U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VAHEH MOKHTARIANS and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

Docket No. 97-2381; Submitted on the Record;
Issued December 3, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained periodontal disease causally related to bilateral June 27, 1984 arm injuries or other factors of his federal employment.

This is the second appeal before the Board in this case. By decision dated February 28, 1996,[1] the Board remanded the case to the Office of Workers' Compensation Programs to resolve a conflict of medical opinion between Dr. Philip Horn, an Office medical adviser, and appellant's attending physicians, regarding whether the accepted August 6, 1984 upper extremity injuries rendered appellant unable to perform adequate oral hygiene, thus leading to an acceleration and recurrence of preexisting periodontal disease. The law and facts of the case as set forth in the Board's previous decision are incorporated by reference. However, as the issue on the present appeal concerns the same conflict of medical opinion addressed on the first appeal, the reports creating the conflict, although discussed in the previous decision, are summarized below.

The Office accepted that on August 6, 1984 appellant, then a 37-year-old letter carrier, fell backward on his extended wrists, sustaining bilateral carpal tunnel syndrome requiring five surgical releases from 1984 to 1987, left shoulder bursitis, reflex sympathetic dystrophy syndrome, consequential lumbar and cervical strains and dysthymic disorder.

Appellant submitted numerous reports from his attending physicians explaining how the lack of manual dexterity caused by the carpal tunnel syndrome and multiple surgeries caused or contributed to periodontal disease. In July 19, 1988 and November 10, 1992 reports, Dr. Daniel Miller, an attending dentist, stated that appellant did not have the skill or dexterity to brush or floss due to bilateral carpal tunnel syndrome, leading to "very heavy calculus buildup, therefore, causing the periodontal condition." He explained that appellant's history of

[1] Docket No. 94-1048.

periodontal problems in 1980 made good oral hygiene especially critical to avoid acceleration or recurrence of the condition. In December 11, 1990 and November 9, 1992 reports, Dr. F. Lawrence Bachnik, an attending periodontist, noted that appellant's carpal tunnel syndrome rendered him unable to floss or brush effectively," leading to "severe periodontal problems." In a November 15, 1992 report, Dr. Frank S. Miles, Jr., an attending osteopath, found appellant unable to bring the 5th digit of the right hand or left 4th and 5th digits into opposition with his thumbs, insufficient grip strength in either hand to hold a pen, wrist flexion limited to 10 degrees bilaterally, wrist extension of 10 degrees on the left and 15 degrees on the right and inability "to supinate either hand beyond the sagittal plane." Dr. Miles concluded that appellant was unable to maintain proper oral hygiene due to the accepted injuries.[2]

In the previous decision, the Board found that a conflict of medical opinion was created by the October 20, 1992 report of Dr. Philip W. Horn, an Office medical adviser.[3] Dr. Horn suggested that appellant could use unspecified models of an electric toothbrush, oral irrigator and a dental floss holder that did not require wrist movement. He stated that as appellant could apparently drive a car, he should also be able to maintain good oral hygiene.

To resolve the conflict of medical opinion between appellant's attending physicians and Dr. Horn, the Board remanded the case to the Office for appointment of an impartial medical specialist who was to provide a rationalized report, based on a complete and accurate history, explaining any causal relationship between the claimed periodontal disease and the accepted injuries. The Board specified that the impartial medical specialist should take into account the Office's February 25, 1994 schedule award for a 40 percent loss of use of each upper extremity due to the accepted injuries, in determining whether factors of appellant's federal employment caused or contributed to the development of a periodontal or dental condition.

Following the issuance of the Board's previous decision, appellant submitted additional medical evidence.

In a September 1, 1994 report, Dr. Amina Edathodu, an attending neurologist, noted that a nerve conduction velocity (NCV) study of the upper extremities was within normal limits except for "right median sensory which was borderline … mild slowing and somewhat lower amplitude suggestive of mild compression or postoperative changes. Acute carpal tunnel syndrome does not seem likely, however, as the slowing is minimal." In a November 10, 1994 electrodiagnostic report, Dr. Edathodu found the ulnar and radial nerves within normal limits bilaterally.

Dr. Robert R. Miles, an attending osteopath, submitted periodic progress reports dated from October 1994 to January 1997. In an October 6, 1994 report, Dr. Miles noted and removed a ganglion cyst of the right volar aspect of the wrist. In an October 12, 1994 report, he

[2] The Board notes that a second opinion physician was in agreement with the assessment of appellant's attending physicians. In a June 19, 1991 report, Dr. Mitchell E. Kurzner, a second opinion orthopedic surgeon, noted appellant's bilateral forearm muscle atrophy and an extremely limited range of hand and wrist motion bilaterally.

[3] The Office had found in October 22, 1992 and March 5, 1993 decisions that Dr. Horn's October 20, 1992 report represented the weight of the medical evidence.

diagnosed bilateral carpal tunnel syndrome and "autonomic nerve disease." Reports from October to December 1995 diagnose cervical nerve root compression with radiculopathy, a herniated nucleus pulposus, cranial nerve root compression, somatic dysfunction and chronic pain. Reports from June to August 1996 diagnose reflex sympathetic dystrophy syndrome of the upper extremities, and tingling with numbness bilaterally in the hands, arms and fingers. In a December 17, 1996 report, Dr. Miles diagnosed radiculopathy, carpal tunnel syndrome, severe pain requiring narcotics and decreased cervical range of motion secondary to pain.

