

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN C. KNECHT and DEPARTMENT OF DEFENSE,
DEFENSE FINANCE & ACCOUNTING SERVICE, Denver, CO

*Docket No. 98-297; Submitted on the Record;
Issued August 18, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

In a decision dated May 15, 1997, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence established that he had recovered from the accepted bilateral carpal tunnel syndrome and had no objective findings to support an ongoing condition related to the employment injury of September 8, 1995.

The Board finds that the Office has not met its burden of proof to justify the termination of appellant's compensation benefits.

It is well established that, once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her 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.² The Office's procedure manual provides that, having accepted a claim and initiated payments, the Office may not terminate compensation without a positive demonstration, by the weight of evidence, that entitlement to benefits has ceased.³

The medical evidence of record fails to establish that appellant no longer suffers residuals of the accepted bilateral carpal tunnel syndrome or authorized surgical releases. In a clinic note

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Periodic Review of Disability Cases*, Chapter 2.812.3 (July 1993).

dated October 9, 1996, Dr. David H. Bristow, appellant's attending orthopedic surgeon, reported that appellant had carpal tunnel releases performed early that year and toward the end of the previous year but that he continued to have pain primarily in the incisional area and increasing numbness on the left. Dr. Bristow reported objective findings of pain along the incisional area, a little more to the ulnar side on both hands, which he stated was consistent with pillar pain. Dr. Bristow noted that appellant complained that any kind of writing or use of data entry aggravated the pain and worsened it significantly. He concluded that appellant was close to reaching maximum medical improvement, although Dr. Bristow noted that in his experience he had seen patients who had persistent incisional or pillar pain gradually improve well beyond a year and ultimately reach a point where their hands were functioning fairly normally. Dr. Bristow recommended giving things more time. If the numbness worsened he would recommend a repeat conduction study, but Dr. Bristow stated that it seemed that appellant's primary problem was pain in the incisional area and that it was his experience that pain was usually made worse by a repeat operation.

In an attending physician's supplemental reports dated January 15 and March 10, 1997, Dr. Bristow noted findings of continued numbness and pain, status post carpal tunnel release bilaterally and indicated that appellant's current symptoms were due to the accepted employment injury. He recommended avoidance of activities that aggravate the numbness and pain, such as keyboarding and writing and indicated that disability for regular work would continue for 90 days or longer.

The Office referred appellant to Dr. Philip Heyman, an orthopedic surgeon, for a second opinion. Dr. Heyman examined appellant on January 8, 1997 and related that appellant complained of pain in both hands and numbness that was virtually constant. Appellant advised that his initial symptoms of numbness and tingling resolved after surgery but that the pain and numbness and tingling returned, that his wrists "hurt like hell" and that his symptoms were as bad as they were before surgery. Appellant also advised that he woke at night with pain. Dr. Heyman reported his impression as status post bilateral carpal tunnel releases and recommended follow-up electrical studies by the neurologist who had performed the earlier studies. He stated that if there was improvement in the conduction velocities from preoperative status, it would strongly suggest that the pain was not from an ongoing carpal tunnel syndrome and, therefore, a repeat surgical release would not be necessary.

In a supplemental report dated March 18, 1997, Dr. Heyman reported that he had reviewed the follow-up electrical studies and that the neurologist who performed them had noted a significant improvement since the previous study of October 24, 1995. Dr. Heyman observed that the distal motor and sensory latencies did not appear to be significantly prolonged. "I am not of the opinion," Dr. Heyman reported, "that [appellant's] hand pain can be attributed to an ongoing peripheral compressive neuropathy and, therefore, revision of the carpal tunnel release is contraindicated. I cannot think of any other operative or nonoperative treatments that would be of benefit to [appellant] given the subjective symptoms and paucity of hard findings."

On April 3, 1997 Dr. Bristow responded to Dr. Heyman's findings as follows: "I have *not* recommended redo carpal tunnel for [appellant] and *do* agree with Dr. Heyman."

The Office's May 15, 1997 decision, terminating compensation benefits followed.

Although the medical evidence developed in this case supports that appellant no longer has an ongoing peripheral compressive neuropathy, it fails to establish that all residuals of the accepted bilateral carpal tunnel syndrome and authorized surgical releases have ceased. Dr. Bristow, the attending orthopedist, made findings of pain along the incisional area, a little more to the ulnar side on both hands, which he stated was consistent with pillar pain and which he attributed to the accepted employment injury. Dr. Heyman, the Office referral physician, did not dispute Dr. Bristow's opinion. He simply confirmed that additional surgery was contraindicated based on the current electrical studies. He did not report that the accepted employment injury and authorized surgical releases had resolved without residuals or that appellant's current complaints of pain and numbness along the incisional areas were unrelated to the accepted injury or surgeries.

Without a positive demonstration by the weight of evidence that entitlement to benefits has ceased, the Office had not met its burden of proof to justify the termination of appellant's compensation benefits.

The May 15, 1997 decision of the Office of Workers' Compensation Programs is reversed.

Dated, Washington, D.C.
August 18, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member