

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIZABETH P. KIRMIS and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, N.M.

*Docket No. 97-116; Submitted on the Record;
Issued October 21, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden to terminate appellant's compensation benefits effective June 3, 1996.

On June 25, 1991 appellant, then a 47-year-old multiple letter sorting machine operator, filed a notice of occupational disease alleging that she injured her arms, wrist, hands, and elbows in the course of her federal employment. The Office accepted the claim for bilateral tendinitis of appellant's wrists and appellant received appropriate compensation benefits.

By decision dated September 28, 1992, the Office reduced appellant's compensation effective October 18, 1992 on the basis that appellant was no longer totally disabled as a result of her employment injury and that the position of loan clerk fairly and reasonably represented her wage-earning capacity. The Office adjusted appellant's compensation pursuant to 5 U.S.C. § 8106 and 5 U.S.C. § 8115 in a separate decision dated October 19, 1992. By decision dated February 14, 1994, the Office denied appellant's request for reconsideration of the decision reducing her compensation.

On September 22, 1994 Dr. Emmet Thorpe, appellant's treating physician and a Board-certified orthopedic surgeon specializing in occupational medicine, examined appellant and reviewed the medical evidence. He diagnosed "chronic wrist and forearm discomforts probably on the basis of recurrent tendinitis and possibly associated with precarpal tunnel and/or entrapment symptoms that occasionally can be present." He further noted that appellant was a deconditioned patient. Dr. Thorpe noted that the case was difficult to analyze because appellant was making it difficult to obtain a history. However, he stated that based on his review of the evidence and his examination he noted a significant chance of appellant having tendinitis which would likely be recurrent if appellant returned to her previous duties. Dr. Thorpe further noted that appellant's complaints were not supported by objective evidence. He opined, however, that appellant's current condition was due to her work injury and that it precluded a return to her

usual employment. He stated that appellant should not do repetitive work for longer than a few minutes without a rest and that appellant had likely reached maximum medical improvement.

On March 29, 1996 the Office referred appellant, along with the case record and a statement of accepted facts, to Dr. Emmett Altman, a Board-certified orthopedic surgeon, for a second opinion examination.

On April 10, 1996 Dr. Altman indicated that he reviewed appellant's history and objective testing, and conducted a physical examination. His examination of appellant's wrists revealed a full range of flexion, extension, radial and ulna deviation with complaints of pain. Dr. Altman noted complaints of pain deep to palpation in the antecubital area, but no pain along the ulnar nerves. He found a full range of finger motion, but pain on the base of the thumbs. Dr. Altman noted that electrodiagnostic studies were essentially negative. He also noted that Phalen's and Tinel's signs were negative and that there was no evidence of flexor tenosynovitis. Dr. Altman's x-rays revealed a congenital fusion of the capitate and hamate bone due to repetitive use of her hands. He stated that appellant basically had synovitis of the wrist creating pain in the hands up the arms. Dr. Altman concluded that "there is subjective evidence the claimant has bilateral wrist dysfunction on the basis of a congenital fusion of the capitate, hamate bones in the distal carpal row that caused a severe synovitis as a result of repetitive activities with her fingers." He further stated that appellant was unable to return to her job as it required prolonged periods of time at the keyboard which definitely contributed to her pain and dysfunction. Dr. Altman opined that appellant did not at this time have bilateral tendinitis. Finally, he concluded that "I believe the patient essentially has achieved full recovery from her work-related condition." In an accompanying work capacity evaluation, Dr. Altman stated that appellant should avoid repetitive use of the hands or wrists as it created a synovitis of the wrist. He further indicated that these limitations were due to appellant's congenital captitate/hamate fusion.

On May 2, 1996 the Office issued a notice of proposed termination of compensation and medical benefits. The Office indicated that the weight of the evidence established that the injury-related condition had ceased. The Office allowed appellant 30 days to present evidence or argument to the contrary.

By decision dated June 3, 1996, the Office terminated appellant's compensation effective that same date because the weight of the evidence established that the injury-related condition had ceased.

On August 1, 1996 appellant's representative requested reconsideration. In support, appellant's representative referred to a medical report from Dr. Theresa Balcomb, a Board-certified orthopedic surgeon and specialist in hand surgery.

By decision dated September 5, 1996, the Office denied appellant's request for reconsideration. In an accompanying memorandum, the Office noted that Dr. Balcomb's opinion was not yet part of the record.

Appellant's representative again requested reconsideration on September 13, 1996. In support, appellant's representative submitted a June 10, 1996 report from Dr. Balcomb who

reviewed appellant's history and the objective evidence of record, and conducted a physical examination. She diagnosed pain on the medial side of both elbows consistent with medial epicondylitis. She also diagnosed bilateral arthrodesis of the capitate and hamate bones which she indicated was congenital and did not contribute to appellant's symptoms. Dr. Balcomb related appellant's symptoms to bilateral medial epicondylitis, but stated that ulnar nerve problems should be ruled out with further testing. She further opined that appellant's symptoms precluded a return to her previous employment. Dr. Balcomb clarified her opinion on July 5, 1996. She stated that she did not believe appellant ever suffered from her accepted employment condition of bilateral wrist tendinitis and that the entirety of her symptoms related to bilateral medial epicondylitis.

By decision dated September 27, 1996, the Office reviewed the merits of the case and found that the evidence submitted was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office noted that Dr. Balcomb's opinion supported its determination that appellant was not disabled as a result of the accepted work condition of bilateral wrist tendinitis.

The Board finds that the Office met its burden to terminate appellant's benefits effective June 3, 1996.

Once the Office has accepted a claim and pays compensation, it has the burden of proof of justifying termination or modification of compensation benefits. After it has been determined that an employee has disability causally related to his federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹

In the present case, Dr. Thorpe, appellant's treating physician and a Board-certified orthopedic surgeon specializing in occupational medicine, diagnosed appellant's present condition as "chronic wrist and forearm discomforts probably on the basis of recurrent tendinitis and possibly associated with precarpal tunnel and/or entrapment symptoms that occasionally can be present." Because Dr. Thorpe's opinion regarding appellant's current condition and its relationship to her accepted condition, bilateral wrist tendinitis, was equivocal, his opinion is entitled to little weight in resolving the issue of whether appellant's injury-related condition had ceased.² Moreover, contrary to the assertions of appellant's representative, the opinion of Dr. Balcomb, a Board-certified orthopedic surgeon and specialist in hand surgery, failed to support that appellant continued to suffer residuals from her accepted condition of bilateral wrist tendinitis because Dr. Balcomb stated that she did not believe appellant ever suffered from that condition.

In addition, Dr. Altman, a Board-certified orthopedic surgeon, provided a well-rationalized medical opinion which indicated that appellant had fully recovered from her work-related condition. Dr. Altman fully explained that appellant's current condition stemmed from

¹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

² *William S. Wright*, 45 ECAB 498 (1994).

an unrelated congenital fusion of appellant's capitate and hamate bones and noted that his opinion was supported by the x-rays he reviewed. Although Dr. Altman indicated that appellant's prior employment activities would aggravate appellant's present condition, he clearly indicated that the present condition was unrelated to appellant's accepted employment injury of bilateral wrist tendinitis. Accordingly, because Dr. Altman provided the only well-rationalized opinion of record addressing whether appellant's accepted employment injury had resolved, his opinion constitutes the weight of the medical evidence.³ The Office, therefore, met its burden to terminate appellant's benefits on June 3, 1996.

The decisions of the Office of Workers' Compensation Programs dated September 27, September 5 and June 3, 1996 are hereby affirmed.

Dated, Washington, D.C.
October 21, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).