

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EILEEN R. KATES and U.S. POSTAL SERVICE,
POST OFFICE, Miami, Fla.

*Docket No. 96-1303; Submitted on the Record;
Issued February 18, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant's right shoulder condition or bilateral wrist condition is causally related to factors of her employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for installation of a jacuzzi tub at her residence.

The case has been on appeal three times previously.¹ Appellant had filed a claim for bilateral epicondylitis which she related to repetitive motion in her position as a letter sorting machine clerk. The Office accepted appellant's claim for bilateral epicondylitis and, subsequently, for an adjustment disorder. The Office paid compensation but terminated compensation for refusal to accept suitable employment. In a September 29, 1989 decision, the Board affirmed the Office's decision to terminate compensation. In a July 22, 1992 decision, the Board reviewed additional medical evidence submitted by appellant and found that the evidence submitted did not show that the position offered to appellant was unsuitable at the time it was offered. In a March 2, 1995 decision, the Board found that the Office had not provided appellant with her right to due process because, after the Office had found the offered position was suitable for appellant and after it had found that her reasons for refusing the position were unacceptable, it had not informed her that her reasons for declining the position were found to be unacceptable and had not given her one more opportunity to accept the offered position before compensation was terminated. The Board therefore reversed the Office's decision in which it refused to modify the decision to terminate appellant's compensation.

Parallel to her appeals to the Board, appellant raised other issues in her claim. In an April 3, 1993 letter, appellant contended that she had carpal tunnel syndrome. In a July 11, 1993 letter, she requested the installation of a whirlpool tub in her household for home therapy of her arm conditions. In other correspondence, appellant contended that she had a consequential

¹ 46 ECAB 573 (1995); Docket No. 91-1570 (issued July 22, 1992); Docket No. 89-565 (issued September 29, 1989).

injury to her right shoulder as a result of her employment-related elbow condition. In a May 24, 1994 letter, her representative requested a final decision by the Office on these issues. In a September 13, 1994 decision, the Office denied appellant's claim for carpal tunnel syndrome on the grounds that there was no objective evidence that she had carpal tunnel syndrome. It denied her claim for a right shoulder condition on the grounds that there was no objective evidence that appellant had sustain injury to her right shoulder due to her job duties or accepted condition. The Office further denied appellant's request for a permanent jacuzzi whirlpool bath on the grounds that it had previously approved a portable unit and there was no showing that a permanent unit would be more effective than a portable unit for the treatment of her epicondylitis. Appellant requested a written review of the record by an Office hearing representative. In a September 11, 1995 decision, the Office hearing representative set aside the Office's September 13, 1994 decision and remanded the case for further development of the medical evidence on appellant's claim for carpal tunnel syndrome and right shoulder condition and her request for a permanent jacuzzi whirlpool tub. In a February 28, 1996 decision, the Office found that the medical evidence of record did not support objective findings or disability relating to the right shoulder condition or her bilateral wrist condition. The Office further found that a jacuzzi tub was not warranted for residuals of the employment injury.

In regard to the right shoulder and bilateral wrist conditions, the Board finds that the case is not in posture for decision due to a conflict in the medical evidence.

The Office based its decision on the November 29, 1995 report of Dr. Peter Millheiser, a Board-certified orthopedic surgeon, who stated appellant's shoulder had no active trigger points, spasm, swelling, erythema, clicking, crepitus, snapping, popping or grinding. Dr. Millheiser reported that appellant had no restriction in the range of motion of the right shoulder. He indicated that appellant's wrists appeared normal with no atrophy, swelling, erythema, clicking, popping, grinding or crepitus. Dr. Millheiser reported that appellant had a normal range of motion in the wrists. He noted that the Tinel's sign was positive over the ulna nerves on the volar side with pain in the first three fingers after tapping. Dr. Millheiser indicated that appellant had hypesthesia of the thumb, index and middle fingers of both hands. He stated that the Phalen's sign was questionably positive bilaterally. Dr. Millheiser only diagnosed bilateral epicondylitis. He concluded that appellant had no objective evidence of any significant right shoulder condition. Dr. Millheiser commented that he did not feel appellant had carpal tunnel syndrome. He noted that Tinel's sign was negative over both wrists. Dr. Millheiser acknowledged that appellant had numbness in the first three fingers but stated that appellant did not classically fit a pattern of carpal tunnel syndrome. He concluded that he did not see any definite objective problem in the wrists as far as carpal tunnel syndrome was concerned. Dr. Millheiser commented that the lateral epicondylitis was resolved. He stated that appellant did not have a residual disability as there were no objective clinical findings to support such disability.

