

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of FENTRESE L. HARRISON and U.S. POSTAL SERVICE,  
POST OFFICE, N. Little Rock, AR

*Docket No. 97-2536; Submitted on the Record;  
Issued August 6, 1999*

---

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether appellant established continuing disability beyond May 30, 1993, causally related to her accepted bilateral carpal tunnel syndrome; (2) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment in the amount of \$3,943.10, for the period May 30 through July 30, 1993; and (3) whether the Office properly determined that appellant was at fault in creating the overpayment.

On April 24, 1992 appellant, then a 33-year-old mail clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she suffered from bilateral carpal tunnel syndrome as a result of her employment. Appellant indicated that she first became aware of her condition and its relationship to her employment, on April 3, 1992.<sup>1</sup> The Office accepted appellant's claim for bilateral carpal tunnel syndrome and she received appropriate wage-loss compensation.

Appellant received a compensation payment in the amount \$3,943.10, which covered the period May 30 through July 30, 1993. After initially authorizing disbursement of these funds in July 1993, the Office subsequently determined that appellant was not entitled to compensation after May 30, 1993 based on medical evidence which indicated that she no longer had disability from carpal tunnel syndrome. On July 28, 1993 the Office telephoned appellant and left a message advising her that she would soon receive a check dated July 30, 1993 that was issued in error and that she should return the check. The Office also sent appellant a letter that same day informing her not to cash the check and to return it as soon as possible. The letter further explained that appellant was not entitled to compensation for the period May 30 through July 30, 1993 because her treating physician, Dr. Chakales, indicated in a June 6, 1993 report that "there is no evidence of any carpal tunnel compression at this time."

---

<sup>1</sup> Due to a prior back injury, appellant was not working at the time she filed her claim in April 1992. She has not worked since June 20, 1991.

Appellant did not return the July 30, 1993 check as requested by the Office. Instead, she was examined on August 16, 1993 by Dr. Yvette K. Baker and was again diagnosed as suffering from carpal tunnel syndrome. Appellant cashed the July 30, 1993 check the Office had erroneously issued for the period May 30 through July 30, 1993.

Appellant continued to file additional claims (Form CA-8) alleging continuing disability due to her carpal tunnel syndrome. By letter dated December 17, 1993, the Office acknowledged receipt of appellant's claims and informed her that the evidence of record was insufficient to establish continuing disability. Additionally, the Office advised appellant of the type of evidence that was required in order to proceed with a claim for recurrence of disability,<sup>2</sup> and allowed appellant 30 days to submit such evidence. The letter also noted that the July 30, 1993 check that the Office had issued in error had not yet been returned. The Office requested that appellant provide a written statement regarding the status of the check.

In a decision dated January 20, 1994, the Office denied appellant's claim for compensation, after November 1, 1993. The Office found that the medical evidence of record failed to establish that appellant remained disabled due to her bilateral carpal tunnel syndrome. In conclusion, the Office stated that appellant failed to demonstrate that the claimed disability on or after May 30, 1993, was causally related to the injury of April 3, 1992.

On January 24, 1994 the Office informed appellant that it had made a preliminary determination that an overpayment in the amount of \$3,943.10, had occurred and that she was at fault in the creation of the overpayment. The Office advised appellant of her rights in the event that she disagreed with the preliminary determination and further indicated that if she did not respond within 30 days, a final decision would be issued based on the information currently on file.

On February 9, 1994 appellant, with the assistance of counsel, requested a hearing regarding the Office's January 20, 1994 denial of compensation and the January 24, 1994 preliminary overpayment determination. The hearing was subsequently held on September 12, 1995.

In a decision dated June 24, 1997, the Office hearing representative affirmed the Office's decision dated January 20, 1994 and finalized the January 24, 1994 overpayment finding.

The Board finds that appellant has failed to establish continuing disability after May 30, 1993, causally related to her accepted bilateral carpal tunnel syndrome.

In the instant case, the Office accepted appellant's claim for bilateral carpal tunnel syndrome and awarded wage-loss compensation for intermittent periods of disability based on appellant's filing of Form CA-8. Appellant has the burden of proof to establish her disability for benefits claimed under Form CA-8.<sup>3</sup> The issue of whether appellant has continuing disability

---

<sup>2</sup> The Office advised appellant to file Form CA-2a in the event she believed a recurrence of total disability had occurred.

