

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENTA C. KENT and U.S. POSTAL SERVICE,
WOODLANDS STATION, Woodlands, Tex.

*Docket No. 96-1029; Submitted on the Record;
Issued February 9, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she was totally disabled, from September 20, 1994 through July 24, 1995, due to her accepted condition of bilateral carpal tunnel syndrome.

On August 23, 1994 appellant, then a 44-year-old mail carrier, filed a notice of occupational disease alleging, that she developed carpal tunnel syndrome, due to factors of her federal employment.

Appellant subsequently submitted medical reports from Dr. John T. Burns, a Board-certified orthopedic surgeon. In an August 31, 1994 medical report, Dr. Burns diagnosed bilateral carpal tunnel syndrome, mild de Quervain's stenosing tenosynovitis of the right wrist and lateral epicondylitis of the right elbow. He opined that appellant's complaints referable to both upper extremities were related to repetitive use of hands and extremities during the course of her work-related day. In a September 20, 1994 electromyogram/nerve conduction study report, Dr. Burns found mild chronic right C5-6 nerve root irritation and diagnosed repetitive stress syndrome in appellant's right and left upper extremities (lateral epicondylitis and de Quervain's stenosing tenosynovitis). He restricted appellant to light-duty work.

On May 16, 1995 the Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome. The Office informed appellant that lost time from work may be claimed by filing a Form CA-7 and later periods of disability may be claimed by filing Forms CA-8. The record also indicates that the Office authorized appellant's right carpal tunnel release surgery. Surgery was performed on June 19, 1995.

Appellant completed a Form CA-7 which the Office received on July 24, 1995, requesting wage-loss compensation from September 20, 1994 through July 24, 1995. On the reverse side of the form, appellant's supervisor noted that appellant stopped work on September 20, 1994 and returned to work on July 24, 1995.

In a June 28, 1995 attending physician's report, Dr. Burns diagnosed "de Quervain's right wrist," checked a box "yes" to indicate that this was work related and stated that the injury resulted from "repetitive use of the right upper extremity at work." The physician further stated, that appellant was totally disabled from September 20, 1994 to July 24, 1995. In an accompanying July 6, 1995 disability certificate, Dr. Burns indicated that appellant was disabled from July 10 through July 24, 1995 and could return to regular duty on July 24, 1995.

By letter dated September 19, 1995, the Office advised appellant that her claim for compensation could not be processed as the medical evidence, within the case file did not contain evidence indicative of total disability for the periods claimed. The Office requested that appellant submit rationalized medical evidence to support total disability.

By decision dated December 26, 1995, the Office denied appellant's claim for compensation on the grounds that there was insufficient medical evidence, supporting that appellant's disability from September 20, 1994 to June 18, 1995 was causally related to her accepted employment-related condition. The Office further noted that appellant failed to provide the requested and required medical evidence to support her claim for the dates claimed.

The Board finds that the case is not in posture for a decision.

In the present case, the Office accepted that appellant's condition of bilateral carpal tunnel syndrome arose in the performance of duty. It also appears that the Office authorized right carpal tunnel release surgery and that appellant underwent surgery on June 19, 1995.

Appellant has the burden of proving by the preponderance of reliable, probative and substantial evidence that she was disabled for work as a result of an employment injury, or employment factors. This burden includes the necessity of submitting medical opinion evidence, based on a proper factual and medical background, establishing such disability and its relationship to her employment.¹ The determination of whether an employee is disabled for work is primarily medical in nature and is in the realm of medical evidence.² However, it is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.³ The Office has an obligation to see that justice is done.⁴

The Board notes that the Office authorized right carpal tunnel release and Dr. Burn's records indicate that appellant had surgery on June 19, 1995. Under Board precedent, where the

¹ *David H. Goss*, 32 ECAB 24 (1980).

² *Janice N. Cooper*, 32 ECAB 528 (1981).

³ *Udella Billups*, 40 ECAB 260, 269 (1989); *Dorothy Sidwell*, 36 ECAB 699 (1985).

⁴ *John J. Caralone*, 41 ECAB 354, 360 (1989).

Office authorizes surgery, any disability resulting therefrom is compensable.⁵ The Office's December 26, 1995 decision, finds that appellant did not submit required medical evidence to support disability for the claimed dates, but it also seems to limit the denial to a part of the claimed period, September 20, 1994 to June 18, 1995, without explanation. It does not specifically address the issue of disability due to this surgery that was performed on June 19, 1995.⁶ Likewise, appellant would also be entitled to compensation for any time missed from work due to medical treatment for an employment-related condition.⁷ The Office has not made a determination on this aspect of appellant's claim.

While the reports of Dr. Burns are insufficiently rationalized to establish that appellant was totally disabled from September 20, 1994 to June 18, 1995,⁸ they are, in view of other evidence, sufficient to require further development of the record by the Office, as they do provide some support for causal relationship, for at least partial disability and are not refuted by any other medical evidence.⁹ Consequently, the Office, upon remand, should request additional medical evidence from Dr. Burns addressing the extent of appellant's work-related disability beginning September 20, 1994. Should the Office obtain medical evidence establishing that appellant was partially disabled due to her accepted condition during this period, the Office should then determine whether appropriate light duty was offered to appellant, during any period in which she was partially disabled due to her accepted condition.¹⁰

Therefore, the case will be remanded for further appropriate medical and factual development. The Office should request that Dr. Burns provide a reasoned opinion addressing whether appellant was totally or partially disabled, beginning September 20, 1994 due to an employment injury. The Office should also request that Dr. Burns forward all relevant records listing dates, of treatment for the accepted condition, during the claimed period and also all records pertaining to the surgery performed on June 19, 1995 and any related periods of disability. Thereafter, the Office should issue an appropriate merit decision regarding the period of claimed disability.

⁵ See *Rose M. Thompson*, 33 ECAB 1947 (1982); *Douglas P. Rahm*, 12 ECAB 498 (1961); *Hildreen M. Johnson*, 10 ECAB 384 (1959); *Melvin D. Dombach*, 8 ECAB 389 (1955); *Howard C. Derr*, 7 ECAB 396 (1954); *John Myers*, 6 ECAB 660 (1954).

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Illness*, Chapter 2.806.3(a)(3)(b) (June 1996) which provides that disability after acceptance may be due to surgery or worsening of the accepted condition and indicates that disability following surgery is expected in carpal tunnel syndrome cases since surgery is often the recommended treatment for this condition.

⁷ *Vincent E. Washington*, 40 ECAB 1242 (1989).

⁸ Dr. Burns did not explain why, in his September 20, 1994 report, he limited appellant to light duty due to her wrist condition while, in his June 28, 1995 report, he indicated that appellant was totally disabled beginning September 20, 1994.

⁹ *John J. Caralone*, *supra* note 4.

¹⁰ The general test in determining whether an employee is disabled is whether the employment-related impairment prevents the employee from engaging in the kind of work he or she was doing when he or she was injured. *Clifford W. Krippendorf*, 33 ECAB 94 (1981).

The decision of the Office of Workers' Compensation programs dated December 26, 1995 is set aside and remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.

February 9, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member