

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOCELYN BRYANT and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 97-2430; Submitted on the Record;
Issued July 23, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on February 7, 1996 causally related to her accepted employment injury; and (2) whether appellant has established that she sustained a permanent impairment entitling her to a schedule award.

The Board has duly reviewed the case on appeal and finds that appellant has failed to establish that she sustained a recurrence of disability causally related to her accepted employment injury.

Appellant filed a claim on January 4, 1990 alleging that she developed nerve damage due to factors of her federal employment. The Office of Workers' Compensation Programs accepted her claim for carpal tunnel syndrome, right wrist on August 17, 1990. The Office expanded appellant's claim to include left carpal tunnel syndrome on July 20, 1992. The Office also authorized right and left carpal tunnel releases. The employing establishment offered her a limited-duty position which appellant accepted on September 1, 1993. The Office determined her loss of wage-earning capacity based on this position on April 25, 1994. Appellant requested a schedule award on January 24, 1995 and the Office denied this request by decision dated August 3, 1995. She requested reconsideration of this decision on July 31, 1996 and by decision dated June 25, 1997, the Office denied modification of its August 3, 1995 decision denying a schedule award.

Appellant file a notice of recurrence of disability on March 7, 1996 alleging on February 7, 1996 she sustained a recurrence of disability due to her accepted employment injuries.¹ By decision dated July 15, 1996, the Office denied appellant's claim for recurrence of disability. Appellant requested an oral hearing and by decision dated May 28, 1997 and finalized June 4, 1997, the hearing representative affirmed the Office's July 15, 1996 decision.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establish that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.² Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing February 7, 1996 and her January 4, 1990 employment injury.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁴

In this case, the Office accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral releases. She returned to work in a light-duty position on September 1, 1993 working four hours a day. Appellant stopped work on February 7, 1996 and alleged that she sustained a recurrence of disability. In support of her claim for recurrence of disability, appellant submitted a report dated February 9, 1996 from Dr. Thomas J. Graham, a Board-certified orthopedic surgeon. Dr. Graham noted appellant's employment and medical histories and performed a physical examination. He recommended a pain clinic. Appellant's attending physician, Dr. Yoel Anouchi, a Board-certified orthopedic surgeon, completed a form report on March 7, 1996 and attributed appellant's disability to right wrist de Quervains tenosynovitis and right shoulder bursitis.

These reports are not sufficient to meet appellant's burden of proof as Drs. Anouchi and Graham did not provide an opinion that appellant's current disability was causally related to her accepted employment injury. Dr. Graham did not offer an opinion regarding appellant's disability for work. Dr. Anouchi attributed appellant's disability to conditions not accepted by the Office as employment related.

¹ Appellant filed a claim for right shoulder bursitis as well as tendinitis of the wrists and elbows due to factors of her federal employment on March 7, 1996. As the Office has not issued a final decision on this claim, the Board will not address this issue on appeal. 20 C.F.R. § 501.2(c).

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁴ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

Dr. Steve Sanford, a physician Board-certified in physical medicine and rehabilitation, completed a report on April 29, 1996 and reviewed appellant's history of injury and medical history. Dr. Sanford performed a physical examination and diagnosed bilateral wrist tendinitis and carpal tunnel syndrome. He recommended further testing and stated that appellant could not return to her former job or any job requiring hand gripping, wrist flexion or extension, pinching with the thumb or static posturing. Dr. Sanford stated that these restriction were due to appellant's hand pain and grip weakness.

Dr. Sanford's report is not sufficient to meet appellant's burden of proof. Although he provided a history of injury, physical findings and a diagnosis. Dr. Sanford failed to provide any medical reasoning supporting his opinion that appellant's current disability was due to her accepted employment injury. He also failed to explain why appellant's accepted condition had changed requiring further work restrictions.

The Office referred appellant for a second opinion evaluation with Dr. Patrick T. Hergenroeder, a Board-certified orthopedic surgeon. Dr. Hergenroeder completed a report on May 29, 1996 noting appellant's history of injury, her medical history and results of his physical examination. He found that x-rays were negative. Dr. Hergenroeder stated, "This patient was seen as a second opinion and I find no evidence of any bilateral carpal tunnel syndrome and any objective findings. Her EMG [electromyogram] and nerve conduction study pre-operatively was normal. It [is] hard to improve on normalcy." Dr. Hergenroeder found that appellant was not disabled from performing the duties of her date-of-injury position and recommended that she work eight hours a day. This report does not support that appellant sustained a recurrence of disability in February 1996 as Dr. Hergenroeder found that appellant was capable of returning to full duty with no restrictions.