In support of appellant, Dr. Barry J. Cutler, a Board-certified neurologist, stated in a February 1, 1993 report that appellant had complained of tingling in her fingers since 1987 involving her thumb and first two fingers which was becoming progressively worse. Dr. Cutler diagnosed carpal tunnel syndrome which he related to appellant's employment-related activities. In an August 11, 1993 report, he indicated that appellant still had a positive Tinel's sign and a

positive Phalen's sign despite treatment with wrist splints. Dr. Cutler noted that appellant was complaining of pain in the right shoulder for the prior three months extending into the neck and down the right arm. Electromyograms (EMG) of both arms were normal. In an August 30, 1993 report, Dr. Melvyn H. Rech, an osteopath, stated that appellant had been guarding the use of her right shoulder in treatment of her bilateral epicondylitis and subsequently had demonstrated adhesive capsulitis of the shoulder. In a September 29, 1993 report, Dr. Cutler stated that a magnetic resonance imaging (MRI) scan of the right shoulder showed findings indicative of a torn rotator cuff of the right shoulder. He commented that appellant still had symptomatology of carpal tunnel syndrome.

In a March 14, 1994 report, Dr. Rech stated that appellant's right shoulder condition was a consequential injury of her elbow problems because when her elbow therapy was discontinued she became very protective of her shoulder and, in the course of time, disuse of the shoulder caused adhesive capsulitis. He indicated that adhesive capsulitis resulted from an inflammation of an injury that does not allow a patient to perform range of motion exercises to her extremity, leading to a lengthy period of inactivity in which the shoulder capsule may form adhesions and, therefore, cause limitation of motion along with pain. Dr. Rech stated that appellant had objective findings of a carpal tunnel syndrome in the form of positive Tinel's sign and Phalen's sign. He commented that although the nerve conduction tests were within normal limits, it did not exclude a carpal tunnel syndrome. Dr. Rech related the carpal tunnel syndrome to appellant's repetitive work as a letter sorting machine operator.

The reports of Drs. Rech and Cutler conflict with the report of Dr. Millheiser. Drs. Rech and Cutler reported objective findings in support of the diagnoses of carpal tunnel syndrome and adhesive capsulitis while Dr. Millheiser stated that appellant had no objective findings even though he noted numbness in appellant's fingers. Dr. Rech related the carpal tunnel syndrome to appellant's repetitive motion in her job. He related his diagnosis of adhesive capsulitis of the right shoulder to protective disuse of the shoulder arising from appellant's treatment and cessation of treatment for her accepted epicondylitis condition. The case must therefore be remanded for further development.

On remand the Office should refer appellant, together with the statement of accepted facts and the case record, to an appropriate impartial medical specialist for an examination. The impartial medical specialist should be requested to make a full description of findings from examination and tests and provide his diagnosis of appellant's condition. He should indicate whether appellant has bilateral carpal tunnel syndrome and adhesive capsulitis of the right shoulder and, if so, whether these conditions are related to appellant's employment or are a consequence of the accepted employment injury or the treatment given to the accepted condition. After further development as it may find necessary, the Office should issue a *de novo* decision on whether appellant has conditions of the right shoulder and both wrists which are causally related to factors of her employment.

The Board finds that the Office did not abuse its discretion in denying appellant's request for a permanent jacuzzi whirlpool tub.

The payment of medical expenses incident to securing medical care is provided for under section 8103 of the Federal Employees' Compensation Act.² Under section 8103, the Office provides the services or appliances prescribed by or recommended by a qualified physician which the Office considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation. In this case, appellant requested the installation of a permanent whirlpool tub in her residence while the Office only authorized a portable whirlpool unit for use in her own bathtub. Dr. Rech, in his March 14, 1994 report, recommended that appellant be provided with a whirlpool or jacuzzi tub to give pain relief in her elbows which would allow her to receive physical therapy every day instead of three days a week. He indicated that appellant was unable to take nonsteroid anti-inflammatory medications because of gastric problems. Dr. Rech, however, did not give any opinion on whether a permanent whirlpool tub would provide significantly better benefits in medical treatment than the use of a portable whirlpool unit. Appellant has not submitted any other medical evidence which would demonstrate that the installation of a permanent whirlpool tub in her residence is a necessity for medical treatment which would satisfy the objective of sections 8103. As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.³ Appellant has not demonstrated that the Office abused its discretion in denying her request for installation of a jacuzzi whirlpool tub in her residence.

² 5 U.S.C. §§ 8101-8193.

³ *Daniel J. Perea*, 42 ECAB 214 (1990).

The decision of the Office of Workers' Compensation Programs dated February 28, 1996 is affirmed insofar as it denies appellant's request for a jacuzzi tub. The decision is set aside insofar as it denies appellant's claim for her carpal tunnel syndrome and right shoulder condition. The case is remanded for further development as set forth in this decision.

Dated, Washington, D.C.
February 18, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member