

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY R. HANSELKA and DEPARTMENT OF THE ARMY,
WHITE SANDS MISSILE RANGE, White Sands, N.M.

*Docket No. 96-2217; Submitted on the Record;
Issued December 2, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden to terminate appellant's compensation for her accepted February 2, 1988 lumbar strain and temporary aggravation of degenerative disc disease; (2) whether appellant established a recurrence of this February 2, 1988 back injury; and (3) whether appellant established a recurrence of her accepted bilateral carpal tunnel syndrome.

This decision will first address the Office's termination of appellant's compensation for her accepted lumbar strain injury and temporary aggravation of degenerative disc disease, and its subsequent denial of appellant's claim for a recurrence of disability of this injury.

On February 9, 1988 appellant, then a 37-year-old secretary, filed a notice of traumatic injury alleging that she injured her left hip and possibly her back when she slipped on a slick floor on February 2, 1988 in the performance of her federal employment. The Office accepted the claim for lumbar strain and a temporary aggravation of degenerative disc disease and appellant was placed on the periodic rolls to receive compensation for total disability.

On February 4, 1994 Dr. David A. Capen, appellant's treating physician and a Board-certified orthopedic surgeon, indicated that he did not expect appellant to return to work because of the nature of her low back pain and the fact that appellant had the pain for six years. He stated that a pain management program did not allow appellant to stop taking pain-killing drugs. Dr. Capen further stated that appellant could not return to work due to restricted lumbar motion. He stated that there were signs of sciatica. Dr. Capen noted weakness in appellant's feet and muscles. He also found an alteration of sensibility over the S1 dermatome of the feet and that her ankle jerks were depressed. Dr. Capen completed a work restriction form indicating that appellant could perform intermittent sitting and walking for one hour a day, but that she could not lift, bend, squat, climb, kneel or twist. He indicated that intermittent standing was limited to 15 to 20 minutes. His lifting restriction was 0 to 10 pounds and he indicated that there were hand restrictions due to appellant's carpal tunnel syndrome. Dr. Capen stated that appellant could

occasionally reach above her shoulder, but that she could not operate foot controls or do repetitive movements with her feet. Dr. Capen found restrictions related to cold, dampness, temperature changes and high speed working. He concluded that appellant could maybe work two to four hours per day and that she was taking Darvocet for pain.

On August 29, 1995 Dr. Capen completed another work capacity evaluation. He stated that appellant should limit standing, walking, and climbing to ten minutes an hour for three hours per day. Dr. Capen indicated that there were limitations to appellant's fine motor movements of the upper extremities due to balanced carpal tunnel syndrome so that appellant could not perform repetitive movements of the wrist or elbow. He stated that these injuries were due to appellant's employment injury and that these restrictions would apply forever.

On September 14, 1995 the Office referred appellant to Dr. Thomas Alost, Jr., a Board-certified orthopedic surgeon, for a second opinion examination. Dr. Alost examined appellant on October 3, 1995. He noted the history of appellant's February 2, 1988 injury and her work history. Dr. Alost recorded appellant's symptoms of pain in her lower back radiating down both legs, aggravated by any type of repetitive, prolonged activity, and that appellant had to switch positions constantly to alleviate pain. He recorded that appellant had bowel incontinence. He noted a 1988 motor vehicle accident and treatment appellant received for multiple other injuries including bilateral heel spurs and carpal tunnel syndrome. Dr. Alost then reviewed appellant's long medical history. He specifically noted that appellant received multiple surgeries to the sacral region as a result of being gored by a buffalo in 1989. Dr. Alost's physical examination revealed a normal lumbar region except for healed surgical incisions about her lumbar region. He found evidence of tenderness and spasm around the paralumbar region. Dr. Alost indicated that appellant could walk with a normal gait and heel/toe walk without difficulty. He stated that she showed diminished range of motion in all planes of motion within the lumbar region which passed the straight leg validity test. Dr. Alost reported that lumbar flexion was 31 degrees; extension, 6 degrees; right lateral flexion, 10 degrees; and left lateral flexion, 18 degrees. He further noted that extension was extremely painful, but that appellant was neurologically intact in her lower extremities. Dr. Alost noted that straight leg raising caused pain. His review of appellant's lumbar spine film showed some degenerative changes. In response to whether appellant had objective evidence of lumbar strain caused by the work-related injury, Dr. Alost indicated that appellant did have palpable spasm within the paralumbar region with restricted range of motion within the lumbar spine. Dr. Alost, however, stated that there was no objective evidence of a work-related aggravation of appellant's degenerative disc disease because the (MRIs) were normal. He stated that appellant's symptomology was chronic myofascial pain as a result of her chronic lumbosacral paraspinal muscular strain. Dr. Alost stated that this current disability was directly related to the lumbosacral sprain with a chronic myofascial component. He opined, however, that appellant could return to her sedentary job as a secretary if she was provided with a lumbar-supporting chair.

On November 6, 1995 the employing establishment indicated that it provided lumbar-supporting, ergonomic chairs to its employees.

On November 7, 1995 the Office issued a "Notice of Proposed Termination of Compensation." The Office indicated that the weight of the evidence established that the injury-

related disability had ceased. The Office allowed appellant 30 days to present evidence or argument to the contrary.

