

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON P. HENDRICKS and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, NC

*Docket No. 98-982; Submitted on the Record;
Issued August 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has established that she developed carpal tunnel syndrome in the performance of duty, causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for an oral hearing under 5 U.S.C. § 8124 on the grounds that it was untimely requested.

On April 17, 1997 appellant, then a 42-year-old rural mail carrier, filed a claim alleging that her hands went numb while working and that she developed bilateral carpal tunnel syndrome causally related to her employment. In a subsequent statement, appellant noted that she had had no previous jobs that required repetitive movements, that she had no hobbies or outside activities involving repetitive use of her hands, that she began work with the employing establishment in 1983 with duties that included sorting, casing and delivering mail which all required repetitive use of her hands, and that her hand problems started in January 1997 with numbness and pain and the loss of ability to grasp objects. Appellant further noted that surgery was performed on her right hand on April 30, 1997.

A preoperative April 29, 1997 Form CA-17 report from a physician's assistant noted decreased median nerve velocities, and a positive Phalen's test, and contained the diagnosis of carpal tunnel syndrome. A May 13, 1997 postoperative CA-17 also signed by a physician's assistant reported that appellant could return to duty with the activity restrictions.

On May 19, 1997 the employing establishment confirmed that appellant's statement describing the use of her hands in her duties was consistent with the normal position requirements.

By letter dated June 9, 1997, the Office explained that a report from a physician's assistant was insufficient without a physician's signature to constitute probative medical evidence, and it requested that she submit a comprehensive report from her treating physician

which included examination results and findings and a complete and detailed statement causally relating appellant's condition to specific employment hand motions and activities.

In response appellant's treating physician, Dr. Robert L. Liljeberg, a Board-certified orthopedic surgeon, noted that appellant had both positive Tinel's and Phalen's signs of both wrists, that she had bilateral hand numbness, that she had a positive median nerve compression test on February 27, 1997, and that nerve conduction studies done on April 7, 1997 revealed bilateral carpal tunnel syndromes with bilateral delay in median motor and sensory potentials. Dr. Liljeberg diagnosed carpal tunnel syndrome, noted that a right carpal tunnel release was performed and noted that postoperatively appellant had resolution of her symptoms on the right. He indicated that surgery was being considered for the future for the left hand.

However, instead of a specific detailed statement causally relating appellant's condition to specific employment hand motions and activities, Dr. Liljeberg stated, "It appears that this condition may have been caused by her work, due to the nature of repetitive motion."

By decision dated July 17, 1997, the Office rejected appellant's claim finding that fact of injury had not been established. The Office determined that Dr. Liljeberg's statement was speculative that occupational repetitive motion "may have caused" appellant's condition.

By letter dated November 6, 1997, appellant requested a written review of the record by the Branch of Hearings and Review and she submitted further medical evidence from Dr. Liljeberg containing further statements addressing causal relation.¹

By decision dated November 25, 1997, the Branch of Hearings and Review denied appellant's request for a review of the written record as it was untimely requested.

The Board finds that this case is not in posture for decision.

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.² This holds true in occupational claims as well as in initial traumatic injury claims. In the instant case, although appellant's treating physician's report does not contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that she developed bilateral carpal tunnel syndrome causally related to her repetitive work duties, it constitutes substantial, uncontradicted evidence in support of appellant's claim and raises an uncontroverted inference of causal relationship between her allegedly disabling complaints and periods of disability, that is

¹ As this evidence was not reviewed by the Office for its most recent formal final decision it is not now before the Board on this appeal; *see* 20 C.F.R. § 501.2(c).

² *William J. Cantrell*, 34 ECAB 1223 (1983).

sufficient to require further development of the case record by the Office.³ Additionally, there is no opposing medical evidence in the record.

Therefore, this case must be remanded to the Office for the development of a statement of accepted facts, including a detailed description of appellant's repetitive duties and specific questions to be answered, and for referral to an appropriate orthopedic hand specialist, together with the relevant medical records, for a rationalized medical opinion on causal relation between appellant's diagnosed bilateral carpal tunnel syndrome and factors of her federal employment.

This finding, accordingly, renders the second issue moot.

Consequently, the decision of the Office of Workers' Compensation Programs dated July 17, 1997 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.
August 20, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

³ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).