U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. MEREDITH and DEPARTMENT OF DEFENSE, DEFENSE GENERAL SUPPLY CENTER, Richmond, Va.

Docket No. 97-2341; Submitted on the Record;
Issued May 7, 1998

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing any disability after July 1, 1994 causally related to her accepted employment injury of February 4, 1991.

This case has previously been on appeal before the Board. In its May 13, 1994 decision,[1] the Board found that the Office of Workers' Compensation Programs properly found that appellant had not met her burden of proof in establishing carpal tunnel syndrome in her right hand and affirmed the Office's May 14, 1992 decision and the October 23, 1992 decision, in part. However, the Board further found that the Office improperly rescinded its acceptance of appellant's May 21, 1991 claim for carpal tunnel syndrome of the left hand as the Office did not present any new or different evidence as a basis for this determination. The Board therefore reversed that portion of the October 23, 1992 decision that addressed appellant's carpal tunnel syndrome of the left hand. The facts and circumstances of the case as set out in the Board's May 13, 1994 decision are incorporated herein by reference.

Following the Board's decision, the Office approved appellant's request for continuing medical treatment for her carpal tunnel syndrome of the left hand. On July 25, 1994 appellant filed a claim for continuing compensation covering the period April 5, 1991 to July 1, 1994.

In a letter dated October 2, 1995, the Office advised appellant that she was entitled to gross compensation through leave buy back for the period February 4, 1991 to May 3, 1994 and that she should file claims for compensation if she had not returned to work and would lose pay or entered a leave-without-pay status in the future. Appellant also received appropriate compensation for the period February 5, 1991 to June 30, 1994.

By decision dated November 2, 1995, the Office denied appellant's claim for continuing compensation after July 1, 1994 on the grounds that the medical evidence did not establish any

[1] Docket No. 93-575.

disability after that date which was causally related to her accepted employment injury. In a merit decision dated January 9, 1997, the Office denied modification of the prior decision.

The Board has carefully reviewed the entire case record in the present appeal and finds that appellant has not established that she has any disability after July 1, 1994 causally related to her accepted employment injury.[2]

An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.[3] The Board has held that the mere fact that a disease or condition manifests itself during a period of employment does not raise an inference of causal relationship between the condition and the employment.[4] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that employment caused or aggravated her condition is sufficient to establish causal relationship.[5] While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty,[6] neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[7]

In developing the medical evidence with respect to the issue of whether appellant has any disability related to her accepted employment injury, the Office properly determined that there was a conflict in the medical evidence between Dr. Reginald C. Jackson, appellant's treating physician and a Board-certified radiologist, and Dr. Herman Nachman, a Board-certified orthopedic surgeon and Office referral physician, regarding whether appellant had any disability after July 1, 1994 from her February 1991 employment injury. In a form report dated July 18, 1994, Dr. Jackson diagnosed carpal tunnel syndrome of the left hand which was related to appellant's employment as a data transcriber from November 1983 to August 1985 and to her work as lead procurement clerk at employing establishment. He indicated that appellant had diminished strength in her left hand, had difficulty grasping and holding things and was totally disabled from April 5, 1991 through July 1994. In contrast, in a report dated December 15, 1994, Dr. Nachman, on examination, found good grip in both hands with good push and pull in

[2] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on July 17, 1997, the only decisions before the Board is the Office's January 9, 1997 decision. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[3] *Williams Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

[4] *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[5] *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[6] *See Kenneth J. Deerman*, 34 ECAB 641 (1983).

[7] *See Margaret A. Donnelly*, 15 ECAB 40 (1963); *Morris Scanlon*, 11 ECAB 384 (1960).

the upper extremities, no evidence of muscle atrophy of the thenar, hypothenar or intrinsic muscles of either hand, some give away in testing opposition of the thumb, first and second fingers of the left hand, negative Phalen's and Tinel's signs in both wrists, equal deep tendon reflexes and intact sensory and vibratory nerve distributions in both upper extremities. He concluded that appellant did not have any work restrictions as a result of her accepted employment injury and was not in need of surgery for carpal tunnel syndrome in her left hand.

In order to resolve the conflict the Office referred appellant to Dr. Bruce M. Stelmack, a Board-certified neurologist and physiatrist, for an impartial medical examination in accordance with section 8123(a) of the Federal Employees' Compensation Act.[8]

In situations where there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of the resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[9] The Board has carefully reviewed the opinion of Dr. Stelmack and finds that it has sufficient probative value, regarding the relevant issue in the present case, to be accorded such special weight.

In a report dated March 7, 1995, Dr. Stelmack noted the history of injury, reviewed appellant's medical records and conducted a limited nerve conduction study and electromyography (EMG)/monopolar needle examination. On examination he found "normal sensory nerve action potential distal latencies and amplitudes, as well as wave forms and bilaterally normal abductor pollices brevis insertional activity without [EMG] evidence of any abnormality including carpal tunnel syndrome." Dr. Stelmack noted that appellant had no work history since September 1991 which suggested that the abnormal examination symptoms were due to nonwork-related sources. He diagnosed history of bilateral carpal tunnel syndrome without neurodiagnostic evidence supporting current injury to the median nerve bilaterally. Dr. Stelmack indicated that appellant's complaints on the left wrist were at least partially work related and were also related to unspecified cumulative trauma disorder and obesity. However, he further found that she was not totally disabled, could be permitted to return to work and was capable of doing many types of work as long as repetitive activities were limited. Dr. Stelmack has provided a well-reasoned and rationalized opinion that appellant was not totally disabled by her accepted employment injury. Thus, the Office properly accorded special weight to the impartial medical examination report by Dr. Stelmack in finding that his report constituted the weight of the medical evidence and that appellant had not established that she was disabled after July 1, 1994 in relation to her accepted injury. Moreover, appellant did not submit evidence with her request for reconsideration that was sufficient to overcome the report by Dr. Stelmack. Appellant submitted a report dated January 30, 1996 by Dr. Todd R. Rowland, who indicated that he was unable to determine whether appellant had carpal tunnel syndrome or not. This inconclusive report is not sufficient to establish that modification of the Office's prior decision is

[8] Section 8123 of the Act 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; 5 U.S.C. § 8123(a).

[9] *Jack R. Smith*, 41 ECAB 691 (1990); *James P. Roberts*, 31 ECAB 1010 (1980).

warranted and is not sufficient to establish a new conflict in the medical evidence. Appellant also submitted a partially favorable disability decision by the Social Security Administration which is irrelevant as it is not medical evidence and therefore cannot overcome the well-reasoned opinion by Dr. Stelmack.[10] Appellant has not met her burden of proof in establishing disability after July 1, 1994 causally related to her accepted employment injury.

The decision of the Office of Workers' Compensation Programs dated January 9, 1997 is hereby affirmed.

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

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] Findings of other administrative agencies are not determinative with regard to proceedings under the Federal Employees' Compensation Act which is administered by the Office and the Board. *George A. Johnson,* 43 ECAB 712 (1992).