

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN C. GROVES and DEPARTMENT OF HEALTH & HUMAN
SERVICES, SOCIAL SECURITY ADMINISTRATION, Atlanta, Ga.

*Docket No. 96-1671; Submitted on the Record;
Issued July 8, 1998*

DECISION and ORDER

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

The issue is whether appellant has established that she had a recurrence of disability beginning April 17, 1995 causally related to her employment injury, bilateral carpal tunnel syndrome.

On April 2, 1993 appellant, then a 43-year-old claims representative, filed a claim alleging that she sustained carpal tunnel syndrome as a result of the physical requirements of her job. She stated that she first became aware of the condition on February 26, 1993. Appellant continued to work.

The Office of Workers' Compensation Programs accepted the claim for bilateral carpal tunnel syndrome and authorized appropriate benefits. Appellant underwent bilateral surgical release of her right wrist in October 1993 and of her left wrist in February 1995. Appellant returned to full time regular duty without restrictions on April 17, 1995 pursuant to the advice of her attending physician, Dr. John L. Hemmer, a Board-certified orthopedic surgeon.

In a letter dated August 7, 1995, appellant informed the Office that she was applying for disability under the Civil Service Retirement System because of the stress connected with her work, the stress caused by attempting to work in splints, and the undue anxiety that her injuries have caused her. Appellant further stated that she would like to reach a compromise settlement of this claim and future medical benefits.

On September 11, 1995, Dr. Hemmer noted that he saw appellant on September 7, 1995 for a follow-up of her carpal tunnel release bilateral. He noted that appellant complained of problems with her left hand at work, but that her symptoms seemed to resolve when she is off from work. Dr. Hemmer opined that from a medical standpoint he did not find anything further that needed to be done and that he saw no contraindication medically to having appellant return to work. Dr. Hemmer commented that if appellant's job continues to give her problems, she

might want to find some other type of employment since she relates that her hand is better when she is not working.

On September 22, 1995 appellant filed a recurrence of disability notice, alleging a recurrence of disability on September 22, 1995. Appellant stated that she initially returned to work for 4 hours per day on March 27, 1995 through April 16, 1995 and then was released to work full time on April 17, 1995. Appellant indicated that as soon as she returned to duty (even the 4 hour day) she had pain in her left hand. Appellant indicated that Dr. Hemmer suggested that she wear the splint on her left arm when typing. Appellant stated that she tried the splint for approximately 3 months and that the split appeared to help the pain while she was working but, upon removal of the splint, her hands is partially numb and she does not have full use of her fingers or hand for 1 to 2 hours. Once the numbness wears off, appellant stated that her hand starts to hurt. Appellant additionally stated that she is unable to tear papers off the printer or to tear up papers in order to destroy information. Appellant stopped work on September 22, 1995 and has not returned.

In a medical report dated September 28, 1995, Dr. Arden L. Hothem, a Board-certified plastic surgeon, noted that appellant has continued to have pain in her left hand following surgery and that the pain is a problem while working. He further noted that appellant has taken herself out of work because of hand pain and will decide on her own as to when to return. Dr. Hothem reported that the hand moved well on physical examination and found that the nerve conduction study and x-rays of the hand were essentially normal. He noted that appellant's neck films showed narrowing of the C5-6 interspace, but did not provide a comment. Dr. Hothem's report is silent on the issue of disability for work.

On October 18, 1995, Dr. Hemmer completed Form OWCP-5 in which he indicated that appellant could conduct repetitive motions of the wrist and elbow; had reached maximum medical improvement on September 7, 1995; and had no restrictions.

In an October 18, 1995 decision, the Office denied appellant's claim for compensation because the medical evidence failed to demonstrate findings of disability due to carpal tunnel syndrome after April 17, 1995. The Office found that the reporting physicians did not confirm any physical disability for work, but merely stated that that appellant "has taken herself out of work because of hand pain and will decide on her own as to when to return."

By letter dated November 3, 1995, appellant requested reconsideration and submitted additional information and medical reports.

In a report dated October 30, 1995, Dr. Roger Owens, a Board-certified internist, noted that appellant had had bilateral carpal tunnel release and was still complaining of pain in her left hand. Dr. Owens further noted that appellant had not worked since September 23, 1995 and that she felt that she is unable to work due to her continuing pain in the left hand. Dr. Owens opined that, from the medical standpoint, there appears to be nothing further that could be done medically to impact the chronic pain.

In a report dated October 30, 1995, Dr. Hector Gotay, a Board-certified neurologist, noted that appellant felt that if she returned to repetitive use of the upper extremities the pain and

discomfort would accentuate particularly more-so on the left side. After examining appellant, the physician stated that the sensory examination and motor testing were normal and that the general neurological examination was essentially intact. Dr. Gotay advised appellant that as she had “been treated for carpal tunnel syndrome we usually do not recommend repetitive movements as typing; however, she could do a job well as long as there was no repetitive movement involved.” Dr. Gotay stated that appellant can work at a full-time job as long as there was no repetitive movements like extensive typing involved. In a note also dated October 30, 1995, Dr. Gotay advised that appellant should avoid repetitive movements of the upper extremity left hand. He also noted that a functional capacity evaluation (FCE) was pending.

