

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN B. AHRENS, JR. and DEPARTMENT OF THE ARMY,
ARMY CORPS OF ENGINEERS, Kansas City, Mo.

*Docket No. 95-3103; Submitted on the Record;
Issued July 8, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective January 8, 1995, on the grounds that residuals of accepted writers' cramp had ceased as of that date.

On January 15, 1987 appellant filed a claim for writer's cramp beginning in June 1985. At that time, appellant was on sick leave, having stopped work November 7, 1986. The Office accepted the claim on February 16, 1988 as writers' cramp.

By decision dated September 26, 1990, the Office reduced appellant's wage-loss compensation to reflect his actual earnings of \$100.00 per week for the period June 11 to July 28, 1990 as a delivery/order filler.¹

¹ Appellant received benefits on daily rolls beginning March 20, 1987 and on the periodic rolls as of April 10, 1988. In a May 31, 1990 closure report, vocational rehabilitation counselor Raymond H. Best, indicated that rehabilitation services beginning in June 1989 had proven unsuccessful, despite appellant's cooperation and pursuit of job contacts. Appellant worked from July 9 to November 19, 1990 earning \$5.00 per hour as a delivery warehouse worker and from February 6 to May 10, 1991 as a sales-customer relations specialist at a private company, but "had to quit due to problems with taking notes by phone." The record indicates that the Office issued an August 22, 1990 notice of proposed termination of compensation, as appellant was working as a delivery/order filler while receiving compensation for total disability on the periodic rolls, but that the Office took no further action on this notice.

By decision dated December 24, 1991, the Office denied appellant's claim for a schedule award for permanent impairment of the right upper extremity on the grounds that he had submitted insufficient medical evidence to establish maximum medical improvement.²

On October 9, 1992 the employing establishment offered appellant a light-duty position as a position classification specialist, using a desktop computer instead of handwriting reports, which the Office found to be suitable work. In a March 22, 1993 letter, appellant accepted the offered light-duty position, but indicated that Dr. John D. Morrison, an attending Board-certified family practitioner, had not yet released him to return to work following an October 1992 proctectomy with post-surgical complications. Appellant did not report for duty as directed on May 17, 1993.³

By November 23, 1994 notice, the Office advised appellant that it proposed to terminate his compensation benefits on the grounds that his work-related disability had ceased, according to March 3 and 4, 1992 reports from Dr. Brian Lambden, a Board-certified physiatrist and second opinion physician. The Office concluded that there was no objective evidence to support continuing work-related disability. Appellant replied by December 16, 1994 letter, generally refuting the Office's assertions.⁴

By decision dated December 29, 1994, the Office terminated appellant's compensation benefits effective January 8, 1995 on the grounds that there were "no objective findings to establish continuing residuals of the accepted work-related condition and disability." The Office noted that objective electrodiagnostic studies were negative for neurologic abnormality.

Appellant disagreed with this decision and requested reconsideration, alleging that the Office failed to establish that his work-related condition and disability had ceased and that Dr. Morrison, an attending Board-certified family practitioner, submitted a February 1, 1995 report, showing continuing work-related residuals.

² The Office noted that the decision did not preclude appellant from claiming a schedule award again when maximum medical improvement was reached. The Board notes that the Office seemed to find that appellant had attained maximum medical improvement as of Dr. Ginsburg's April 4, 1988 examination, therefore, it is unknown why the Office then found that appellant had not established that he had reached maximum medical improvement. Appellant disagreed with this decision and in a January 21, 1992 letter, requested an oral hearing before a representative of the Office's Branch of Hearings and Review, held August 5, 1992. By decision dated October 15 and finalized October 16, 1992, an Office hearing representative affirmed the Office's December 14, 1991 decision.

³ By decision dated May 20, 1993, the Office terminated appellant's compensation benefits on the grounds that he refused an offer of suitable employment. Appellant requested reconsideration by June 28, 1993 letter. By July 20, 1993 decision, the Office vacated its May 20, 1993 decision and reinstated benefits retroactive to May 30, 1993. The record indicates that on July 20, 1993, the Office recalculated appellant's loss of wage-earning capacity, but did not issue a formal decision altering the September 26, 1990 determination of wage-earning capacity.

