U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANA NEBEL and DEPARTMENT OF THE AIR FORCE, WRIGHT PATTERSON AIR FORCE BASE, Ohio

Docket No. 95-3076; Submitted on the Record;
Issued October 1, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, BRADLEY T. KNOTT

The issue is whether appellant has established that she was disabled for her light-duty assignment by an employment-related condition on August 9 and 19, September 13 and 30, October 19, November 2 and December 16, 1993, and from January 10 to 12 and October 3 to 7, 1994.

The Office of Workers' Compensation Programs accepted that appellant sustained tenosynovitis of both wrists, bilateral carpal tunnel syndrome and bilateral pronator syndrome in the performance of her duties as a procurement clerk. The Office authorized surgery for these conditions, and appellant underwent carpal tunnel releases in October 1989 and February 1990 and on April 24, 1991 a decompression neurolysis of the right median nerve at the elbow and forearm performed by Dr. Douglas A. Gordon, a Board-certified orthopedic surgeon. The Office paid for the surgeries and for the concomitant periods of disability. Appellant returned to work on July 30, 1991 with right upper extremity restrictions against lifting over five pounds or repetitive use. Thereafter the Office paid appellant compensation for 54 hours she missed from work between August 13, 1991 and July 28, 1992.

On January 31, 1994 appellant filed a claim for compensation for intermittent absences from work from August 9, 1993 to January 31, 1994. The employing establishment advised that appellant used a total of 72 hours of leave-without-pay on the following dates: August 9 and 19, September 13 and 30, October 19, November 2 and December 16, 1993, and from January 10 to 12, 1994. On October 13, 1994 appellant filed a claim for compensation for the period October 3 to 7, 1994.

In a report dated March 24, 1994, Dr. Lenora Gray, a Board-certified neurologist, stated, "This is to inform you that [appellant] missed workdays, which are listed on the attached sheet, because of pain in her hands." Date-stamped as received the same day as Dr. Gray's March 24, 1994 report were appellant's and the employing establishment's lists of the dates on which appellant used 72 hours of leave-without-pay between August 9, 1993 and January 12, 1994.

In a report dated September 21, 1994, Dr. Gordon noted that appellant "did not have significant improvement with the surgery" and that she was on medications which did "help to some extent. She has been working though she does occasionally miss days for increased symptoms." Dr. Gordon then described appellant's symptoms:

> "Symptoms are now roughly equivalent on both the right and left sides and involve essentially forearm pain in the anterior and lateral aspects which seems to shoot into all of the fingers, mostly in the index and long fingers. The forearm pain is more prominent on the right and the tingling somewhat more prominent on the left. The hands often feel heavy and this seems to occur with activity. She does seem to be somewhat improved when she first gets up in the morning and this deteriorates during the day."

On examination Dr. Gordon noted global weakness of the upper extremities and positive Phalen's and Tinel's signs; the doctor diagnosed "Persistent pain dysfunction in the upper extremities with symptoms predominantly in the median nerve distribution."

In a note dated October 7, 1994, Dr. Matthew L. O'Connell, a Board-certified family practitioner, indicated appellant had been under his care from October 3 to 7, 1994 and was able to return to work on October 10, 1994. Dr. O'Connell listed the nature of the illness or injury as "CTS," a common abbreviation for carpal tunnel syndrome. In a report dated October 12, 1994, Dr. Gray noted that she treated appellant in 1989 and then did not see her again until September 30, 1993, at which time, "The pain continues in spite of the surgeries. … She stated that she was unable to do anything at work because of the pain, including typing or writing." In a report dated November 17, 1994, Dr. Gordon concluded that appellant had a 15 percent permanent impairment of each upper extremity due to decreased strength, and a 25 percent permanent impairment of each upper extremity due to pain and discomfort.

The Office denied appellant's claim for compensation between the dates of August 9, 1993 and October 7, 1994 by decision dated December 2, 1994, finding that the evidence failed to establish her disability was causally related to her employment. This decision was affirmed by an Office hearing representative in an August 21, 1995 decision.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this 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.[1]

The Board finds that appellant has established that she was disabled for her light-duty assignment by an employment-related condition on August 9 and 19, September 13 and 30, October 19, November 2 and December 16, 1993, and from January 10 to 12, 1994.

[1] *Terry R. Hedman*, 38 ECAB 222 (1986).

In a report dated March 24, 1994, Dr. Gray, a Board-certified neurologist, stated that appellant missed work on these days "because of pain in her hands." The Board has noted that when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurt too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on this issue or a basis for payment of compensation.[2] In the present case, however, there are objective signs of disability, not in Dr. Gray's March 24, 1994 report, but in the September 21 and November 17, 1994 reports of Dr. Gordon. In a September 21, 1994 report, Dr. Gordon noted that appellant "has been working though she does occasionally miss days for increased symptoms." The primary symptom Dr. Gordon then described, and which was one of the two bases of his assessment of her permanent impairment, was pain, the same symptom to which Dr. Gray attributed her disability for the intermitent days missed from work from August 9, 1993 to January 12, 1994. Worsening of symptoms can be an appropriate basis for payment of compensation for disability.[3]

The Board recognizes that Dr. Gray examined appellant on only one of the ten dates on which she indicated appellant was disabled between August 9, 1993 and January 12, 1994. Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.[4] However, in the present case, it is not clear what a physical examination on each of the claimed dates would have added to the medical evidence. Dr. Gordon, appellant's attending physician, had already attempted all available treatment, including surgery, and concluded that she was left with a permanent residual of pain, which increased at times, causing occasional days missed from work. Given the circumstances of this case and the fact that appellant is claiming only 72 hours of absences from work during a five-month period, the Board finds that the Office should pay appellant compensation for the time she missed from work due to her accepted condition on August 9 and 19, September 13 and 30, October 19, November 2 and December 16, 1993, and from January 10 to 12, 1994.

The Board further finds that appellant has not established that she was disabled from her light-duty assignment by an employment-related condition from October 3 to 7, 1994.

While the evidence cited above, taken as a whole, was sufficient to meet appellant's burden of proof for the period August 9, 1993 to January 12, 1994, the evidence for the period October 3 to 7, 1994 is less probative and insufficient to meet appellant's burden of proof. This evidence consists of a report from a general practitioner which contains a diagnosis of the employment-related condition, carpal tunnel syndrome, but does not contain any indication why the doctor considered appellant disabled from October 3 to 7, 1994. Some explanation is necessary, especially given that the claimed disability in this instance lasted an entire week, as opposed to the mostly single days of disability during the earlier period August 9, 1993 to January 12, 1994.

[2] *John L. Clark*, 32 ECAB 1618 (1981).

[3] *Thomas N. Martinez*, 41 ECAB 1006 (1990).

[4] *See Paul D. Weiss*, 36 ECAB 720 (1985).

The decisions of the Office of Workers' Compensation Programs dated August 21, 1995 and December 2, 1994 are set aside with respect to the period August 9, 1993 to January 12, 1994, and affirmed with respect to the period October 3 to 7, 1994.

Dated, Washington, D.C.
October 1, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member