

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEPHANIE CLARK and U.S. POSTAL SERVICE,
POST OFFICE, Dulles, VA

*Docket No. 98-999; Submitted on the Record;
Issued December 29, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective November 18, 1997.

On February 14, 1997 appellant, then a 34-year-old markup clerk, filed a claim for tendinitis and carpal tunnel syndrome in both wrists. She related her condition to keying mail on mechanical and nonmechanical machines which required repetitive motion. The employing establishment indicated that appellant had stopped working on February 7, 1997. In a July 11, 1997 letter, the Office accepted appellant's claim for bilateral wrist tendinitis. The Office paid appellant compensation, effective March 1, 1997, for the hours she did not work. The Office subsequently approved appellant's request to buy back leave for the period February 10 to March 6, 1997.

In an October 17, 1997 letter, the Office proposed to terminate appellant's compensation on the grounds that the medical evidence of record showed appellant had no continuing disability from her accepted employment injury. In a November 18, 1997 decision, the Office terminated appellant's compensation effective that day on the grounds that appellant had recovered from bilateral wrist tendinitis.¹

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

¹ In a February 3, 1998 letter, appellant filed an appeal with the Board. In a separate letter of the same date, appellant requested a hearing before an Office hearing representative. In an April 29, 1998 decision, the Office denied appellant's request for a hearing. In an April 15, 1998 letter, appellant requested an "oral reconsideration" of her claim. In a July 7, 1998 decision, the Office again denied appellant's request for reconsideration. The Board and the Office may not have concurrent jurisdiction in the same case on the same issue. *Douglas E. Billings*, 41 ECAB 880 (1990). The April 29 and July 7, 1998 decisions of the Office therefore are null and void.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

In a February 5, 1997 office note, Dr. David L. Evans, a Board-certified internist, indicated that appellant had a repetitious strain of the left wrist and hand. Subsequent office notes reported tendinitis of both wrists and possible carpal tunnel syndrome. In a March 10, 1997 report, Dr. Roberta Kasman, an orthopedic surgeon, indicated that appellant's entire left wrist was tender but the tenderness was difficult to localize. She noted no atrophy and no irritation in the motion of the wrist or elbow. She noted that the Tinel's test and Phalen's test were negative. An x-ray of the left wrist was negative. Dr. Kasman reported that the examination of the right wrist was inconsistent with a history not completely consistent with carpal tunnel syndrome. In a March 17, 1997 report, Dr. David C. Lipps, a Board-certified neurologist, indicated that an electromyogram and nerve conduction studies were normal. In a March 31, 1997 report, Dr. Kasman indicated that appellant had bilateral wrist pain but the source was still uncertain. She again noted that the history was not consistent with carpal tunnel syndrome. In a May 16, 1997 report, Dr. Margaret Fisher, a Board-certified rheumatologist, diagnosed myofascial pain syndrome and tendinitis which she related to overuse.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Bruce M. Freedman, a Board-certified plastic surgeon, for an examination and second opinion on whether appellant's accepted condition of bilateral wrist tendinitis persisted, whether she had carpal tunnel syndrome and whether she was capable of returning to her regular position with the employing establishment. In a September 19, 1997 report, Dr. Freedman noted that appellant had no swelling or atrophy of the arms and negative Tinel's and Phalen's signs of the wrists. He indicated that appellant's sensory testing followed no anatomical distribution. Dr. Freedman stated that appellant had no specific trigger points in her arms, shoulders or neck. He concluded appellant had complaints of bilateral arm pain without supporting objective physical evidence. Dr. Freedman pointed out that appellant had no evidence of carpal tunnel syndrome, tendinitis or other well-defined musculoskeletal ailments. He commented that appellant's symptoms had been vague, constantly changing and not medically definable. Dr. Freedman noted appellant's normal findings in the electrodiagnostic tests in March 1997. The physician reported appellant's joints were soft, supple and without swelling, instability or stiffness. He indicated that the findings from appellant's inability to perform simple grip strength testing were consistent with lack of volitional effort or malingering. Dr. Freedman commented that appellant's sensory testing was not anatomic and did not follow any well-defined organic pathology. He reported that her sensory measurements were inconsistent and not reproducible. Dr. Freedman stated that her subjective complaints were in excess of her physical findings. He found appellant's facial grimacing, verbal expressions and behavior to be inappropriate and bizarre for her level of objective findings. Dr. Freedman commented that one contradictory finding was appellant claimed to be in extreme pain when the lightest touch or pressure was applied to her hands or forearms but she entered his office wearing bulky forearms

² Jason C. Armstrong, 40 ECAB 907 (1989).

splints and had bracelets and rings on her wrists and hands. He noted that appellant's nails were painted which did not usually occur in patients with well-defined pain syndromes. Dr. Freedman concluded that appellant did not have any objective symptoms consistent with bilateral wrist tendinitis and had no evidence to support a diagnosis of carpal tunnel syndrome. He stated that appellant could return to her regular duties as a markup clerk with no restrictions.

The initial reports on appellant's condition noted vague symptoms and no evidence of carpal tunnel syndrome, as shown by the normal EMG and nerve conduction studies. The report of Dr. Fisher did not provide any rationale in support of her diagnosis of a myofascial pain disorder which she related to overuse. Her report therefore has little probative value. Dr. Freedman submitted a thorough report which, in detail, showed that appellant's complaints were not supported by any objective findings and were inconsistent with the objective findings he made. Dr. Freedman's report surpassed the other medical reports of record in detail and in rationale. His report, therefore, represents the weight of the medical evidence and fully supports the Office's decision that appellant no longer had any disability related to her accepted condition of bilateral wrist tendinitis.

The decision of the Office of Workers' Compensation Programs dated November 18, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 29, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member