⁴ Appellant enclosed an excerpt from medical literature regarding focal dystonia. However, the Board has held that medical texts and excerpts from publications are of no evidentiary value in establishing causal relationship between a claimed condition and an employee's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee. *William C. Bush*, 40 ECAB 1064, 1075 (1989).

By decision dated May 3, 1995, the Office denied modification, finding that the medical record established that appellant had no work-related residuals as of January 8, 1995. Appellant requested reconsideration by June 7, 1995 letter, reiterating his previous arguments. The Office denied reconsideration by June 26, 1995 decision, on the grounds that appellant's arguments were repetitious and previously addressed by the Office.

The Board finds that the Office improperly terminated appellant's compensation benefits effective January 8, 1995.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.⁵ In this case, the Office failed to meet its burden of proof in establishing that appellant's disability due to accepted writers cramp ceased as of January 8, 1995.

Appellant submitted considerable medical evidence establishing that the accepted writer's cramp was a permanent work-related condition with no known treatment, which would thus persist beyond January 8, 1995.

Dr. Morrison, an attending Board-certified family practitioner, submitted reports from August 27, 1987 to February 1, 1995, stating that there was "no medically recognized effective treatment" or cure for writer's cramp, appellant's condition had not improved with time and that his condition remained permanent with no expectation of partial or full recovery.⁶ Dr. Stanley H. Ginsburg, a Board-certified neurologist and impartial medical examiner opined, in a March 2, 1988 report, that while cessation of writing partially alleviated appellant's symptoms, the underlying condition of writer's cramp remained. He explained in an April 4, 1988 report, that "we can not say that the affects attributable to his federal employment will cease at any time.... Therefore ... [appellant] continues to have effects ... attributable to his employment, this may be considered 'permanent,' ... [I]t will never totally disappear." In a March 4, 1992 report, Dr. Lambden, stated that there was no treatment or cure to "eliminate the focal dystonia," that appellant did "continue to suffer from focal dystonia."

Although the Office denied appellant's schedule award claim by December 24, 1991 decision, an issue not before the Board on the present appeal, an Office medical adviser found on August 23, 1988 that appellant had reached maximum medical improvement as of April 4, 1988 and that according to the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, he had a 9 percent permanent impairment of the right upper extremity and a 10 percent impairment of the right hand. This determination indicates that appellant had an permanent, objective loss of function of the right upper extremity attributable to work factors.

Thus, appellant's attending physician, an impartial medical examiner, second opinion physician and Office medical adviser all opined that the accepted writer's cramp was a

⁵ Jason C. Armstrong, 40 ECAB 907 (1989).

⁶ October 31, 1988, October 24, 1989, November 26, 1991, July 22 and December 20, 1994, February 1, 1995.

permanent condition that would never resolve. Dr. Morrison made objective clinical findings on February 1, 1995 of continuing work-related residuals disabling appellant from his date-of-injury position. Therefore, there is no medical evidence of record supporting the Office's finding that appellant's writers' cramp condition ceased as of January 8, 1995.

Appellant also submitted many reports demonstrating that work-related residuals permanently disabled him from his date-of-injury job. Appellant's duties as a personnel classification specialist from 1966 to when he stopped work in November 1986 required writing between 22 and 30 hours per week.

Dr. Morrison permanently proscribed writing, repetitive wrist motions, keyboarding and fine manipulation⁷ in a series of reports from January 24, 1987 to July 22, 1994.⁸ He renewed these restrictions based on objective clinical observations of February 1, 1995, nearly one month after the January 8, 1995 termination date, revealing appellant's inappropriate grasping of a pen, leading to "spasm and bruising in his thumb," second and third fingers.

Also, in a March 4, 1992 report, Dr. Brian Lambden, a second opinion physician and Board-certified physiatrist, indicated that appellant could not longer perform the amount of writing required by his date-of-injury job and recommended use of a dictaphone for reports longer than a "paragraph or two," a writing board for use with any handwriting task, noting that appellant's accepted writer's cramp precluded use of a computer keyboard. He noted that these restrictions were permanent.

