U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTHA LOPEZ and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

Docket No. 98-674; Submitted on the Record;
Issued April 19, 2000

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits for the work-related condition of bilateral carpal tunnel syndrome.

On August 28, 1985 appellant, then a 37-year-old letter sorting machine operator, filed an occupational claim alleging that she developed a hand condition in the performance of duty. The Office accepted the claim for bilateral carpal tunnel syndrome. Appellant received compensation for intermittent periods of disability. She stopped work on January 28, 1994 and has not returned.[1]

Appellant has been under the care of Dr. William L. King, a Board-certified orthopedic surgeon, since March 26, 1991. Nerve conduction studies performed on July 9, 1993 were interpreted as normal with no evidence of compression neuropathy or neuropathy. Based on appellant's continuing symptoms, however, he recommended surgical intervention and performed a left carpal tunnel release on January 28, 1994 and right carpal tunnel release on October 17, 1994.

In an August 16, 1995 report, Dr. King indicated that he had been treating appellant for bilateral carpal tunnel syndrome and that she continued under occupational therapy for hypersensitivity of the scar of her right hand and because of an unrelated problem of her pelvis which required the use of crutches. He noted that using crutches attributed to appellant's hand condition and caused pain because pressure was applied to the area of her surgery. Dr. King stated that the paresthesia related to appellant's carpal tunnel syndrome had all but resolved

[1] Appellant was involved in a nonwork-related bus accident on April 28, 1995 in which she sustained injuries to her back, right leg, shoulders and ribs. She has also been under the care of a psychiatrist.

except for hypersensitivity in the palms of her hands. He, however, did not approve appellant for a return to work.[2]

The Office sent appellant for a second opinion evaluation with Dr. Sebastian O. Adibe, a Board-certified orthopedic surgeon, on October 24, 1995. In a report dated November 6, 1996, he noted that on physical examination her upper extremities showed normal motion in all joints including both hands. Dr. Adibe also noted surgical scars on both of appellant's wrists. He observed that she would try not to use her hands but would sometimes forget what she was trying to avoid and then lapse and use her hands freely. Dr. Adibe opined that, based on the normal electromyographic and nerve conduction studies, appellant had no residual physical impairment related to her bilateral carpal tunnel syndrome that would prevent her from returning to work, although he did recommend a work hardening program. He also specifically stated that there was no evidence for a diagnosis of reflex sympathetic dystrophy as proffered by Dr. King since appellant presented with otherwise normal hands.

In a series of treatment notes dating from November 30, 1995 to May 16, 1996, Dr. King indicated that appellant was not capable of returning to work due her persistent complaints of pain and her obvious hypersensitivity. He noted that she was incapable of working at her former job or even performing the activities of daily living.

Because of the conflict in the medical evidence between Drs. King and Adibe, the Office referred appellant, along with a copy of the medical record and a statement of accepted facts, to Dr. Sam G. Nakla, a Board-certified orthopedic surgeon, for an impartial medical examination.[3] In a report dated October 24, 1996, he noted physical findings including normal range of motion in the hands and wrists, normal fist-making ability and negative Phalen's test and Tinel's sign in both hands. Nerve conduction studies performed on October 29, 1996 were also noted by Dr. Nakal to be normal. He stated there were no objective findings from which to conclude that the condition of bilateral carpal tunnel syndrome was still active and causing residuals, nor was there "any abnormality seen or felt or noticed in both hands." Dr. Nakla concluded that appellant's carpal tunnel syndrome had completely resolved and that she was no longer in need of further active medical treatment. He also stated that appellant was capable of returning to her former work as a letter sorting machine operator without a work hardening program.

On March 11, 1997 the Office issued a notice of proposed termination of compensation, indicating that the weight of the medical evidence resided with the report of the impartial physician.

[2] In a May 4, 1995 report, Dr. King stated that appellant presented him with reflex sympathetic dystrophy and noted her symptoms as being hypersensitivity of the scar and hand weakness.

[3] Appellant was originally scheduled for an impartial medical evaluation with Dr. Michael Bercik on April 22, 1996. Because she did not receive notice of the examination in a timely manner, the examination was rescheduled. Before the rescheduled examination could take place, however, Dr. Bercik notified the Office that his staff had mislaid the contents of appellant's case file. Although the case file was later found, the Office did not pursue an evaluation with him. The Office chose to schedule appellant for an evaluation with a different impartial physician, Dr. Nakla, on October 24, 1996.

In response to the notice of proposed termination, appellant submitted an April 9, 1997 report from Dr. King which stated that she was under his care for bilateral carpal tunnel syndrome and that she would never be able to return to her previous occupation.

Appellant also submitted a prescription form dated April 9, 1997 from Dr. Monica R Mehta, who is Board-certified in physical medicine and rehabilitation, which noted the following: "reflex sympathetic dystrophy carpal tunnel release surgery [re] to refrain from work until further notice."

In a decision dated April 14, 1997, the Office terminated appellant's compensation.

On July 2, 1997 appellant, by counsel, filed a request for reconsideration.

