

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GAIL F. HARLAN and U.S. POSTAL SERVICE,
BELLE MEADE STATION, Nashville, Tenn.

*Docket No. 96-2244; Submitted on the Record;
Issued July 22, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective July 24, 1994.

On September 13, 1987 appellant, then a 37-year-old letter carrier, filed a claim for tarsal tunnel syndrome, which she related to standing and walking in delivering mail. She indicated that she first began to feel pain in her feet in April 1987 and the pain became progressively worse despite home treatments. Appellant stopped working on June 10, 1987 and used annual leave through June 24, 1987. She returned to limited-duty work on October 23, 1987. The Office accepted appellant's claim for bilateral tarsal tunnel syndrome and paid temporary total disability compensation for the period June 25 through October 22, 1987. Appellant stopped working again on April 25, 1988 and used annual leave through May 9, 1988. The Office began payment of temporary total disability compensation effective May 10, 1988.¹ In a September 24, 1991 decision, the Office issued a schedule award for a 10 percent permanent impairment of each leg.

In an April 26, 1994 letter, the Office informed appellant that it proposed to terminate her compensation on the grounds that she had no continuing disability as a result of the accepted injury. In a July 7, 1994 decision, the Office terminated appellant's compensation effective July 24, 1994. Appellant requested reconsideration. In a December 12, 1995 merit decision, the Office denied appellant's request for modification of the July 7, 1994 decision. Appellant again requested reconsideration. In an April 12, 1996 decision, the Office denied appellant's request

¹ On November 1, 1990 the employing establishment offered appellant a modified position as a city carrier. Appellant refused the position. In a January 14, 1991 decision, the Office terminated appellant's compensation on the grounds that she had failed to accept suitable employment. Appellant requested reconsideration. In a February 21, 1991 decision, the Office vacated the January 14, 1991 decision and reinstated appellant's compensation.

for reconsideration because she had not submitted substantive legal questions nor new and relevant evidence in support of her request for reconsideration.

The Board finds that the Office has not met its burden of proof in terminating appellant's compensation.

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.²

In a June 29, 1987 report, Dr. Gardner L. Dixon, a general practitioner, diagnosed tarsal tunnel syndrome based on neurologic and orthopedic examination of appellant. A July 2, 1987 electromyogram (EMG) and nerve conduction studies indicated that appellant had bilateral tarsal tunnel syndrome. In a January 22, 1988 report Dr. Dixon stated that the long distances of walking required in appellant's job caused the tarsal tunnel syndrome. In subsequent reports Dr. Dixon indicated that appellant continued to have pain in her feet and was totally disabled for work.

In a June 21, 1989 report, Dr. William M. Gavigan, a Board-certified orthopedic surgeon, diagnosed bilateral tarsal tunnel syndrome. He commented that appellant had decreased sensation throughout her body except for her right thoracic area and in her abdomen. He indicated that this finding did not fit a specific nerve pattern of any kind and suggested a hysterical presentation. He stated that he could not account for an organic cause of appellant's weakness or the need for a cane.

In an August 18, 1992 report, Dr. Dixon indicated that appellant was unable to walk for any extended period of time or distance and had decreased sensitivity to hot and cold in the plantar surface of her feet. He stated that appellant had atrophy in the intrinsic muscles of both feet as a direct consequence of her tarsal tunnel syndrome. He noted that appellant had significant decrease in the power of her feet and swelling, which directly affected her ability to walk and maneuver in a work situation, which he also related to appellant's employment-related condition.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. E. Dewey Thomas, a Board-certified orthopedic surgeon, for an examination and second opinion. In a July 1, 1993 report, Dr. Thomas stated that appellant had no residuals indicating objective findings of the accepted condition other than the EMG. He commented that the tarsal tunnel syndrome was only partially disabling, not totally disabling. He stated that the only reason for appellant's prolonged and poor recovery was the presumed hysterical component of her condition as alluded to by Dr. Gavigan. He concluded appellant could perform the physical requirements of the job as a city carrier if she was motivated to do so. In a subsequent

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

report, Dr. Thomas stated that appellant could occasionally lift 75 pounds as required by the position of city carrier but could not do so on a repetitive basis.

Dr. Thomas found no objective evidence to support appellant's disability. However, Dr. Dixon had previously found atrophy in the intrinsic muscles of the foot, loss of power in the foot and swelling in the feet as well as a decrease in sensation in the feet. His findings, therefore, directly conflict with the findings of Dr. Thomas. Dr. Dixon and Dr. Thomas reached conflicting conclusions on appellant's ability to work. Dr. Thomas' report, therefore, was only sufficient to cause a conflict in the medical evidence. It did not have sufficient probative value to outweigh the probative value of Dr. Dixon's reports that appellant continued to be totally disabled for work and provided objective medical evidence in support of that conclusion.

Further medical evidence was provided by Dr. Lloyd A. Walwyn, a Board-certified orthopedic surgeon, who stated in a September 11, 1994 report that appellant's ankle and feet appeared swollen and were cool and tender. Dr. Walwyn indicated that manipulation or application of pressure produced severe pain. He reported that active or passive range of motion of the ankles and feet was restricted and was accompanied by moderate to severe pain. He indicated that appellant had tactile hyperesthesia and dysesthesia of her feet. Dr. Walwyn commented that he did not observe any attempt by appellant to mislead, magnify her symptoms or engage in any other form of maladaptive behavior or conduct. He concluded that appellant had a 23 percent permanent impairment of each leg. Dr. Walwyn's report give further weight to the conflict in the medical evidence. The Office has not met its burden of proof in establishing that appellant's accepted condition of tarsal tunnel syndrome was no longer causing disability for work, thereby justifying the decision to terminate her compensation.

The decisions of the Office of Workers' Compensation Programs, dated April 12, 1996 and December 12, 1995, are hereby reversed.

Dated, Washington, D.C.
July 22, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member