Thus, appellant submitted sufficient medical evidence to establish that the accepted condition necessitated permanent work restrictions due to work-related residuals after January 8, 1995. This is an additional reason that the Office's termination of appellant's compensation benefits as of January 8, 1995 was in error.

The Office also predicated its termination of compensation benefits on the absence of positive electrodiagnostic results, interpreting that this indicated the accepted writers cramp had resolved. However, the medical evidence indicates that such test results are not indicative of the accepted writer's cramp condition. Every physician of record diagnosed writer's cramp by history, clinical observation, objective neurologic signs on physical examination and the absence of positive electrodiagnostic studies. Moreover, the Office accepted appellant's writers cramp condition on February 16, 1988, based on approximately three years of medical reports, none of which mentioned a positive electrodiagnostic study.

⁷ Additionally, Dr. Duane Glatz, an attending Board-certified neurologist, permanently restricted simple grasping and fine manipulation in a September 13, 1988 report.

⁸ In a January 24, 1987 and October 31, 1988 reports, Dr. Morrison opined that appellant was permanently disabled from any position involving writing. In February 13 and October 24, 1989 and May 21, 1991 work restriction evaluations, Dr. Morrison proscribed fine motor activities and writing. In a November 26, 1991 and June 1, 1993 reports, Dr. Morrison forbade keyboarding, as it could "produce similar symptoms and result in a further deterioration of [appellant's] hand function. In a July 22, 1994 report, Dr. Morrison stated that appellant should limit "[w]ork requiring writing and similar hand functions," or "repetitive motion of [the] wrist," with restrictions against "[a]ny significant writing or hand manipulation resulting in immediate discomfort and cramping."

In a November 11, 1985 report, Dr. David Conyers, an attending Board-certified neurologist specializing in hand surgery, noted reduced grip and pinch strength of the right hand with a positive Froman's sign, indicating weakness of the adductor pollicis muscle. He diagnosed writers cramp. In a September 3, 1986 report, Dr. Glatz found normal NCV studies of the right wrist and diagnosed writers cramp based on history and clinical observation.

In a November 11, 1986 note, Dr. Morrison, found normal EMG and NCV studies and diagnosed writers cramp. In reports from October 31, 1988 through November 26, 1991, Dr. Morrison noted that appellant had "involvement of inappropriate muscle groups" of the right hand, producing objective dyskinesia. In a December 20, 1994 report, Dr. Morrison explained that writer's cramp was diagnosed by clinical observation and neurologic examination, as opposed to laboratory tests and that the normal EMG and NCV results ruled out other neurologic pathologies, thus confirming the diagnosis.

In December 1, 1987 and April 4, 1988 reports, Dr. Ginsburg, the impartial medical examiner, found minimal cogwheeling at the right wrist with "disturbances of tone and posture" indicating dyskinesia. He diagnosed writer's cramp with focal dystonia, based upon history and clinical observation.

In a March 3 and 4, 1992 reports, Dr. Lambden observed appellant's difficulty in drawing concentric circles and sloppy handwriting and diagnosed a right upper extremity focal dystonia secondary to writing at work. He stated that there was "no reason to doubt [appellant's] description of the problem. [Appellant] certainly did not present as a symptom magnifier."⁹

Therefore, the Office's raising the issue of lack of positive electrodiagnostic studies as a grounds for termination of compensation is erroneous, as the medical record contains sufficient rationale explaining that positive electrodiagnostic studies are not proper diagnostic criteria for writer's cramp.

As the Office has failed to establish that appellant's work-related disability and residuals ceased as of January 8, 1995, the December 29, 1994 decision terminating his compensation benefits was in error and must be reversed.

⁹ Dr. Lambden recommended further evaluation with Dr. Chris O'Brien, a specialist in movement disorders. The Office did not approve this referral.

The decisions of the Office of Workers' Compensation Programs dated June 26 and May 3, 1995 and December 29, 1994 are hereby reversed, and the case returned to the Office for reinstatement of compensation retroactive to January 8, 1995, and payment of all appropriate retroactive and prospective benefits.

Dated, Washington, D.C.
July 8, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member