Following the oral hearing, appellant submitted a report dated April 9, 1997 from Dr. Bruce Costarella, a Board-certified family practitioner. Dr. Costarella noted examining appellant and diagnosed fibromyalgia which he found was not related to her carpal tunnel syndrome. He stated, "With reasonable medical certainty, her carpal tunnel syndrome and post surgical pain syndrome may have been aggravated -- that is made worse by continued work. I cannot be more exacting as I do not understand the type of work, the work load, and demand that [appellant] was asked to perform." This report is not sufficient to meet appellant's burden of proof in establishing a recurrence of disability causally related to appellant's accepted employment injury. Dr. Costarella opined that appellant's current condition could be due to factors of her continued federal employment. A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.⁵ Dr. Costarella's report also lacks the necessary factual background as he indicates that he is unaware of appellant's work duties.

Appellant's light-duty position required her to work in the general delivery unit verifying mail. This required her to sit at a case or desk reviewing mail in a tray to ensure that the mail is in the proper container. Another employee placed the trays on the desk for appellant and she was allowed to stand or sit intermittently. At the oral hearing, appellant testified that the nature

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(B)(1) (January 1995).

and extent of her light-duty job requirements had changed after she returned to work. She stated that she was also required to “do file cards and rewrite the file cards.” Appellant indicated that this requirement was beyond her work restrictions.

Appellant’s supervisor responded to appellant’s allegations and stated that appellant was required to verify mail or file cards. She indicated that appellant sat at a desk or table and that another person placed the trays on the desk for appellant. Appellant’s supervisor stated appellant had regular breaks and denied that appellant was required to work outside her restrictions.

The Board finds that the summary of appellant’s position by her supervisor is comparable to the light-duty position offer accepted by appellant. While appellant’s supervisor indicated that appellant was required to verify both mail and file cards, she indicated that the procedure for these activities was the same and that there were no changes in the way appellant was required to perform her duties or in the amount of work appellant was required to perform. There is no evidence supporting appellant’s allegation that the nature and extent of her light-duty requirements changed. Furthermore, the medical evidence does not establish that appellant sustained a recurrence of disability causally related to her accepted employment injury. Therefore, the Office properly denied appellant’s claim.

The Board further finds appellant’s claim for a schedule award is not in posture for decision.

Appellant filed a claim on January 24, 1995 requesting a schedule award. The Office requested additional information from appellant on February 9 and June 6, 1995.⁶ By decision dated August 3, 1995, the Office denied appellant’s claim for a schedule award finding that she had failed to submit any medical evidence. Appellant requested reconsideration on July 31, 1996 and submitted additional medical evidence.

In a report dated July 24, 1996, Dr. Sanford noted appellant’s history of injury and medical history. He diagnosed bilateral carpal tunnel syndrome and bilateral wrist and shoulder tendinitis. Dr. Sanford provided range of motion figures for appellant’s shoulders as well as physical findings relating to her diagnosed condition of carpal tunnel syndrome. He opined that appellant’s conditions were due to her date-of-injury position and found that she had reached maximum medical improvement. Dr. Sanford provided calculations of appellant’s permanent impairment and concluded that she had 32 percent impairment of her upper extremity due to carpal tunnel syndrome.

As noted previously, Dr. Hergenroeder, the Office second opinion physician, completed a report on May 29, 1996 and found that physical examination revealed no evidence of carpal tunnel syndrome or objective findings. The Board finds that there is an unresolved conflict of medical opinion evidence between appellant’s physician, Dr. Sanford, who found that appellant had permanent impairment of her upper extremities due to the accepted condition of carpal tunnel syndrome and Dr. Hergenroeder, who found no sign of carpal tunnel and consequentially

⁶ Dr. Anouchi submitted a report on April 3, 1995, but did not address appellant’s permanent impairment or date of maximum medical improvement.

no permanent impairment. Section 8123(a) of the Federal Employees' Compensation Act,⁷ 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."

On remand the Office should refer appellant to an impartial medical specialist to determine whether she has any permanent impairment due to her accepted condition of carpal tunnel syndrome. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The decision of the Office of Workers' Compensation Programs dated June 25, 1997 is hereby set aside and remanded for further development consistent with this opinion. The June 4, 1997 decision is hereby affirmed.

Dated, Washington, D.C.
July 23, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁷ 5 U.S.C. §§ 8101-8193, 8123(a).