<sup>3</sup> See *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

due to her accepted condition is primarily a medical question. As previously noted, the Office initially determined that appellant was not entitled to benefits after May 30, 1993 based upon a June 6, 1993 report from Dr. Chakales, her treating physician, in which he indicated that there was no longer any evidence of carpal tunnel compression.<sup>4</sup> In a subsequent report dated June 29, 1993, Dr. Chakales noted that appellant was “markedly symptomatic” and based on neck, back and leg pain. He, however, made no mention of carpal tunnel syndrome.

The record indicates that Dr. Chakales next examined appellant on August 6, 1993 and at that time he noted that appellant was still complaining of multiple problems, including pain radiating to her wrist and hand, with numbness and tingling in both hands. He further noted that appellant was receiving treatment from a psychologist, which had been beneficial with regard to her chronic pain syndrome. However, from an orthopedic standpoint, Dr. Chakales concluded that he had nothing more to offer appellant. He further indicated that he planned to release appellant from his care that same day and refer her to a neurologist. In conclusion, Dr. Chakales noted that from a clinical standpoint, appellant suffered from multiple system diseases, which included: (1) cervical disc syndrome with early degenerative arthritis; (2) lumbar disc syndrome with chronic back pain and bilateral sciatica; and (3) carpal tunnel syndrome, which “electrodiagnostically has improved, but clinically is still symptomatic.”

Dr. Chakales’ reports covering the period of June through August 1993 clearly reveal the absence of any objective evidence of carpal tunnel syndrome and demonstrate merely intermittent subjective complaints of pain, numbness and tingling of the hands and wrists. He continued to submit duty status reports (Form CA-17), which indicated that appellant was totally disabled from resuming work, however, he did not address whether this was due to her carpal tunnel syndrome. This evidence is insufficient to establish continuing disability due to appellant’s previously accepted bilateral carpal tunnel syndrome for the period after May 30, 1993.

Appellant was next examined on August 16, 1993 by Dr. Yvette K. Baker, a neurologist. Although Dr. Baker submitted an August 17, 1993 Form CA-17 indicating that appellant was totally disabled from work due to pain in both wrists and arms, the record does not include a corresponding medical report for this time period. Thus, Dr. Baker did not set forth any physical findings or diagnostic evidence relied upon in support of her disability assessment. In a September 28, 1993 report, Dr. Baker diagnosed lumbar and cervical strain, bilateral carpal tunnel syndrome and bilateral ulnar nerve compression, left greater than the right.<sup>5</sup> She attributed appellant’s conditions to her injury of April 3, 1992 and concluded that appellant was not currently able to perform any job functions. Dr. Baker subsequently submitted two additional attending physician’s reports dated October 31 and December 1, 1993. These reports

---

<sup>4</sup> Dr. Chakales based his assessment on a June 1, 1993 EMG, administered by Dr. David A. Miles. In his report, Dr. Miles noted that the previously reported carpal tunnel syndromes had completely reverted to normal values and he concluded that currently there was “no evidence of carpal tunnel syndrome on either side by standard techniques or by palmar stimulation studies.”

<sup>5</sup> The record includes a September 28, 1993 nerve conduction study which Dr. Baker apparently relied upon in diagnosing bilateral carpal tunnel syndrome and bilateral ulnar nerve compression.

reiterate earlier findings, but do not specifically address any particular employment factors that caused or contributed to appellant's continuing disability due to bilateral carpal tunnel syndrome.

In a narrative report dated January 3, 1994, Dr. Baker explained that she began treating appellant on August 16, 1993 for bilateral carpal tunnel syndrome and bilateral ulnar nerve compression. She noted that appellant's initial physical examination revealed atrophy of the thenar and hypothenar eminences bilaterally, left greater than right and significantly decreased grip strength bilaterally. Additionally, she reported a general history of job-related injuries in December 1986 and again in January 1988, as well as appellant's involvement in a motor vehicle accident on April 26, 1991. Dr. Baker indicated that she had only scanned appellant's medical records and expressed the need for a complete neurological work-up to ascertain whether there were any additional problems that might require treatment. With respect to the issue of causation, Dr. Baker expressed her feeling that "all of [appellant's] injuries [were] related to either one of the on-the-job injuries or the regular activities required by her job, such as consistent heavy lifting, repetitive hand motions, etc." She concluded that appellant was unlikely to ever be able to return to work with the employing establishment.

