

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDREW M. MARINA and U.S. POSTAL SERVICE,
POST OFFICE, Ronkonkoma, N.Y.

*Docket No. 96-1282; Submitted on the Record;
Issued May 27, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has established disability after September 26, 1980 as causally related to his federal employment.

The case has been before the Board on a prior appeal. In a decision dated June 3, 1982, the Board adopted the findings and conclusions of an Office of Workers' Compensation Programs hearing representative found in a July 29, 1991 decision.¹ The hearing representative had affirmed an October 26, 1980 Office decision terminating appellant's compensation as of September 26, 1980, on the grounds that the weight of the medical evidence, represented by Dr. Allen O. Smith, a neurologist selected as an impartial medical specialist, indicated that appellant's employment injury had ceased.²

Subsequent to the Board's decision, the Office denied modification by decisions dated May 1 and July 31, 1986, January 28, 1987, April 25, 1994, July 7 and December 22, 1995. The Office has also issued nonmerit decisions denying reconsideration of the claim on January 14 and June 18, 1993, May 31 and June 15, 1994 and October 3, 1995.

The Board has reviewed the record and finds that appellant has submitted sufficient evidence to require further development of the record.

Once the Office has met its burden to terminate compensation, the burden shifts to the claimant to establish that he has disabling residuals causally related to his federal employment.³ A review of the evidence submitted after the Board's June 3, 1982 decision reveals several

¹ Docket No. 82-1075.

² The Office accepted aggravation of left carpal tunnel syndrome and tardy ulnar palsy.

³ See *George Servetas*, 43 ECAB 424, 430 (1992).

medical reports supporting a continuing disabling condition causally related to appellant's federal employment.

In a report dated October 26, 1982, Dr. Bernard Sandler, a neurologist, stated that his diagnoses remained as carpal tunnel syndrome and tardy ulnar palsy superimposed on an underlying neurological disorder. He stated that the stress of carrying the heavy bag and the stress placed on wrist and elbow joints were predisposing causes of the diagnosed conditions, and it was his definite opinion that the tardy ulnar palsy and the carpal tunnel syndrome were permanently aggravated by conditions of employment. In a report dated June 27, 1986, Dr. Shasidari Kori, a neurologist, provided a history and results on examination, stating that there was clear evidence of ulnar and medial nerve dysfunction consistent with carpal tunnel syndrome and ulnar neuropathy. Dr. Kori stated that this was the same injury that had persisted since 1973, and he believed appellant sustained nerve injuries as a result of his job in 1973 and since then had been showing progressive deterioration of function along these nerves.

In a report dated December 27, 1993, Dr. Harish J. Patel, a neurologist, noted appellant's work history and diagnosed chronic cervical radiculoneuropathies and bilateral carpal tunnel syndrome. Dr. Patel opined that the diagnoses were the direct result of work-related injuries resulting in permanent muscle wasting and permanent disability. In a report dated March 14, 1995, Dr. David W. Malka, a neurologist, reported that appellant had a cervical polyradiculopathy and left cubital tunnel syndrome as a result of years of mail carrying. Dr. Malka stated that these nerve entrapments were caused by repeated trauma to the neck as a result of carrying a heavy weight, with the cubital tunnel syndrome also caused by hypertrophy of the flexor carpi ulnaris muscle due to repeated flexures at the wrist, as occurs with repeated mail handling. He opined that appellant was permanently disabled as a result of these conditions.

The record therefore contains significant, uncontradicted medical evidence supporting a disabling condition after September 26, 1980 that is causally related to appellant's federal employment. Although not sufficiently detailed to meet appellant's burden of proof, these reports do constitute probative medical evidence that is sufficient to require further development of the evidence.⁴ On remand the Office should further develop the medical evidence to resolve the issue as to whether appellant had a disabling condition after September 26, 1980 causally related to his federal employment, and if so, the period of disability. After such further development as the Office deems necessary, the Office should issue an appropriate decision.

⁴ See *Rebel L. Cantrell*, 44 ECAB 660 (1993); *Udella Billups*, 41 ECAB 260 (1989).

The decisions of the Office of Workers' Compensation Programs dated December 22, October 3 and July 7, 1995 are set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
May 27, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member