In a February 27, 1996 report, Dr. Larry D. Horvath, an attending osteopath to whom appellant was referred by Dr. Miles, reviewed appellant's history of injury and multiple surgeries. Dr. Horvath commented that the September and November 1994 NCV studies showing no ulnar or median nerve entrapment was "hard to discern appropriately since [appellant] has had multiple surgeries and there are previous reports of neuropathies of both hands." On examination, he found ulnar atrophy on the right, some ulnar atrophy on the left, bilateral hand weakness in the median and ulnar distributions, sensory changes, a positive Tinel's sign at the wrist at the ulnar and median distributions bilaterally and pain radiating from the wrists into the elbows. Dr. Horvath diagnosed status post bilateral median and ulnar neuropathies and reflex sympathetic dystrophy syndrome due to the multiple wrist surgeries. He stated that appellant was permanently disabled for work due to bilateral impairments of the hands and wrists caused by carpal tunnel syndrome and the effects of repeated wrist surgeries.[4]

On remand of the case the Office referred appellant, the medical record, a statement of accepted facts and list of questions to be resolved to Dr. William R. Greenberg, a Board-certified neurologist, for the purpose of resolving the conflict in medical evidence. Among the questions to be resolved was whether carpal tunnel syndrome prevented appellant from brushing and flossing his teeth normally and if so, if appellant "could maintain adequate dental hygiene by using an electronic toothbrush … oral irrigator and a dental floss holder that does not require wrist movement … Please explain."

In a June 10, 1996 report, Dr. Greenberg briefly reviewed appellant's history of injury and treatment. He related that appellant could not hold flossing "material or [a] toothbrush due to a combination of pain, shaking and tremor," and could not perform fine motor activities "such as cutting." On examination, Dr. Greenberg found limited cervical extension and rotation, significant limitation of right shoulder motion, sensory changes and hyperesthesia in both hands, resting tremor of both hands more pronounced on the right, "flattening of the thenar eminence on the left" with increased sweating, dysesthesia, loss of vibration sensation in the fourth and fifth digits on the left, tenderness over the ulnar and median nerves on the left. He noted "difficulty in fully assessing the muscle strength of the hands." Dr. Greenberg stated an impression of subjective pain complaints "out of proportion to what would be expected," and a possible Parkinsonian tremor. Regarding the questions to be resolved, he opined that appellant's periodontal symptoms were not "directly related to the problems involving his hands."

[4] Appellant underwent a left carpal tunnel release with synovial biopsy of the left wrist on August 14, 1984 median and ulnar release with median neurolysis and flexor tenosynovectomy on the right on September 11, 1984 reexploration and release of adhesions of the median nerve and fifth finger flexor tendon on the left on April 4, 1986. Appellant underwent two additional procedures in 1987.

Dr. Greenberg reported that appellant should be able to utilize electronic devices such as a toothbrush, electric pick" and dental floss holder despite "the subjective pain complaints.… Other individuals with more disabling conditions are able to utilize these devices. I do not feel there is adequate explanation hindering normal dental hygiene."

By decision dated July 29, 1996, the Office denied appellant's claim for periodontal disease on the grounds that causal relationship was not established, based on Dr. Greenberg's report as the weight of the medical evidence.

Appellant disagreed with this decision and in an August 21, 1996 letter, requested an oral hearing before a representative of the Office's Branch of Hearings and Review held February 7, 1997.[5] Appellant testified at the hearing that although he was able to drive a car, he could not brush or floss his teeth or perform other fine motor activities and required daily assistance with his personal hygiene.

By decision dated March 25, 1997 and finalized March 26, 1997, the Office affirmed the July 29, 1996 decision. The Office noted Dr. Greenberg's opinion that appellant "should be" able to use adaptive oral hygiene devices, as other "individuals with more disabling conditions" could do so. The Office concluded that Dr. Greenberg's report was "sufficiently rationalized" to negate a causal relationship between the June 27, 1984 injuries and their accepted sequelae and appellant's periodontal condition.

The Board finds that the case is not in posture for decision due to an outstanding conflict of medical evidence between Dr. Horn, for the government and Drs. Bachnik, Miles and Miller, for appellant.

