U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARCY A. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, Tenn.

Docket No. 96-1850; Submitted on the Record;
Issued June 16, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing a recurrence of disability after November 8, 1995 causally related to her accepted August 26, 1994 employment injury of carpal tunnel syndrome.

On September 21, 1994 appellant, then a 29-year-old mail processor, filed an occupational disease claim, alleging that she had pain and numbness in her left and right hands, fingers and wrists related to factors of her federal employment. Appellant did not stop work.[1] On November 4, 1994 the Office of Workers' Compensation Programs accepted her claim for carpal tunnel syndrome. On November 22, 1995 appellant filed a claim for recurrence of disability beginning November 8, 1995. She alleged that she had numbness in both hands, sharp throbbing pains in her arms and wrists on waking and that she had begun wearing her braces to sleep again. Appellant reported that she had not missed any work due to her claimed recurrence. In a decision dated March 27, 1996, the Office denied appellant's claim for recurrence on the grounds that the medical evidence failed to establish that the claimed medical condition was causally related to her accepted employment injury.

The Board has carefully reviewed the case record on appeal and finds that this case is not in posture for review.

Where appellant claims recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the subsequent disability for which she claims compensation is causally related to

[1] Appellant's initial claim was filed under her maiden name of Marcy A. Lamberth. She was married on September 7, 1995.

the accepted injury.[2] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[3]

In the present case, appellant submitted medical reports by Dr. Verne E. Allen, a Board-certified neurosurgeon and appellant's treating physician, in response to the Office's initial request, dated December 14, 1995, for medical evidence and acknowledgment of her occupational disease claim. In a follow-up report dated December 12, 1994, Dr. Allen diagnosed bilateral carpal tunnel syndrome, noted that appellant's physical examination was positive for Tinel's and Phalen's signs and that there was weakness of the opponens musculature, and indicated that electromyography testing would be done. In a report dated January 30, 1996, Dr. Allen noted that the electromyography test was negative but that appellant did have numbness and tingling in both hands and that they bothered her at work. Thus, Dr. Allen has provided a diagnosis after the date of alleged recurrence of bilateral carpal tunnel syndrome, the accepted employment injury, and has indicated that appellant's hands bother her while she is at work.

While the reports by Dr. Allen are not sufficient to establish that appellant's claimed recurrence is causally related to her accepted employment injury of bilateral carpal tunnel syndrome, the Board finds that these reports, given the absence of evidence to the contrary, are sufficient to require further development of the evidence. The Board notes that when an employee initially submits supportive factual and/or medical evidence which is not sufficient to carry the burden of proof, the Office must inform the claimant of the defects in proof and grant at least 30 calendar days for the claimant to submit the evidence required to meet the burden of proof. The Office may undertake to develop either factual or medical evidence for determination of the claim.[4] It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature,[5] and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.[6] The Office has the obligation to see that justice is done.[7]

In the present case, as there was an uncontroverted inference of causal relationship, the Office was obligated to request further information from appellant's treating physician. On remand, the Office should further develop the evidence by providing Dr. Allen with a statement of accepted facts and requesting that he submit a rationalized medical opinion on whether

[2] *John E. Blount*, 30 ECAB 1374 (1979).

[3] *Frances B. Evans*, 32 ECAB 60 (1980).

[4] 20 C.F.R. § 10.11(b); *see also John J. Carlone*, 41 ECAB 354 (1989).

[5] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985; *Michael Gallo*, 29 ECAB 159 (1978).

[6] *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

[7] *William J. Cantrell*, 34 ECAB 1233 (1983).

appellant's claimed recurrence is causally related to her accepted employment injury. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated March 27, 1996 is hereby set aside, and this case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
June 16, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member