

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANE E. HUDSON and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Glendale, Calif.

*Docket No. 96-651; Submitted on the Record;
Issued February 25, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues is whether the Office of Workers' Compensation Programs discharged its burden of proof to terminate appellant's compensation benefits effective September 13, 1994.

On February 6, 1992 appellant, then a 52-year-old claims representative, filed a notice of occupational disease stating that she had incurred carpal tunnel syndrome as a result of typing in her federal employment. In support of her claim, appellant submitted a March 3, 1992 report from Dr. Maher F. Habashi, a Board-certified orthopedic surgeon and appellant's attending physician. In his report, Dr. Habashi diagnosed employment-related bilateral carpal tunnel syndrome, Dupuytren's contracture, left hand, and traumatic arthritis, first carpometacarpal joint, right thumb. Appellant stopped working on November 4, 1992 and has not returned.

On June 29, 1992 the Office accepted appellant's claim for bilateral carpal tunnel syndrome. Subsequently, the Office accepted carpal tunnel release, left, November 6, 1992, carpal tunnel release, right, February 19, 1993, and excision of scar, left hand z plasty, August 25, 1993.

In continuing support of her claim, appellant submitted at least nine additional narrative reports from Dr. Habashi, dating from September 9, 1992 through December 10, 1993, in which the physician documented appellant's progress, her ongoing treatment and her response to various surgeries. In these reports, Dr. Habashi continued to diagnose bilateral carpal tunnel syndrome, status post surgical release, Dupuytren's contracture, work related, and traumatic employment-related arthritis of the right thumb, and stated that appellant was still symptomatic, in need of further medical care and medication and remained totally disabled. In his October 14, 1992 report, Dr. Habashi noted that, in addition to her hand pain, appellant was complaining of neck and right shoulder pain and stated that an additional diagnosis was made of acromioclavicular arthritis, right, rotator cuff syndrome, right and cervical spinal sprain. In subsequent reports, Dr. Habashi continued to list these additional diagnoses.

In his January 18, 1994 report, Dr. Habashi noted that appellant had returned to his office complaining of neck, shoulder and back pain. He noted that she had had, to date, three surgeries for her carpal tunnel syndrome, including surgical excision of recurrent Dupuytren's contracture in August 1993. Dr. Habashi indicated that appellant would be temporarily disabled until March 31, 1994.

By letter dated January 29, 1994, the Office referred appellant to Dr. Harkeerat Dhillon, an orthopedic surgeon, for a second opinion evaluation.

In his narrative report dated April 20, 1994, Dr. Dhillon noted that he had examined appellant on February 3, 1994 and that she was, at that time, complaining of neck pain dating back to 1987. He noted that she did not complain of any specific problems relating to her hands and indicated to him that her hand symptoms had improved, but that she had spasms around Christmas of 1993.¹ Subsequent to his examination, and his review of appellant's history of injury, the medical records, x-ray and magnetic resonance imaging scan results, Dr. Dhillon stated that the test results were compatible with appellant's complaint of neck pain since 1987, as they revealed the presence of degenerative disc disease with osteoarthritis of the 6th and 7th vertebrae and some nerve root compression. He further stated that "[a]s she seems to have recovered reasonably well from the carpal tunnel syndromes, her residual symptoms now, all primary symptoms of the neck are due to the above-mentioned pathology."

On August 10, 1994 the Office issued appellant a notice of proposed termination of compensation, finding that the weight of the medical evidence rested with Dr. Dhillon, who, in a well-reasoned report, concurred with Dr. Habashi's recent conclusion that appellant's complaints were related to her neck and shoulder pain, and were unrelated to her carpal tunnel syndrome. The Office allowed appellant 30 days to submit additional evidence or argument.

By decision dated September 13, 1994, the Office terminated appellant's monetary and medical benefits effective that date. The Office stated that the weight of the medical evidence established that appellant's injury-related condition had ceased.

By petition dated October 20, 1996, appellant requested reconsideration of the Office's September 13, 1994 decision. Appellant stated she continued to have symptoms relating to her carpal tunnel syndrome, and that she had told Dr. Dhillon, the Office second opinion physician, only that her hands would improve if they were not used for any length of time. In support of her request, appellant submitted additional medical reports from Dr. Habashi, dated August 25, 1993 and January 18, March 21, April 15, June 21, September 10, October 14 and November 9, 1994.