On December 4, 1995 appellant stated that Dr. Capen never released her for any work and that she required bed rest to deal with her problems. Appellant further stated that she could not drive while taking her back pain medication. She further stated that sedentary work was not available as her position required her to change positions. Appellant indicated that she had bladder and bowel incontinence, and sciatica.

By decision dated December 8, 1995, the Office terminated appellant's compensation effective December 9, 1995 on the basis that the medical evidence established that the accepted conditions were no longer disabling. In an accompanying memorandum, the Office noted that the weight of the evidence rested with the opinion of Dr. Alost.

On December 13, 1995 Dr. R.R. Jauernek, a Board-certified radiologist, found that appellant's MRI of the lumbar spine was normal.

On January 15, 1996 appellant filed a notice of recurrence of disability alleging that on January 15, 1996 she suffered a recurrence of disability. Appellant stated that the recurrence was an old injury with numbness in the left hip and leg, swelling, and pain.

On February 5, 1996 Dr. Boris Kaim, a Board-certified psychiatrist and neurologist, stated that in February 1988 appellant injured her left hip and the left side of her back and that she reinjured her right hip and right side of her back. He noted complaints of numbness and pain in her back. Dr. Kaim stated that his January 23, 1996 nerve conduction study showed prolongation of the H reflex indicative of S1 root disorder. He stated that there was a neuropathy of the left tibia nerve and left deep peroneal nerve, and that clinically appellant had myelopathy. Dr. Kaim stated that due to her painful back appellant could not return to work.

On February 14, 1996 the Office requested that appellant provide additional information, including a physician's opinion, with supporting explanation, addressing the causal relationship between her current condition/disability and the original injury.

On March 25, 1996 Dr. Kaim noted that appellant had a history of seizures and he reviewed appellant's medical history. He conducted a physical examination, a cranial nerve examination, a motor examination, a deep tendon reflex examination, a sensory examination, cerebellar tests, gait tests, and paraspinal muscle tests. He diagnosed epilepsy, history of head trauma and encephalitis, and myelopathy. Dr. Kaim did not address whether appellant suffered a recurrence of disability related to her February 2, 1988 injury.

By decision dated June 18, 1996, the Office rejected appellant's claim of a recurrence of disability of her February 2, 1998 accepted work injury.

The Board initially finds that the Office did not meet its burden to terminate appellant's compensation benefits for her February 2, 1988 back injury.

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. Capen, appellant's treating physician and a Board-certified orthopedic surgeon, indicated in his February 4, 1994 report that appellant could not return to work because of her pain and her restricted lumbar motion. In reaching these conclusions, he did not refer to diagnostic testing or the results of his physical examination. Dr. Capen did not remedy this deficiency in completing his August 29, 1995 work capacity evaluation. The Office, however, relied on the opinion of Dr. Alost, a Board-certified orthopedic surgeon, who conducted a complete review of appellant's history, a thorough physical examination, and a review of the MRI. Dr. Alost concluded that appellant could return to her sedentary job as a secretary if she was provided with an appropriate chair. Dr. Alost, however, did not explain this conclusion in light of extensive findings and testing. His opinion is therefore entitled to little weight and is insufficient to meet the Office's burden to establish that appellant's employment-related disability had ceased.² Moreover, because the Office improperly terminated appellant's compensation for her February 2, 1988 back injury, the Board will not address the Office's June 18, 1996 decision denying a recurrence of disability of the same injury.

The Board will now address whether appellant established a recurrence of her accepted injury for bilateral carpal tunnel syndrome.

On September 23, 1992 appellant filed a notice of occupational disease alleging that she suffered from carpal tunnel syndrome as a result of her federal employment. On December 2, 1992 the Office accepted the claim for bilateral carpal tunnel syndrome. Appellant subsequently received surgery for both a right and left carpal tunnel release.

On January 15, 1996 appellant filed a notice of recurrence of disability indicating that she suffered a recurrence of disability on that same date. Appellant stated that her hands hurt with radiating pain up both arms. She stated that her hands shook and that she could not hold things.

On March 25, 1996 the Office requested additional information, including a physician's opinion with supporting explanation, as to the causal relationship between appellant's current disability/condition and the original injury. Appellant was given 30 days to respond.

By decision dated May 2, 1996, the Office rejected appellant's claim for compensation because the evidence failed to demonstrate a causal relationship between the work incident and the claimed condition or disability.

The Board concludes that appellant has not established a recurrence of disability causally related to her accepted bilateral carpal tunnel syndrome injury.

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

² *Clara T. Norga*, 46 ECAB 473 (1995).

Where appellant claims a recurrence of disability to an accepted employment-related injury, she has the burden of establishing by the weight of the reliable probative evidence that the recurrence of the condition for which she seeks compensation is causally related to the accepted employment injury.³ As part of this burden, appellant must submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current condition and the accepted employment-related injury.

In this case, appellant failed to submit any medical evidence showing a causal relationship between her current condition and her accepted carpal tunnel injury. Appellant therefore failed to establish that she suffered a recurrence of disability on January 15, 1996.

The decision of the Office of Workers' Compensation Programs dated December 8, 1995 is reversed. The decision of the Office dated June 18, 1996 is affirmed.

Dated, Washington, D.C.
December 2, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

³ See *Henry L. Kent*, 34 ECAB 361 (1982); *Dennis E. Twadzik*, 34 ECAB 536 (1983).