

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KHADEEJAH ABDUS-SALAAM and U.S. POSTAL SERVICE,  
POST OFFICE, Whippany, NJ

*Docket No. 98-545; Submitted on the Record;  
Issued December 21, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective May 25, 1997; and (2) whether the Office properly denied appellant's request for reconsideration.

On February 3, 1994 appellant, then a 34-year-old flat sorting machine clerk, filed a claim for compensation benefits alleging that she sustained bilateral carpal tunnel syndrome in the performance of duty. The Office accepted appellant's claim by letter dated July 28, 1995.

In a narrative report dated June 13, 1995, Dr. Robert G. Greene, appellant's attending Board-certified orthopedic surgeon, related that she underwent surgery for her left wrist carpal tunnel syndrome on March 14, 1994 and he provided findings on examination. He stated that when he last saw appellant on June 5, 1995, she had excellent range of motion in her wrist and had no evidence clinically of carpal tunnel syndrome. He stated that she was able to return to regular work as of June 7, 1995.

In reports dated July 18, 1995 to January 10, 1996, Dr. Joseph Vitale, appellant's attending Board-certified internist, indicated that appellant was totally disabled due to carpal tunnel syndrome.

In a disability certificate dated May 16, 1996, Dr. Vitale noted that appellant left work on May 10, 1996 because she had wrist pain. He provided no findings on examination.

In a disability certificate dated May 23, 1996, Dr. Vitale noted that appellant left work on May 21, 1997 because she was unable to lift piles of magazines. He indicated that she could return to work on May 27, 1996 with no lifting. He provided no findings on examination.

In a disability certificate dated July 29, 1996, Dr. Vitale diagnosed "pain of hands" and indicated that appellant should not return to work until September 8, 1996. He provided no findings on examination.

By letter dated December 24, 1996, the Office advised appellant that she had been placed on the periodic compensation rolls to receive compensation benefits for temporary total disability.

In a letter to Dr. Vitale dated January 17, 1997, the supervisor of the Office's nurse intervention program related that appellant had advised that she was not receiving any active treatment for her carpal tunnel syndrome. The nurse asked Dr. Vitale to provide his opinion as to the treatment he felt appellant needed for her pain. Dr. Vitale responded that he last saw appellant on October 15, 1996 at which time appellant stated that she was still in pain. He stated that he did not know what further treatment would benefit appellant as she had seen specialists in orthopedics, neurology and physical therapy.

By letter dated February 14, 1997, the Office referred appellant, together with a statement of accepted facts and copies of medical records, to Dr. Walter M. Flax, a Board-certified specialist in orthopedic trauma and occupational medicine, for an examination and evaluation as to whether appellant had any remaining disability causally related to her employment-related carpal tunnel syndrome.

In a report dated March 4, 1997 describing an examination on February 27, 1997, Dr. Flax provided a history of appellant's condition and findings on examination. He stated:

"Examination of both hands and wrists ... reveals a barely visible 1 [inch] scar in the palm of the left hand between the thenar and hypothenar eminences, the site [of the operation]. This area is not tender nor indurated. There was no swelling in this area. The palms of both hands appear symmetric as do the dorsal surface[s] of both hands....

"All motions of both wrists including dorsiflexion, palmar flexion, radial and ulnar deviation are complete, equal and painless. There is no restriction to flexion or extension of any of the metacarpal phalangeal joints nor the interphalangeal joints of any of the fingers. The hand grasps are strong.

"Bilaterally the Tinel's Sign, Phalen's Sign and Finkelstein's Test are negative. Comparable measurements of both forearms reveal no differences....

"[Appellant] describes an incident which is in keeping with the statement of accepted facts as presented to me. The clinical impression was that of a bilateral carpal tunnel syndrome although I did review an EMG [electromyogram] and nerve conduction studies of [January 1995] as well as [February 1996],<sup>1</sup> both of which were normal showing no evidence of any carpal tunnel syndrome. She did have an MRI [magnetic resonance imaging] [scan] of both wrists on [February 1, 1995] in which findings were described as being compatible with a carpal tunnel syndrome on the left and possibly on the right as well. She did undergo surgery

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<sup>1</sup> A report from Dr. Harrold S. Leader, a Board-certified psychiatrist and neurologist, dated February 8, 1996, noted that an EMG and a nerve conduction study performed on appellant's hands and arms were normal.

to her left hand. As I find [appellant] today, I find absolutely no evidence clinically of a carpal tunnel syndrome to be present in either her left or her right hands.”

