U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRIS R. MANANSALA and U.S POSTAL SERVICE,
MAIL PROCESSING & DISTRIBUTION CENTER, Van Nuys, Calif.

Docket No. 96-1446; Submitted on the Record;
Issued July 9, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits and; (2) whether the Office properly denied appellant's request for an oral hearing.

On September 24, 1993 appellant, then a 32-year-old mail processor, filed an occupational disease claim alleging that she sustained an injury commencing in April 1989 which she attributed to factors of her federal employment. The Office accepted appellant's claim for bilateral carpal tunnel syndrome.

In a claim form dated November 22, 1994, appellant filed a claim for compensation benefits for wage loss commencing on January 4, 1994.

In a report dated May 23, 1994, Dr. Sion Nobel, a Board-certified physiatrist, indicated that electromyography and nerve conduction studies were negative for carpal tunnel syndrome and negative for a problem with the left upper extremity.

In reports dated July 11, 1994, Dr. Nobel diagnosed bilateral carpal tunnel syndrome and cervical and lumbar myofascial back pain and indicated by checking the block "yes" that the conditions were caused or aggravated by appellant's employment. He indicated that appellant was able to perform light-duty work and listed several work restrictions.

In a letter dated August 25, 1994, Dr. Nobel noted that appellant had an electrodiagnostic study on October 25, 1993 which was considered negative for carpal tunnel syndrome but clinically appellant was symptomatic and when she performed repetitive motion of the wrist, the pain became worse. He diagnosed carpal tunnel syndrome, lateral epicondylitis, and neck and wrist sprain.

In a form report dated November 21, 1994, Dr. Nobel diagnosed carpal tunnel syndrome, a cervical strain and shoulder impingement, and right lateral epicondylitis and indicated by

checking the block marked "yes" that these conditions were causally related to appellant's employment. Dr. Nobel indicated that appellant was only able to work five to six hours per day with restrictions.

By decision dated December 19, 1994, the Office denied appellant's claim for compensation benefits for ongoing disability for two work hours daily between January 4 and November 13, 1994.

In a fitness-for-duty examination report dated December 22, 1994, Dr. Jay A. Vogel, a Board-certified orthopedic surgeon, provided a history of appellant's condition and findings on examination and noted appellant's complaint of pain in both wrists. He stated that his physical examination revealed only tenderness in the volar portion of appellant's right hand, that there was no atrophy of the thenar or hypothenar musculature and that appellant had a negative Tinel's and negative Phalen's test. Dr. Vogel stated that there was no indication on physical examination of any peripheral neuropathy, carpal tunnel syndrome, or tardy ulnar nerve palsy. He stated that appellant had a normal examination and was capable of performing full duties at work without any restrictions.

By letter dated December 29, 1994, the Office referred appellant, along with a statement of accepted facts and copies of medical records, to Dr. Benjamin E. Lesin, a Board-certified orthopedic surgeon, for a second opinion examination and evaluation as to whether appellant had any continuing employment-related medical condition or disability.

In a report dated January 17, 1995, Dr. Lesin provided a history of appellant's condition, a summary of the medical records, and detailed findings on examination. He diagnosed fibromyalgia and stated that this condition was unrelated to appellant's work activities. Dr. Lesin stated that she would have this condition even absent her work duties. He did not find any evidence of the accepted condition, carpal tunnel syndrome, and he noted that appellant's attending physicians also did not find any objective evidence of carpal tunnel syndrome.

In a form report dated October 5, 1995, Dr. Nobel diagnosed repetitive strain syndrome and indicated by checking the block marked "yes" that the condition was causally related to appellant's employment but he also noted "it could be from chronic post-traumatic arthritis-bursitis.

In a letter dated October 30, 1995, the Office advised appellant that it proposed to terminate her compensation benefits on the grounds that the weight of the medical evidence established that she no longer had any residual disability or medical condition causally related to her April 5, 1989 employment injury.

By decision dated December 11, 1995, the Office terminated appellant's compensation benefits on the grounds that the weight of the medical evidence as represented by the January 17, 1995 report of Dr. Lesin established that she no longer had any residuals causally related to her employment injury.

By letter postmarked January 17, 1996, appellant requested an oral hearing before an Office hearing representative.

By decision dated March 7, 1996, the Office's Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that appellant had not timely submitted her request within 30 days of the Office's December 11, 1995 decision. The Office indicated that the issue involved, whether appellant's disability causally related to April 1989 employment injury had ceased, could be equally well resolved by a request for reconsideration and the submission of additional evidence.

