doing light duty four hours per day. On January 25, 1989 she again stopped work due to pain.

In an April 21, 1989 report, Dr. Jensen indicated that surgery was warranted.

The surgery for carpal tunnel release was authorized and performed on October 25, 1989.

On December 12, 1989 the claim was accepted for carpal tunnel syndrome and de Quervain's syndrome of her right upper extremity.

On April 30, 1990 appellant returned to work, doing light duty four hours per day.

In a July 2, 1990 decision, the Office found appellant's part time, light duty represented her wage-earning capacity.

On September 17, 1990 appellant stopped work and claimed a recurrence of total disability.

In an August 29, 1991 report, Dr. John Ashby, a treating physician, diagnosed de Quervain's tendinitis and tendinitis of the flexor tendons of the right hand.

In a January 9, 1992 report, appellant's treating physicians, Dr. Carl Mogil requested authorization to perform a de Quervain's release, that was approved and performed on June 22, 1993.

Appellant remained off work until Dr. Jensen released her to part time, light duty on December 3, 1994.

In a June 13, 1995 report, Dr. Mogil found appellant to have a recurrent right wrist pain highly suggestive of carpal tunnel syndrome in her right wrist.

In an August 25, 1995 decision, the Office denied appellant's 1990 recurrence of disability claim.

In an August 25, 1995 letter, appellant requested a hearing.

In a June 24, 1996 report, Dr. Scott H. Jaeger, a second opinion referral physician, found that appellant's carpal tunnel and de Quervains had resolved and she could do clerical work full time.

In a March 13, 1996 decision, an Office hearing representative reversed the Office decision and accepted appellant's recurrence of disability claim.

In a January 6, 1997 report, Dr. Howard Zeidman, a second opinion referral physician, found that appellant had subjective pain and numbness in her right hand but he could find no objective basis for the pain. He indicated that she could do clerical work full time.

In a June 12, 1997 report, Dr. Mogil found that appellant did not have recurrent carpal tunnel syndrome electrically speaking (electromyogram, April 24, 1997) but had persistent wrist tendinitis.

In an October 15, 1998 report by another second opinion referral physician, Dr. Mark Kahn, appellant was diagnosed with residual of carpal tunnel release and post first dorsal release. He found that appellant was at maximum medical improvement; and further found that she could perform eight hours a day of nonrepetitive work, four hours of her current repetitive light duty, but she could not do her date-of-injury job full time.

In an August 26, 1999 letter, the Office found a conflict in the medical evidence between Drs. Mogil and Kahn and referred appellant for an impartial medical examination.

In a September 20, 1999 report, Dr. Norman H. Eckbold, a Board-certified orthopedic surgeon, selected as an impartial medical specialist, found that appellant had subjective complaints of pain but he could find no objective basis for it. He found that appellant's neck was neurologically intact from C3-T1 bilaterally. Dr. Eckbold found that her Tinel's, Phalen's and

Finkelstein's tests were normal bilaterally. He found that her thumb motors were intact bilaterally and she had very minimal atrophy of the thenar muscles. Dr. Eckbold stated:

"In the absence of any objective functional deficit at this time and noting well-healed scars and normal evaluation of the regions of the radial styloid bilaterally and hands, I feel [appellant] has objectively recovered from the accepted carpal tunnel syndrome."

He concluded that she could work full time doing repetitive activities.

In a February 25, 2000 letter, the Office proposed terminating appellant's compensation, finding the weight of the medical evidence rested with Dr. Eckbold.

Appellant submitted a March 10, 2000 form report from Dr. Jensen indicating that appellant had continuing restrictions.

In a March 27, 2000 decision, the Office terminated appellant's compensation.

In a March 29, 2000 report, that was received by the Office on April 19, 2000, Dr. Barry S. Gleimer, an orthopedist, diagnosed appellant with residual chronic carpal tunnel syndrome and residual chronic tendinitis of extensor tendons, right thumb. He found that appellant could not return to her date-of-injury job, and stated:

"[Appellant] has sustained de Quervain's disease and carpal tunnel syndrome from the performance of the very same type of activities which Dr. Eckbold proposes she return to. Had she had complete resolution of her symptomology certainly this would be reasonable. [Appellant] has, however, ... been found to have chronic pain consistent with chronic tendinitis into the extensor tendon/first dorsal compartments of the right wrist and thumb. This is indicative of a residual tendon dysfunction and injury. Chronic tendinitis is consistent and caused by either scarring and lack of free motion between tendon and involved sheath within which it glides or actual internal structural damage, irregularity and injury to the tendon itself....

"At this time interval it is not anticipated [that] [appellant] will have any further or significant improvement....

"I would certainly have no objection of her returning to a full, eight[-]hour workday provided it not involve repetitive use of her right hand....

Appellant requested a hearing.

In a December 14, 2000 decision, an Office hearing representative affirmed the termination but modified the March 27, 2000 termination by finding there was no conflict between Drs. Kahn and Mogil, as both doctors had agreed that appellant had residuals of her accepted conditions. The hearing representative found that a referral to Dr. Eckbold was proper and found the weight of the evidence rested with Dr. Eckbold because his report was more recent than Dr. Kahn's October 15, 1998 report. However, the hearing representative found,

subsequent to the termination, that a new conflict arose based on Dr. Gleimer's March 29, 2000 report and remanded the case for a new impartial medical examination.

The Board finds the Office met its burden of proof in terminating appellant's compensation effective March 27, 2000.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.²

The Office met its burden with Dr. Eckbold's thorough and comprehensive report. Dr. Eckbold, a Board-certified orthopedic surgeon, was based on appellant's entire medical history, including the results of several objective tests. He completed the most recent physical examination of appellant and was able to observe her demeanor and responses to tests. Dr. Eckbold found that her neck was neurologically intact from C3-T1 bilaterally. He found that her Tinel's, Phalen's and Finkelstein's tests were normal; as were her perspiration patterns. Dr. Eckbold found that her thumb motors were intact bilaterally and she had very minimal atrophy of the thenar muscles. While recognizing that she had subjective complaints of pain, he could find no objective support for such complaints. Dr. Eckbold's conclusion was consistent with Drs. Jaeger, Zeidman and Kahn, who also concluded that appellant was no longer disabled due the 1988 accepted conditions.

Dr. Mogil's May 20, 1997 report was over two years old and he recognized appellant had no objective evidence to support her complaints of pain.

¹ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

² *Id.*

The December 14, 2000 decision of the Office of Workers' Compensation Programs is affirmed.³

Dated, Washington, DC
January 8, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

³ Although the Board affirms the termination decision, it notes that the case continues to be developed regarding a medical conflict.