

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELLA R. RANDOLPH and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, Ohio

*Docket No. 96-486; Submitted on the Record;
Issued May 7, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing a recurrence of disability for the period September 9 to October 6, 1994.

On December 19, 1989 appellant, then a 32-year-old distribution clerk, filed an occupational disease claim, alleging carpal tunnel syndrome. The Office of Workers' Compensation Programs accepted her claim for bilateral carpal tunnel syndrome. On December 10, 1990 appellant filed an occupational disease claim for bilateral carpal tunnel syndrome and bilateral overuse syndrome. On July 2, 1991 the Office accepted her claim as a "simple occupational disease" for bilateral overuse syndrome. Appellant underwent left carpal tunnel syndrome release surgery in May 1992. Appellant filed several claims for recurrences of disability in 1991 and 1992 which were approved together with an authorization for right carpal tunnel syndrome release surgery in September 1992. Appellant received appropriate compensation for all periods of temporary total disability related to her bilateral carpal tunnel syndrome and surgeries for her condition. On November 30, 1993 appellant accepted a modified distribution clerk position and she returned to this limited-duty position working four hours a day on December 11, 1993.

On October 11, 1994 appellant filed a claim for recurrence of disability beginning September 8, 1994, the date she stopped work in relation to the alleged recurrence. Appellant returned to work on October 7, 1994. By decision dated February 2, 1995, the Office denied appellant's claim for recurrence of disability on the grounds that the medical evidence did not establish a causal relationship between the claimed disability and the accepted employment injury of bilateral carpal tunnel syndrome. In a decision dated November 6, 1995, an Office hearing representative affirmed the Office's February 2, 1995 decision.

The Board has carefully reviewed the entire case record on appeal and finds that this case is not in posture for decision.

Where an employee claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of the substantial,

reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.¹ This burden included the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.² When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or medical evidence of record establishes that she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of the burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³

In the present case, the Office found that appellant had not established a recurrence of disability. The Office assigned determinative weight to the medical report by Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon and Office referral physician. In a report dated October 21, 1994, Dr. Kaffen noted that appellant's claim had been approved for bilateral carpal tunnel syndrome and right shoulder tendinitis and that most of appellant's symptoms were in her upper extremities, including her neck, both shoulders and arms. He indicated that appellant's symptomology was most likely related to her diagnosed condition of fibromyalgia rather than the accepted carpal tunnel syndrome condition. In a report dated November 29, 1994, Dr. Kaffen added that appellant was capable of working four hours a day and reported that there was no medical reason why she would have been incapable of working four hours a day in the last year. In contrast, Dr. Kurt C. Strange, a general practitioner and appellant's attending physician, indicated that appellant was disabled during the period in question. In a report dated August 29, 1994, Dr. Strange noted that appellant was experiencing pain in her hands that was an exacerbation of her carpal tunnel syndrome and continued to experience pain from her fibrositis. He noted decreased touch sensation and median nerve distribution and a new ulnar nerve neuropathy. Dr. Strange concluded that the repetitive motion required in appellant's work was making her conditions worse. In a report dated October 7, 1994, Dr. Strange indicated that appellant had been out of work since September 8, 1994 due to a severe exacerbation of her fibrositis and carpal tunnel syndrome. He noted that appellant was seen on September 9, 1994 when she complained of severe hand, shoulder and back pain and left work on September 8, 1994 due to an exacerbation of her carpal tunnel syndrome from the repetitive movements in her work. He concluded that no sudden causal event was responsible for appellant's condition but rather, it was brought on by repetitive motion over time. Thus, contrary to the Office's findings, Dr. Strange did indicate that appellant's condition was causally related to her accepted employment injury of carpal tunnel syndrome as well as fibrositis that was a progression of her bilateral overuse syndrome.⁴

¹ *John E. Blount*, 30 ECAB 1374 (1979).

² *Frances B. Evans*, 32 ECAB 60 (1980).

³ *Jackie B. Wilson*, 39 ECAB 915 (1988); *Terry R. Hedman*, 38 ECAB 22 (1986).

⁴ In a letter dated December 22, 1993, Dr. Strange advised the Office that appellant's overuse syndrome which was the terminology used to describe her diagnoses of neurological pain and symptoms was better diagnosed as fibromyalgia. Appellant requested that this diagnosis be added to her list of accepted conditions, however, no decision has been reached concerning whether the diagnosed condition of fibromyalgia or fibrositis is causally

Section 8123 of the Federal Employees' Compensation Act⁵ provides that if there is a disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.⁶ In the instant case, the Office relied on the opinion of Dr. Kaffen to find that appellant had not established a recurrence of disability during the period in question without resolving the conflict between his opinion and that of Dr. Strange, regarding whether appellant was capable of performing her limited-duty work. Therefore, because there is an unresolved conflict between the opinions of Drs. Kaffen and Strange, the case must be remanded for further evidentiary development to resolve the conflicting medical evidence. On remand the Office shall refer appellant, a copy of the medical record and a statement of accepted facts to an impartial medical specialist for an evaluation of whether appellant's symptomology is related to her accepted employment condition and whether she was temporarily totally disabled between September 9 and October 6, 1994. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated November 6 and February 2, 1995 are set aside, and the case is remanded for further proceedings consistent with this decision

Dated, Washington, D.C.
May 7, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

related to factors of appellant's federal employment.

⁵ 5. U.S.C. § 8123(a)

⁶ *Shirley L. Steib*, 46 ECAB 309 (1994).