In support of her reconsideration request, appellant submitted an April 28, 1997 report from Dr. Sri Kantha, which noted that appellant was referred by one of the patients she had met at Dr. Mehta's office and that she presented her with complaining of pain in both hands radiating up to the shoulders. Dr. Kantha noted appellant's history of carpal tunnel and her surgical procedures.[4] She noted that in December 1994 appellant related that she had to use crutches for six months while recuperating from the excision of a left groin tumor, which aggravated her hand pain to some extent. On physical examination, Dr. Kantha noted weakened grip strength, weakened motor strength and weakness of the abduction of the thumb bilaterally. She diagnosed reflex sympathetic dystrophy, stage III of both upper extremities and scheduled appellant for a bone scan and diagnostic right-sided stellate ganglion injection under fluoroscopy.[5]

Appellant also submitted an April 30, 1997 report from Dr. Mehta. He noted on physical examination that appellant's range of motion in both wrists were limited. Dr. Mehta further noted that an April 21, 1997 electromyogram (EMG) study revealed right L5-S1 radiculopathy. Under a section of her report entitled "Final Clinical Impression" he stated, "[s]tatus [p]ost[-][s]urgery for [c]arpal [t]unnel [s]yndrome, both hands, secondary to the trauma sustained while at work, reflex sympathetic dystrophy, secondary to the trauma sustained while at work, right ulnar neuritis, secondary to the trauma sustained while at work, right L5-S1 radiculopathy." She concluded that appellant was totally disabled from using her right arm secondary to traumatic dystrophy and reflex sympathetic dystrophy.

In a decision dated September 26, 1997, the Office denied modification of its prior decision following a merit review of the record.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits for the work-related condition of bilateral carpal tunnel syndrome.

[4] Dr. Kantha noted that appellant's symptoms increased after her surgery in the right hand, with pain radiating up the arm to the shoulder and even into the right side of the head.

[5] Appellant also submitted a series of treatment notes from Dr. King dating from November 1996 to June 2, 1997. He indicated that appellant presented with continuing complaints of pain. Dr. King also recommended a bone scan "to rule out patchy uptake as seen with reflex sympathetic dystrophy."

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.[6] 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.[7]

In the instant case, there was a conflict in the medical evidence between Drs. King and Adibe as to whether appellant's disability related to the accepted condition of bilateral carpal tunnel syndrome had ceased. In numerous treatment notes, Dr. King indicated that appellant had continuing complaints of hand pain, weakness and tingling and hypersensitivity to her surgical scars. He diagnosed reflex sympathetic dystrophy and opined that appellant was disabled from work. Conversely, Dr. Adibe diagnosed that appellant was fully recovered from her bilateral carpal tunnel syndrome and opined that there was no evidence of reflex sympathetic dystrophy.

Section 8123(a) of the Federal Employees' Compensation Act provides that, "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."[8]

Given the conflict in the medical evidence, the Office properly referred appellant to a impartial physician for a medical evaluation.[9] Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently reasoned upon a proper factual background, must be given special weight.[10]

In a report dated October 24, 1996, Dr. Nakla opined that there was no objective medical evidence from which to conclude that appellant had any continuing disability or residuals related to the accepted condition of bilateral carpal tunnel syndrome. He also specifically characterized appellant's hands as normal. The Board considers the report of Dr. Nakla to be thorough and well rationalized, supported by the normal objective evidence and based on accurate medical and factual history. The Board, therefore, finds Dr. Nakla's opinion entitled to special weight.

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[6] *Harold S. McGough*, 36 ECAB 332 (1984).

[7] *Jason C. Armstrong*, 40 ECAB 907 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979).

[8] 5 U.S.C. § 8123.

[9] The Board rejects appellant's argument on appeal that the Office improperly referred appellant to Dr. Nakla for an impartial medical evaluation instead of having appellant examined by Dr. Bercik. The Office reasonably considered Dr. Bercik's actions in losing appellant's case file to be irresponsible. The Office also properly notified appellant of the examination scheduled with Dr. Nakla and provided appellant an opportunity in conjunction with that notice to raise any objection with the selection of the impartial physician prior to the examination. Appellant, however, did not object to the selection of Dr. Nakla and she instead attended the examination as scheduled. Because appellant did not follow Office procedures for participating in the selection of the impartial medical specialist, the Board finds no error on behalf of the Office in its selection of Dr. Nakla; *see David Alan Patrick*, 46 ECAB 1020 (1995).

[10] *Roger Dingess*, 47 ECAB 123 (1995).

The Board notes that, although appellant has submitted reports from three physician's diagnosing that she has sympathetic reflex dystrophy, that condition was not accepted by the Office. Moreover, there is no reasoned medical opinion of record explaining with adequate medical rationale how the diagnosis is supported by the objective or physical evidence nor how the condition was caused by factors of appellant's employment. As noted previously, Dr. King's opinion is outweighed by the opinion of Dr. Nakla who specifically stated that there were no residuals of any hand condition apparent from the objective evidence. At best, Dr. King's diagnosis of sympathetic reflex dystrophy appears to be based on appellant's subjective complaints of pain.

Although Dr. Kantha diagnosed reflex sympathetic dystrophy, he did not offer an opinion on causation. His report even suggests that appellant's continuing hand pain may be attributable to her having to use crutches due to a nonwork-related condition. Similarly, Dr. Mehta opined that appellant had reflex sympathetic dystrophy and right ulnar neuritis "secondary to the trauma [he] sustained while at work" but he did not provide any rationale whatsoever for his conclusions. Consequently, because the reports of Drs. King, Kantha and Mehta are not sufficiently reasoned to overcome the opinion of the impartial medical specialist, the Board concludes that the Office carried its burden of proof in terminating appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated September 26 and April 14, 1997 are hereby affirmed.

Dated, Washington, D.C.
April 19, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member