

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM H. DAVIS and DEPARTMENT OF THE NAVY,
NAVY AVIATION DEPOT, Cherry Point, NC

*Docket No. 97-1878; Submitted on the Record;
Issued December 20, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective August 13, 1991.

In the present case, appellant worked as a sheet metal mechanic for the employing establishment. He periodically worked in light-duty positions due to various medical problems, including head, neck, back and upper extremity conditions.¹ In 1988 appellant began to report persistent pain in his right arm and his light-duty work was modified to reflect these complaints.² In November 1989, appellant filed an occupational injury claim form alleging that he sustained right carpal tunnel syndrome due to using vibrating tools at work.

The results of electromyographic testing performed on August 10, 1989 revealed prolonged latencies and reduced amplitudes in the right median nerve which were consistent with carpal tunnel syndrome. In a report dated June 27, 1990, Dr. Ray B. Armistead, an attending Board-certified orthopedic surgeon, stated that appellant's frequent use of "impact-type tools" at work had produced his right carpal tunnel syndrome. On August 17, 1990 appellant underwent a right carpal tunnel release. The record contains medical evidence which shows that appellant continued to be treated by Dr. Armistead for right carpal tunnel syndrome and that he continued to work in light-duty positions which were tailored to accommodate his right arm condition. On February 27, 1991 appellant underwent a fitness-for-duty evaluation in which Dr. Gene T. Hamilton, a Board-certified orthopedic surgeon, indicated that his right carpal tunnel syndrome necessitated work restrictions.

¹ Appellant had sustained head, neck and back injuries due to a fall at work in September 1988.

² Appellant was directed by his physicians to not engage in heavy lifting or use vibrating tools.

Appellant was terminated from the employing establishment effective August 13, 1991.³ In a letter dated July 8, 1991, the employing establishment notified appellant of his proposed removal from employment. In the letter, the employing establishment discussed appellant's treatment for a variety of conditions, including right carpal tunnel syndrome and made note of his periods of working in light-duty positions. The employing establishment indicated that appellant reported right foot and ankle complaints in April 1991 but asserted that he had not responded to its requests to provide further factual and medical evidence regarding this condition.⁴ The employing establishment indicated that a determination had been made that appellant's right carpal tunnel syndrome restricted him from the "essential and critical tasks of the duties" of his sheet metal mechanic job. The employing establishment stated that no permanent light-duty work was available and appellant would have to be terminated from the employing establishment for inability to perform his job. By letter dated July 26, 1991, the employing establishment finalized the proposed termination of appellant's employment.

In August 1995, after extensive development of the medical evidence and several Office decisions denying his claim, the Office accepted that appellant sustained right carpal tunnel syndrome.⁵ The Office paid appellant compensation for periods of disability through August 13, 1995, and appellant asserted that he was entitled to employment-related disability compensation after August 13, 1995.

By decision dated March 21, 1996, the Office determined that appellant was not entitled to compensation for wage loss after August 13, 1991. The Office justified its denial of appellant's claim for further disability compensation by indicating that appellant was terminated from the employing establishment effective August 13, 1991 not due to his right carpal tunnel syndrome condition but rather due to his nonwork-related right foot and ankle condition. By decision dated February 12, 1997, the Office denied modification of its March 21, 1996 decision.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation effective August 13, 1991.

Under the Federal Employees' Compensation Act,⁶ once the Office has accepted a claim it has the burden of justifying termination or modification of compensation benefits.⁷ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁸ The Office's burden of proof includes the necessity of

³ It appears that appellant continued to work in his light-duty position through at least April 1991 and was sent home on the leave of his choice by the employing establishment.

⁴ The record contains reports, dated in mid April 1991, in which an employing establishment physician indicated that appellant reported right foot and ankle pain.

⁵ By decision dated January 22, 1993, the Board had remanded the case to the Office for further development of the medical evidence. In a report dated March 9, 1993, Dr. Armistead indicated that appellant's right carpal tunnel syndrome was a direct result of the duties he performed at work.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁹

Although the Office characterized its denial of appellant's claim for disability compensation after August 13, 1991 as a denial of a wage-loss claim, the Office's actions actually constituted a termination of appellant's compensation after August 13, 1991. As noted above, the Office accepted that appellant sustained employment-related right carpal tunnel syndrome and paid compensation through August 13, 1991. The fact that the Office accepts an employee's claim for a specified period of disability does not shift the burden of proof to the employee. The burden is on the Office with respect to the period subsequent to the date when compensation is terminated or modified.¹⁰

The Board notes that the Office did not present sufficient evidence to meet its burden of proof to terminate appellant's compensation effective August 13, 1991. The Office suggested that appellant did not have any disability after August 13, 1991 due to his employment-related right carpal tunnel syndrome, but it did not present medical evidence establishing that appellant ceased to have such an employment-related disability.

The Office did not adequately address the fact that the record contains medical evidence from around the time of the August 13, 1991 termination of appellant's compensation which shows that appellant had continuing disability due to his employment-related right carpal tunnel syndrome. For example, the record contains reports dated in mid April 1991 in which Dr. Armistead, an attending Board-certified orthopedic surgeon, indicated that appellant continued to require work restrictions due to his employment-related right carpal tunnel syndrome. In a report dated May 24, 1991, Dr. Armistead indicated that appellant had permanent impairment due to his right carpal tunnel syndrome; in a report dated August 6, 1991, he noted that appellant's right carpal tunnel syndrome was a "definite hindrance in his ability to perform his job duties" and continued to necessitate work restrictions. In a report dated February 27, 1991, Dr. Hamilton, a Board-certified orthopedic surgeon, who performed a fitness-for-duty evaluation, indicated that appellant's right carpal tunnel syndrome necessitated work restrictions.

The Office suggested that appellant's disability after August 13, 1991 was due to a nonwork-related right foot and ankle condition, but it did not provide adequate support for this position. The medical evidence of record concerning appellant's right ankle and foot condition in mid 1991 consists of several reports, dated in April 1991, in which an employing establishment physician indicated that appellant complained of right foot and ankle pain. The record does not contain any medical evidence showing that appellant only had disability after August 13, 1991 due to a nonwork-related right foot and ankle condition. It should also be noted that the Office incorrectly characterized the August 13, 1991 termination of appellant's

⁸ *Id.*

⁹ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹⁰ *See Patrick P. Curran*, 47 ECAB 247, 251 (1995).

employment as being due to his right foot and ankle condition. The documents concerning the termination of appellant's employment show that it was essentially due to the fact that his right carpal tunnel syndrome prevented him from performing his job duties. For the reasons detailed above, the Office did not establish that appellant no longer had disability after August 13, 1991 due to his employment-related right carpal tunnel syndrome. For these reasons, the Office did not meet its burden of proof to terminate appellant's compensation effective August 13, 1991.

The decision of the Office of Workers' Compensation Programs dated February 12, 1997 is reversed.

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

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member