U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANITA H. JONES and U.S. POSTAL SERVICE,
POST OFFICE, Arlington, Tex.

Docket No. 97-457; Submitted on the Record;
Issued December 7, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has employment-related carpal tunnel syndrome requiring surgery; and (2) whether appellant was totally disabled during the period from March 27 to April 23, 1996.

On March 18, 1996 the Office of Workers' Compensation Programs accepted appellant's occupational disease claim for "tenosynovitis, bilateral hand/wrist." Appellant then stopped work from March 27 to April 23, 1996 and claimed compensation for total disability. By letter dated May 30, 1996, appellant requested that the Office authorize surgery on her wrists.

By decision dated August 21, 1996, the Office found that appellant had not established that the proposed surgery was warranted, and that she had not established that she was totally disabled from March 27 to April 23, 1996. Appellant requested reconsideration and the Office refused to modify its decision by a decision dated September 25, 1996.

The Board finds that there is a conflict of medical opinion on the question of whether appellant has employment-related carpal tunnel syndrome requiring surgery.

Appellant's attending physician, Dr. Robert Ippolito, a Board-certified plastic surgeon, stated in a June 27, 1996 report:

> "The patient is employed as a distribution clerk and required to repetitively lift up to seventy pounds throughout the day and to stamp repetitively. On examination, she has a positive Phalen's and a positive Tinel's. This clearly indicates carpal tunnel syndrome. This was verified by a February 8, 1996 MRI [magnetic resonance imaging] which also revealed moderate tenosynovitis. An MRI is a standard by which to diagnose this affliction. This patient has undergone a series of Kenalog injections to the wrist without resolution of her symptoms. It is recommended by this office that she undergo carpal tunnel syndrome surgical

releases. This case clearly appears to be occupation related as [appellant] has no diabetes or thyroid conditions."

In a report dated July 26, 1996, Dr. Tom G. Mayer, a Board-certified orthopedic surgeon, to whom the Office referred appellant for a second opinion evaluation, stated:

> "The patient is very angry and committed to getting the surgery, but I quite frankly cannot understand what the surgeon plans to operate on since the clinical examination reveals nonorganicity with tenderness and 'positive Tinel's test' more on the dorsum of the wrist than on the volar aspect. There is absolutely no evidence that releasing the carpal tunnel is going to change this lady's symptoms!"
>
> * * *
>
> "As noted above, the patient has symptoms and *complaints* consistent with carpal tunnel syndrome, but she does *not* have *subjective* findings consistent with the entity in spite of the suggestion for surgery by a surgeon who has evaluated her. The EMGs [electromyographs] appear to be nondiagnostic and her symptoms involve circumferential wrist pain without a true Tinel's test, negative Phalen's test and quite a bit of nonorganicity. (Emphasis in the original.)
>
> "As noted above, the evidence for carpal tunnel syndrome is equivocal with a generalized weakness, nonorganic signs and no specific findings for median nerve compression. Therefore, the surgical treatment is not warranted."

Appellant's attending physician, Dr. Ippolito, and the Office's referral physician, Dr. Mayer, both Board-certified specialists in an appropriate area of medicine, disagree about whether appellant has carpal tunnel syndrome and whether she should have surgery for this condition. Dr. Mayer stated that his findings on examination and the results of an EMG indicated appellant does not have carpal tunnel syndrome. Dr. Ippolito stated that his findings on examination and the results of an MRI showed that appellant does have carpal tunnel syndrome. Dr. Ippolito noted that conservative treatment, including injections into the wrist, had not relieved appellant's symptoms, and thus recommended surgery. To resolve this conflict of medical opinion, the Office should, pursuant to section 8123(a) of the Federal Employees' Compensation Act,[1] refer appellant to an appropriate medical specialist for a reasoned opinion whether appellant has carpal tunnel syndrome, and, if so, whether surgery should be performed.

The Board further finds that appellant has not established that she was totally disabled during the period from March 27 to April 23, 1996.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence

[1] 5 U.S.C. § 8123(a) states in pertinent part "If there is 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."

establishes that the employee 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 to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[2]

At the time she stopped work on March 27, 1996, appellant was performing limited duty and had been doing so since August 1994. In reports dated March 27 and April 8, 1996, Dr. Ippolito indicated that appellant was totally disabled from March 27 to April 22, 1996. The only finding listed on these reports, however, is the positive MRI. As this test was done on February 8, 1996, after which appellant worked for over six weeks before stopping on March 27, 1996, Dr. Ippolito's reference to the findings of the MRI does not justify total disability beginning March 27, 1996. Dr. Ippolito's reports do not show a show a change in the nature and extent of the injury-related condition so that appellant could no longer perform the limited duty she was performing until March 27, 1996. Appellant has not met her burden of proof.

The decisions of the Office of Workers' Compensation Programs dated September 25 and August 21, 1996 are affirmed insofar as they determined that appellant had not established that she was totally disabled during the period from March 27 to April 23, 1996. Insofar as these Office decisions found that surgery was not warranted, they are set aside and the case is remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
December 7, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[2] *Terry R. Hedman*, 38 ECAB 222 (1986).