The Board finds that Dr. Greenberg's June 10, 1996 report, is insufficiently rationalized to represent the weight of the medical evidence in this case and thus resolve the conflict of medical opinion. In the report, Dr. Greenberg stated that appellant could not perform fine motor activities "such as cutting," holding dental floss or a toothbrush. He found objective sensory changes in both hands, as well as atrophy on the left. Yet, Dr. Greenberg stated an impression of exaggerated subjective pain and a possible Parkinsonian tremor. The Board notes that appellant's pain complaints were accepted by the Office as an element of the February 25, 1994 schedule

[5] In an August 22, 1996 report, Dr. Gerald E. Boutin, an attending clinical psychologist, diagnosed major depressive and pain disorders. Dr. Boutin submitted progress reports dated April 1995 through February 1996 diagnosing the same conditions.

award for 40 percent impairment of each upper extremity due to severe carpal tunnel syndrome unresolved by surgery.[6] The Board also notes that in a February 27, 1996 report, Dr. Larry D. Horvath, an attending osteopath, noted essentially the same objective findings as did Dr. Greenberg approximately three months later. As opposed to Dr. Greenberg's diagnosis of subjective pain complaints, Dr. Horvath diagnosed status post-bilateral median and ulnar neuropathies and reflex sympathetic dystrophy syndrome due to the multiple wrist surgeries.

Regarding causal relationship, Dr. Greenberg concludes, in a speculative manner, that appellant "should" be able to use adaptive oral hygiene equipment, but did not state that appellant could definitely use such devices to maintain adequate oral hygiene.[7] Considering that the critical issue in this case, is whether the accepted injuries prevent appellant from brushing and flossing, the indefinite quality of Dr. Greenberg's opinion on this point greatly diminishes its probative value.[8] The Board notes that Dr. Greenberg's remark that "other individuals" could use various hygiene devices is utterly without bearing on this case and is wholly insufficient as rationale for negating causal relationship. The only individual this appeal concerns is appellant and the only disabilities requiring assessment are his and his alone.

Dr. Greenberg also provided an insufficient assessment of appellant's disabilities. His impression of disproportionate subjective pain complaints does not take into account his objective observations of atrophy and sensory loss in the left hand and appellant's inability to perform fine motor activities. Also, despite the Office's directive to him in the questions to be resolved Dr. Greenberg did not explain how and why appellant had the strength and fine motor ability to use an electronic toothbrush or to hold a floss holder if he could not hold a regular toothbrush. He did not provide specific measurements of appellant's ability to grasp or pinch, rotate or adapt his wrists, or if appellant could perform such fine motor tasks with sufficient frequency and duration to maintain adequate oral hygiene. Thus, Dr. Greenberg did not answer the question posed to him by the Office as to whether appellant could utilize an electronic toothbrush, "oral irrigator and a dental floss holder that does not require wrist movement."

[6] In a December 30, 1993 report, Dr. Beno Nersissian, a Board-certified orthopedic surgeon, performing a schedule award evaluation at the request of the Office, found numbness and paresthesias in both hands and fingers, inability to move the fingers due to pain and discomfort, muscle wasting in the left upper extremity, "virtually zero" grip strength bilaterally, zero degrees of thumb opposition bilaterally, and extremely limited ranges of motion. "Range of motion of both wrists [is] limited to few degrees of [d]orsiflexion and [f]lexion." Dr. Nersissian diagnosed "severe [e]ntrapment [n]europathy of both median nerves at the wrists" precluding any dextral activities requiring gripping, grasping, pulling and pushing." In a February 10, 1994 report, Dr. Virginia I. Miller, an Office medical director, used Dr. Nersissian's report to calculate a 40 percent impairment of each upper extremity for severe entrapment neuropathy of the median nerve at the level of the wrist due to motor and sensory impairment with pain, based on the 4th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. On February 25, 1994 the Office issued appellant a schedule award for a 40 percent permanent loss of use of the left upper extremity and 40 percent permanent loss of use of the right upper extremity.

[7] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

[8] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

Also, in the prior decision, the Board specifically directed that the impartial medical special take into account the 40 percent permanent impairment of each upper extremity specialist due to the accepted carpal tunnel syndrome and its sequelae, for which appellant was awarded a schedule award. However, it appears that Dr. Greenberg did not do so, as he does not mention the award or the percentage of impairment in his report, or specifically discuss the medical reports on which the award is based.

Thus, there is still a conflict of medical opinion between Dr. Horn, for the government, who opined that appellant's claimed periodontal and dental conditions were not casually related to work factors and Drs. Bachnik, Miles and Miller, for appellant, who supported causal relationship. Therefore, the case must be remanded to the Office for appropriate further development to resolve this conflict.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." Consequently, the case must be remanded so that the Office may refer appellant, together with the case record and a statement of accepted facts, to an appropriate Board-certified specialist or specialists, for an examination and a rationalized medical opinion to resolve the medical conflict regarding whether his periodontal and dental conditions were caused or aggravated by his June 1984 work injuries or other factors of his federal employment.

The reports obtained shall contain the objective clinical observations necessary for the Office to make an informed decision in the case, including: quantified measurements of range of motion for both hands and wrists, a complete assessment of grip and pinch strength; a narrative description of the extent of appellant's fine motor abilities in both hands; a thorough description of any adaptive devices that appellant could use for oral hygiene; the physical abilities needed to use such adaptive devices; and, a complete explanation as to why appellant's impairments, including pain, would still allow him to use such devices on a sufficiently regular basis to control his periodontal disease. Following such development as the Office deems necessary, the Office shall issue an appropriate decision in the case.

The decision of the Office of Workers' Compensation Programs dated March 25 and finalized March 26, 1997 is hereby set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, D.C.
December 3, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member