In his March 21, 1994 report, Dr. Habashi noted appellant's various diagnosed conditions and stated that appellant would remain temporarily totally disabled until September 21, 1994. In his June 21, 1994 report, Dr. Habashi extended appellant's temporary total disability until September 30, 1994. In his October 21, 1994 report, Dr. Habashi reported that appellant was

¹ Dr. Dhillon's report states that appellant had spasms around Christmas of 1983, but this appears to be a typographical error.

totally and permanently disabled. The physician noted that in addition to hand pain, appellant had swelling of both wrists, and a tender swelling consistent with a recurrence of Dupuytren's contracture at the site of her previous surgery. He indicated that with respect to her hands, she was still significantly symptomatic and in need of further treatment in the form of medication, injections and possibly surgery. Finally, in his report dated November 9, 1994, Dr. Habashi stated that appellant "[had] been disabled as a result of her carpal tunnel from November 1992 to present and continued to be disabled. Because of the severity of her injury and the persistence of her symptoms it is felt that the patient is totally permanently disabled."

By decision dated March 7, 1995, the Office denied modification of its prior decisions. The Office found that Dr. Habashi's reports did not identify sufficient objective findings concerning appellant's hand condition nor contain enough reasoning to outweigh Dr. Dhillon's second opinion report, as he did not discuss how appellant's neck condition contributed to her current symptoms.

On August 20, 1995 appellant again requested reconsideration of the Office's termination. In support of her request, appellant submitted two additional reports from Dr. Habashi. In his February 24, 1995 report, Dr. Habashi again noted that in addition to her cervical and shoulder pain, which was being treated conservatively, appellant had persistent pain and weakness of both hands together with a recurrence of Dupuytren's contracture. He stated that appellant was still significantly symptomatic and in need of further treatment, medication and possibly surgery, and concluded that she was totally and permanently disabled "mainly due to severe bilateral carpal tunnel." In his final report of record, dated April 26, 1995, Dr. Habashi listed appellant's subjective complaints as well and his objective findings, and stated that although appellant had been surgically treated for her employment-related bilateral carpal tunnel syndrome and Dupuytren's contracture of the left hand, and had showed improvement, she had developed a recurrence of Dupuytren's contracture and still had significant residuals, needing medical treatment. Dr. Habashi again concluded that appellant remained totally and permanently disabled "due to bilateral carpal and ulnar tunnel syndrome."

In a decision dated September 26, 1995, the Office denied appellant's application for review, finding that Dr. Habashi's most recent reports were cumulative in nature and did not provide additional evidence and reasoning to establish that appellant's carpal tunnel syndrome is still related to work activity. The Office noted that its previous decision was based on Dr. Dhillon's opinion that appellant's symptoms were a result of problems in her neck, rather than repetitive use of her forearms. The Office concluded that Dr. Habashi had not provided enough information and reasoning to modify this determination and that it was clear from the record that appellant had significant degenerative changes in her neck which were affecting the nerve distribution, and contributing to her upper arm symptoms.

Once the Office accepts a claim, it has the burden of proof to justify termination of compensation benefits.² The Board finds that the Office did not meet its burden of proof to justify terminating appellant's compensation benefits effective September 13, 1994 due to a conflict in medical opinions between Dr. Habashi and Dr. Dhillon. In this connection, it should

² *Harold S. McGough*, 36 ECAB 332 (1984).

be pointed out that Dr. Habashi reported that appellant had been temporarily totally disabled through September 30, 1994. After that date he reported that appellant had swelling of both wrists, a tender swelling consistent with a recurrence of Dupuytren's contracture at the site of the previous surgery, continued to be significantly symptomatic and in need of further treatment in the form of medication, injections and possible surgery. He finally concluded that appellant was permanently totally disabled. On the other hand, the second opinion physician, Dr. Dhillon concluded that appellant had recovered from her accepted employment-related condition without residuals. Because of the existing conflict in the medical evidence, the Board concludes that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

The September 13, 1994, September 26 and March 7, 1995 decisions of the Office of Workers' Compensation Programs are hereby reversed.

Dated, Washington, D.C.
February 25, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member