He indicated that appellant was capable of performing regular duty with no restrictions.

By letter dated April 3, 1997, the Office advised appellant that it proposed to terminate her compensation and medical benefits on the grounds that the evidence of record, as represented by the report of Dr. Flax, established that appellant had no remaining residuals or medical condition causally related to her employment injury.

By decision dated May 8, 1997, the Office terminated appellant’s compensation benefits effective May 25, 1997.

By letter dated June 4, 1997, appellant requested reconsideration of the denial of her claim and submitted additional evidence.

In a report dated May 2, 1997, Dr. Greene stated that he had not seen appellant between June 1995 and May 1997. He stated that appellant complained of pain and discomfort in her hands. Dr. Greene provided findings on examination which included some numbness in an unspecified right hand finger and the middle finger of the left hand. He noted that she had no muscle wasting, that she had normal range of motion and no wrist swelling or other deformity. Dr. Greene noted that x-rays of both wrists were normal. He did not address her capacity for work.

By decision dated August 28, 1997, the Office denied appellant’s request for reconsideration on the grounds that the evidence submitted was insufficient to warrant further merit review.<sup>2</sup>

The Board finds that the Office met its burden of proof in terminating appellant’s compensation benefits.

It is well established that once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.<sup>3</sup>

In this case, the Office accepted that appellant sustained bilateral carpal tunnel syndrome in the performance of duty and placed her on the periodic compensation rolls to receive compensation benefits for temporary total disability.

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<sup>2</sup> Subsequent to issuance of the Office’s August 28, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

<sup>3</sup> *See Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

In February 1997 the Office referred appellant to Dr. Flax, a Board-certified specialist in orthopedic trauma and occupational medicine, for an examination and evaluation as to whether appellant had any remaining disability or medical condition causally related to her carpal tunnel syndrome.

In a report dated March 4, 1997 describing an examination on February 27, 1997, Dr. Flax provided a history of appellant's condition and detailed findings on examination which included normal and painless range of motion and negative objective tests. He also provided a review of the medical evidence. He stated, "As I find [appellant] today, I find absolutely no evidence clinically of a carpal tunnel syndrome to be present in either her left or her right hands." Dr. Flax indicated that appellant was capable of working with no restrictions.

The Board finds that the Office properly based its termination of appellant's compensation benefits on the thorough report of Dr. Flax and his opinion that appellant's employment-related carpal tunnel syndrome had resolved.

The reports of appellant's attending physicians are not sufficient to establish that appellant had any continuing disability or medical condition causally related to her employment injury.

In a narrative report dated June 13, 1995, Dr. Greene, appellant's attending Board-certified orthopedic surgeon, who performed surgery on her left hand, stated that when he last saw appellant on June 5, 1995, she had excellent range of motion in her wrist and had no evidence clinically of carpal tunnel syndrome. He stated that she was able to return to regular work as of June 7, 1995. Thus, this report does not establish any continuing employment-related disability or medical condition after June 1995.

In disability certificates dated May 16, May 23 and July 29, 1996, Dr. Vitale indicated that appellant was totally disabled but he provided no findings on examination and no medical rationale explaining why appellant was unable to work. Therefore, these disability notes do not establish any continuing employment-related disability or medical condition.

In a report dated May 2, 1997, Dr. Greene stated that he had not seen appellant between June 1995 and May 1997. He stated that appellant complained of pain and discomfort in her hands. Dr. Greene provided findings on examination which included some numbness in an unspecified right hand finger and the middle finger of the left hand. He noted that she had no muscle wasting, that she had normal range of motion and no wrist swelling or other deformity. Dr. Greene noted that x-rays of both wrists were normal. This report does not establish any continuing employment-related disability or medical condition as most of the findings on examination, as well as the x-rays, were normal. The only abnormality noted was some numbness in two of appellant's fingers but Dr. Greene did not explain how, if at all, this finger numbness was related to appellant's employment injury nor did he address how his findings resulted in disability for work. Thus, the Office properly found that the May 2, 1997 report of

Dr. Greene was insufficient to warrant further merit review as it was duplicative of his earlier opinion.<sup>4</sup>

The decisions of the Office of Workers' Compensation Programs dated August 28 and May 8, 1997 are affirmed.

Dated, Washington, D.C.  
December 21, 1999

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> See 20 C.F.R. § 10.138(b)(1).