The Board finds that the Office has met its burden of proof in terminating appellant's compensation benefits.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.[1]

In this case, the Office accepted that appellant sustained bilateral carpal tunnel syndrome due to factors of her federal employment.

By letter dated December 29, 1994, the Office referred appellant to Dr. Lesin, a Board-certified orthopedic surgeon, to determine whether appellant had any residual disability or medical condition causally related to her employment-related carpal tunnel syndrome.

In a thorough, well-rationalized report dated January 17, 1995, Dr. Lesin provided a history of appellant's condition, a summary of the medical records and detailed findings on examination and he diagnosed fibromyalgia. He stated that this condition was unrelated to appellant's job and that she would have this condition even absent her work duties. In his comprehensive report, Dr. Lesin diagnosed a condition which has not been accepted by the Office as causally related to appellant's employment, fibromyalgia. He did not find any evidence of the accepted condition, carpal tunnel syndrome, and he noted that appellant's attending physicians also did not find any objective evidence of carpal tunnel syndrome. The Board finds that the Office has met its burden of proof, in determining that appellant's employment-related carpal tunnel syndrome had ceased, on the comprehensive well-rationalized January 17, 1995 report of Dr. Lesin.

The reports of appellant's physicians are not sufficient to overcome the opinion of Dr. Lesin.

In a report dated May 23, 1994, Dr. Nobel, a Board-certified physiatrist, stated that electromyographic and nerve conduction studies were negative for carpal tunnel syndrome. In a report dated August 25, 1994, Dr. Nobel acknowledged that objective testing was negative for carpal tunnel syndrome but he diagnosed this condition as well as lateral epicondylitis and neck and wrist sprain solely on the basis of appellant's subjective complaints of pain. As Dr. Nobel

[1] *See Alfonso G. Montoya*, 44 ECAB 193 (1992); *Gail D. Painton*, 41 ECAB 492 (1990); *Leona Z. Blair*, 37 ECAB 615 (1986).

did not provide sufficient medical rationale explaining why he felt that he could provide a definite diagnosis in the absence of any objective findings, his report is not sufficient to overcome the opinion of Dr. Lesin that appellant had no continuing employment-related medical condition or disability. Furthermore, in a form report dated October 5, 1995, Dr. Nobel diagnosed repetitive strain syndrome and indicated by checking the block marked "yes" that the condition was causally related to appellant's employment but he also noted "it could be from chronic post-traumatic arthritis-bursitis. As Dr. Nobel's opinion as to causal relationship is speculative and not sufficiently rationalized it is not sufficient to overcome the opinion of Dr. Lesin.

In a fitness-for-duty examination report dated December 22, 1994, Dr. Vogel, a Board-certified orthopedic surgeon, provided a history of appellant's condition and findings on examination. He stated that there was no indication on physical examination of any peripheral neuropathy, carpal tunnel syndrome, or tardy ulnar nerve palsy. He stated that appellant had a normal examination and was capable of performing full duties at work without any restrictions. As Dr. Vogel did not determine that appellant had carpal tunnel syndrome or any other condition causally related to her employment and that she was able to work without restrictions, this report does not support appellant's claim of a continuing employment-related medical condition or disability. Rather, it supports the Office's determination that appellant's employment-related injury had resolved.

The Board further finds that the Office properly denied appellant's request for a hearing under section 8124.

Section 8124(b) of the Act provides that, before review under section 8128(a), a claimant for compensation who is not satisfied with a decision of the Secretary is entitled to a hearing on his claim on a request made within 30 days after the date of issuance of the decision before a representative of the Secretary.[2] As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[3] As appellant's request for a hearing was postmarked January 17, 1996, more than 30 days after the Office's August 6, 1991 decision, appellant was not entitled to a hearing as a matter of right. The Office advised appellant that the issue involved in her case, whether her disability causally related to April 1989 employment injury had ceased, could be equally well resolved by a request for reconsideration and the submission of additional evidence. Therefore, the Office properly denied appellant's untimely request for an oral hearing.

[2] *See* 5 U.S.C. § 8124(a).

[3] *See Charles J. Prudencio*, 41 ECAB 499, 501 (1990); *see also* 20 C.F.R. § 10.131.

The March 7, 1996 and December 11, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
July 9, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member