The Board finds that Dr. Baker's January 3, 1994 fails report fails to address the initial onset of appellant's bilateral carpal tunnel syndrome or the fact that appellant had not performed her job-related duties since June 20, 1991. Moreover, Dr. Baker acknowledged a less than thorough review of the medical records provided to her some five months prior to the issuance of her January 3, 1994 report. Although Dr. Baker attributed appellant's bilateral carpal tunnel syndrome to her federal employment, she failed to provide a rationalized explanation as to why appellant's current condition was due to her job exposure, which ceased more than two years prior to the date Dr. Baker initially examined appellant in August 1993. Consequently, Dr. Baker's reports are of diminished probative value to support a finding of continuing disability beyond May 30, 1993, causally related to appellant's accepted bilateral carpal tunnel syndrome.

Dr. Baker subsequently referred appellant to Dr. W. Steven Metzger, a Board-certified psychiatrist and neurologist. Dr. Metzger examined appellant on February 1, 1994 and submitted a Form CA-17 in which he noted "no evidence of carpal tunnel syndrome" and further indicated that appellant was able to perform her regular work duties on a full-time basis. Clearly, Dr. Metzger's opinion does not support a finding of continuing disability.

In March 1994 appellant resumed treatment with Dr. Chakales. In a report dated March 25, 1994, he briefly summarized appellant's recent treatment with Drs. Baker and Metzger and commented that his current working diagnosis was the same as his previous diagnosis. Dr. Chakales noted continued complaints of persistent and chronic neck pain radiating across the shoulders and arms into the hands. He also noted back pain radiating into appellant's hips. Dr. Chakales indicated that from a clinical standpoint, appellant suffered from the residuals of cervical disc syndrome and lumbar disc syndrome. He also noted "some evidence of carpal tunnel compression." In conclusion, Dr. Chakales noted "At this time, [appellant] states that she is disabled and unable to work."

In a follow-up report dated July 15, 1994, Dr. Chakales discussed appellant's cervical and lumbar condition, but made no mention of any carpal tunnel symptoms. He subsequently

discharged appellant from his care on August 29, 1994, with the following diagnoses: (1) residuals of cervical spine injury, cervical disc syndrome; (2) lumbar spine injury, lumbar disc syndrome; (3) carpal tunnel syndrome, which apparently has improved from an electrodiagnostic standpoint; and (4) chronic pain syndrome. Dr. Chakales concluded that appellant was disabled due to chronic pain syndrome and he recommended that she continue treatment with her psychologist.<sup>6</sup>

In a report dated November 14, 1994, Dr. Chakales provided a comprehensive review of appellant's medical treatment dating back to his initial examination of her on January 28, 1987 for an employment-related back injury that occurred on December 12, 1986. With respect to appellant's current condition, Dr. Chakales reiterated his August 29, 1994 findings.<sup>7</sup> He concluded that from an orthopedic standpoint, appellant did not require active medical treatment, however, he noted that appellant needed psychological evaluation and treatment. Finally, the record indicates that Dr. Chakales continued to treat appellant from January through August 1995 for her cervical and lumbar conditions, however, there is no indication of further treatment for carpal tunnel syndrome.

The Board finds that Dr. Chakales' treatment records covering the period March 1994 through August 1995 do not support a finding of continuing disability after May 30, 1993 due to appellant's previously accepted bilateral carpal tunnel syndrome. On more than one occasion, he characterized appellant's carpal tunnel syndrome as "improved." In other instances, Dr. Chakales' more recent reports did not mention the existence of carpal tunnel syndrome. While appellant may be disabled from performing her prior duties, the record does not establish that her alleged disability after May 30, 1993 is causally related to her accepted bilateral carpal tunnel syndrome. The opinions of Drs. Chakales, Baker, Slavik and Metzger are insufficient to establish disability after May 30, 1993.