In a report dated December 14, 1995, Joann Hamilton, a physical therapist, stated that she conducted a functional capacity evaluation on December 11, 1995. She reported that appellant’s range of motion was within normal limits, the neurological examination was negative, and strength was within functional limits except for some mild grip strength deficits. The therapist added that appellant could lift up to 15 pounds on an occasional basis but noted that appellant had not had any instructions in specific strengthening exercises for her wrists or upper extremities; therefore, appellant’s functional capacity could improve with a strengthening exercise program for her hands and upper extremities. The therapist concluded that appellant should be able to perform repetitive activities of simple grasping and fine manipulation with the right and left hands on an occasional basis, 1-33 percent of the time.

By decision dated February 26, 1996, the Office denied modification of its prior decision because the evidence submitted by appellant was not sufficient to establish that her claimed total disability was causally related to her accepted condition or that there were any changes in nature of appellant’s duties. The Office found that the opinion of Dr. Hemmer represented the weight of the medical evidence.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability beginning April 17, 1995 due to her employment injury, bilateral carpal tunnel syndrome or to other factors of her federal employment.

When an employee claims a recurrence of disability due to an accepted employment injury, she has the burden of establishing by the weight of the reliable, probative, and substantial medical evidence that the recurrence claimed is causally related to an accepted employment injury.¹ As part of this burden, the employee must submit rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, showing a causal relationship between the current disabling condition and the accepted employment injury.² Causal relationship is medical in nature and can be established only by medical evidence.³ The Board notes that an award of compensation may not be based on surmise, conjecture or

¹ 20 C.F.R. § 10.121(a).

² *E.g.*, Kevin J. McGrath, 42 ECAB 109 (1990); Herman W. Thornton, 39 ECAB 875, 887 (1988); Dennis E. Twardzik, 34 ECAB 536, 542 (1983); *see* 20 CFR § 10.110(a).

³ Mary J. Briggs, 37 ECAB 578 (1986); Ausberto Guzman, 25 ECAB 362 (1974).

speculation.⁴ The mere fact that later symptoms mirrored those following the employment injury, without more, is insufficient to establish a causal relationship, as the work activities may produce symptoms which are revelatory of an underlying condition.⁵

In the present case, the Office accepted that appellant sustained employment-related bilateral carpal tunnel syndrome and paid her compensation for appropriate periods of disability. Appellant underwent corrective surgery in the form of two carpal tunnel releases and was able to resume the duties of her job in both instances.⁶ After appellant underwent a carpal tunnel release of her left hand in February 1995, Appellant returned to her pre-injury job for 4 hours per day from March 27, 1995 through April 16, 1995. Dr. Hemmer then released appellant to return to full time work on April 17, 1995. Appellant was working at her full time position when she stopped work on September 22, 1995 and claimed that she had sustained a recurrence of disability on that date due to her employment injury, bilateral carpal tunnel syndrome.

Appellant has attributed her disability beginning September 22, 1995 to her accepted condition of bilateral carpal tunnel syndrome. Appellant, however, has not submitted medical evidence sufficient to establish that her disability beginning September 22, 1995 is due to her work-related carpal tunnel syndrome. Appellant submitted reports from Dr. Owens and Dr. Gotay and a copy of her functional capacity evaluation in support of her claim. Dr. Owens' report, which states that appellant is unable to work due to pain in her left hand, is of limited probative value as Dr. Owens did not provide a medical rationale in support of why appellant would have a recurring carpal tunnel syndrome condition of a disabling nature nor did his report indicate any familiarity with appellant's history or employment factors.⁷ Dr. Gotay reported a normal sensory examination and offered no indication of any changes in appellant's condition since she resumed her regular job. Although Dr. Gotay advised that appellant should avoid repetitive movements of the upper extremity of her left hand, his advise appears to be a general recommendation that is offered to most of his carpal tunnel syndrome patients and, therefore, is not specific to this appellant. In pertinent part, Dr. Gotay wrote "she is advised that indeed having been treated for carpal tunnel syndrome we usually do not recommend repetitive movement (such) as constant typing...." Thus, Dr. Gotay's opinion is of little probative value as it is not specific to appellant. The Board notes that Dr. Hemmer, appellant's attending physician and a Board-certified orthopedic surgeon, was aware of appellant's pain in her left hand and determined that there was no contraindication medically from having appellant return to work. As his report of September 11, 1995 is based on a complete, accurate, and consistent history, is well reasoned, his objective findings are supported by both Dr. Hothem and Dr. Gotay and he is

⁴ *Shirloyn J. Holmes*, 39 ECAB 938 (1988).

⁵ *See Gary R. Fullbright*, 40 ECAB 737 (1989); *Dominic M. DeSala*, 37 ECAB 369 (1986).

⁶ In a progress note dated December 7, 1993, Dr. Hemmer advised that as appellant's work required her being on a computer all day long, she could either go back to work for half days or she needs to rest her hand for about 10 minutes each hour through the first of the year. This progress note refers to appellant's right bilateral release surgery and does not pertain to the present recurrence claim which deals with appellant's left hand.

⁷ *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

familiar with the requirements of appellant's job, Dr. Hemmer's opinion that appellant does not have any residuals of carpal tunnel syndrome represents the weight of the medical evidence in this case. Moreover, the Board notes that at the time appellant stopped work on September 22, 1995, there is no indication in the record of any changes in the nature of appellant's duties nor any evidence of an intervening injury causally related to her employment.

Because appellant has failed to establish by rationalized medical opinion evidence that she sustained a recurrence of disability commencing September 22, 1995, the decisions of the Office of Workers' Compensation Programs dated February 26, 1996 and October 18, 1995 are affirmed.

Dated, Washington, D.C.
July 8, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member