

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LYNN M. McLAREN and DEPARTMENT OF THE NAVY,
NAVY SHIPS PARTS CONTROL CENTER, Mechanicsburg, Pa.

*Docket No. 97-1251; Submitted on the Record;
Issued February 2, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective November 8, 1995 on the grounds that she had no disability after that date due to her employment injury, left carpal tunnel syndrome.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation effective November 8, 1995 on the grounds that she had no disability after that date due to her employment injury, left carpal tunnel syndrome.

Under the Federal Employees' Compensation Act,¹ when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.² However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased.³ Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Richard T. DeVito*, 39 ECAB 668, 673 (1988); *Leroy R. Rupp*, 34 ECAB 427, 430 (1982).

³ *Ann E. Kernander*, 37 ECAB 305, 310 (1986); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁴ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁵ *Id.*

⁶ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In the present case, the Office accepted that appellant sustained employment-related left carpal tunnel syndrome and authorized left carpal tunnel syndrome surgery. The Office paid compensation for periods of total and partial disability; appellant began working in a light-duty position at the employing establishment for four hours per day. By decision dated February 6, 1996, the Office determined that appellant was not entitled to receive compensation after November 8, 1995. The Office indicated that appellant's disability was due to nonwork-related herniated discs at C5-6 and C6-7 rather than the accepted employment injury, left carpal tunnel syndrome. The effect of the Office's decision was to terminate appellant's compensation effective November 8, 1995. By decision dated and finalized November 26, 1996, an Office hearing representative affirmed the Office's February 6, 1996 decision.

The Board notes that the Office did not provide sufficient justification for its termination of appellant's compensation effective November 8, 1995. The Office appears to have based its termination of appellant's compensation on the reports of Dr. Walter Peppelman, an attending osteopath.⁷ In a report dated November 8, 1995, Dr. Peppelman noted that appellant had herniated discs at C5-6 and C6-7 on the left and reported symptoms in her left arm corresponding to those nerve distributions. In a report dated January 15, 1996, Dr. Peppelman stated:

"I believe within a reasonable degree of medical certainty that the patient's radicular symptoms which were initially felt to be carpal tunnel syndrome may in fact have been a combined compression which was caused from the herniated discs at the C5-6 and C6-7 areas. The C6 nerve root which emanates from the C5-6 area runs the course and is the same nerve that is decompressed through the carpal tunnel syndrome and there is some cross-over with that and it is not unusual for a patient to be diagnosed with carpal tunnel syndrome when in fact the etiology of a lot of her symptoms is coming from the neck. If, however, the patient has had no documented history of neck pain prior to July 1995, then I would be uncertain as to the exact cause or etiology of her overall symptoms."⁸

In a report dated January 20, 1996, Dr. Peppelman further noted:

"Since this patient has had no prior radicular symptoms since a work-related injury which occurred in December 1994, I feel that it is within a reasonable degree of medical certainty that the left upper extremity radicular symptoms that we are seeing currently are a result of that work-related injury. It appears to be that the current diagnosis for the cause of these radicular symptoms appears to be stemming from the neck and therefore I do believe that the herniated discs at C5-6 and C6-7 are the etiologies of the patient's current symptoms and are related directly back to the work-related injury in December 1994."

⁷ Appellant was referred to Dr. Peppelman by Dr. Ernest Rubbo, an attending orthopedic surgeon.

⁸ Dr. Peppelman also posited that appellant's symptoms might be due to her left carpal tunnel syndrome surgery.

The Board notes that Dr. Peppelman's opinion does not show that appellant ceased to have disability after November 8, 1995 due to her employment injury, left carpal tunnel syndrome. Although Dr. Peppelman indicated that appellant's symptoms appeared to be due to her herniated cervical discs, he did not attempt to address the medical course of her left carpal tunnel syndrome.⁹ He did not explain the medical process through which appellant's left carpal tunnel syndrome would have resolved such that it no longer contributed to her disability. When reading Dr. Peppelman's reports in whole, his opinion on the cause of appellant's continuing disability is equivocal in nature.¹⁰ The record does not contain medical evidence with a well-rationalized opinion showing that appellant ceased to have disability after November 8, 1995 due to her employment injury, left carpal tunnel syndrome.¹¹ Therefore, the Office did not meet its burden of proof to terminate appellant's compensation effective November 8, 1995.

The decision of the Office of Workers' Compensation Programs dated and finalized November 26, 1996 is reversed.

Dated, Washington, D.C.
February 2, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁹ Dr. Peppelman appears to relate appellant's herniated discs to employment factors; the Office has not accepted this condition as employment related.

¹⁰ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal is of limited probative value regarding the issue of causal relationship).

¹¹ The Board notes that Dr. Rubbo also did not provide a clear, rationalized opinion on the matter.