The Board further finds that the Office properly determined that appellant received an overpayment of compensation in the amount of \$3,943.10, for the period May 30 through July 30, 1993. The record shows that the Office incorrectly issued a check to appellant in the amount of \$3,943.10 and that appellant acknowledged receiving this check.

The Board further finds that the Office properly determined that appellant was at fault in creating the overpayment.

---

<sup>6</sup> Appellant's psychologist, Dr. Frank A. Slavik, Jr., issued a report dated August 5, 1994 in which he diagnosed depression and anxiety, psychological factors affecting physical condition and adjustment reaction. Dr. Slavik concluded that appellant was not employable due to disability associated with back, neck and carpal tunnel syndrome pains, as well as an inability to use hands and arms effectively. However, he failed to indicate which specific employment factors contributed to appellant's carpal tunnel syndrome so as to currently render her disabled. As such, his opinion is insufficient to establish continuing disability beyond May 30, 1993, causally related to appellant's accepted carpal tunnel syndrome.

<sup>7</sup> In addition to diagnosing lumbar and cervical disc syndrome, Dr. Chakales noted "carpal tunnel syndrome treated nonoperatively improved" and "chronic pain syndrome," which he stated was "making [appellant] a dysfunctional individual."

Section 8129 of the Federal Employees' Compensation Act<sup>8</sup> provides that an overpayment must be recovered unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of the Act or would be against equity and good conscience." However, an individual who is found to have been at fault in helping to create the overpayment is not eligible for a waiver of recovery of overpayment.<sup>9</sup>

With respect to determining fault section 10.320(b) of Title 20 of the Code of Federal Regulations provides in relevant part:

"An individual is with fault in the creation of an overpayment who:

- (1) Made an incorrect statement as to a material fact which the individual knew or should have known to be incorrect; or
- (2) Failed to furnish information which the individual knew or should have known to be material; or
- (3) With respect to the overpaid individual only, accepted a payment which the individual knew or should have been expected to know was incorrect."<sup>10</sup>

The Office applied the third standard in determining that appellant accepted a payment which she knew or should have known was incorrect. While the Office erroneously forwarded the July 30, 1993 check to appellant, negligence on the part of the Office does not excuse an employee's acceptance of a payment which she knew or should have been expected to know was incorrect.<sup>11</sup> In the instant case, appellant was clearly made aware of the Office's determination that she was not entitled to the July 30, 1993 payment of \$3,943.10. The Office advised appellant of this fact by telephone on July 28, 1993 and in a follow-up letter that same day. Moreover, appellant testified at the September 12, 1995 hearing that she was contacted by the Office and advised "not to cash the check." She further testified that she disregarded the Office's directive not to cash the check because two doctors subsequently told her: "You have carpal tunnel syndrome." Although appellant ostensibly received conflicting information regarding the presence and extent of her condition, there is nothing in the record to suggest that appellant attempted to clarify this discrepancy with the Office prior to negotiating the July 30, 1993 check. Her stated reason for disregarding the Office's directive does not excuse the fact that she accepted a payment which she knew or should have been expected to know was incorrect.

---

<sup>8</sup> 5 U.S.C. § 8129(a), (b).

<sup>9</sup> *Bonnye Mathews*, 45 ECAB 657, 667 (1994).

<sup>10</sup> 20 C.F.R. § 10.320(b).

<sup>11</sup> *See Russell E. Wageneck*, 46 ECAB 653, 661 (1995).

The Board finds that, under the circumstances of this case, the Office properly found that appellant accepted a July 30, 1993 payment in the amount of \$3,943.10, which she knew or should have been expected to know was incorrect. As appellant was at fault in creating the overpayment pursuant to section 10.320(b)(3),<sup>12</sup> recovery of the overpayment of compensation may not be waived.

The decision of the Office of Workers' Compensation Programs dated June 24, 1997 is hereby affirmed.

Dated, Washington, D.C.  
August 6, 1999

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

---

<sup>12</sup> 20 C.F.R. § 10.320(b)(3).