U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIELLE FENDORAK and U.S. POSTAL SERVICE,
POST OFFICE, Hauppauge, N.Y.

Docket No. 97-687; Submitted on the Record;
Issued March 29, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant's surgery on her left elbow was not causally related to her January 28, 1994 employment injury; and (2) whether the Office properly terminated appellant's compensation effective July 21, 1995 for refusal to accept suitable work.

On January 28, 1994 appellant, then a 27-year-old carrier, filed a claim for a traumatic injury, Form CA-1, alleging that on that date she injured her left shoulder when she slipped on ice.[1] The Office accepted appellant's claim for a cervical sprain and commenced paying appellant total disability benefits. Appellant attempted to return to light work four hours a day on October 2, 1995 but was sent home on October 26, 1995 because the employing establishment could not accommodate her physical restrictions. Appellant has not returned to work.

In a report dated June 13, 1994, Dr. Neil J. Kurtz, a Board-certified orthopedist with a specialty as a physiatrist, who is appellant's treating physician, examined appellant and diagnosed left C8 radiculopathy and intermittent C7 radiculopathic symptoms secondary to appellant's January 28, 1994 employment injury. He noted that appellant complained of increased pain in the neck radiating to the left upper extremity and numbness throughout the day in the tiny and little fingers with intermittent numbness in the thumb, index and middle finger. On examination, he found hypesthesia in the little finger and, to a lesser extent, in the ulnar half of the right finger as well as 60 percent restricted motion on the left side of her cervical spine. Dr. Kurtz opined that appellant's symptoms and signs were causally related to the January 28, 1994 employment injury and that appellant was unable to work. He stated that the x-rays of appellant's cervical spine were normal and he recommended a magnetic resonance imaging (MRI) scan of her cervical spine.

[1] Appellant had a prior work-related neck injury on February 23, 1990, claim No. A2-613166.

The MRI was performed on September 23, 1994 and was normal.

An electromyogram (EMG) and nerve conduction studies were performed on appellant on November 23, 1994 and showed ulnar nerve entrapment of the left elbow.

In a report dated December 5, 1994, Dr. Kurtz reviewed the EMG and performed a physical examination. He opined that appellant had hypesthesia ulnar nerve distribution in the left hand and diagnosed cubital tunnel syndrome with ulnar nerve entrapment in the left elbow secondary to the January 28, 1994 employment injury. Dr. Kurtz reiterated that appellant's signs and symptoms of persistent numbness in the left hand and positive Tinel's sign were causally related to the January 28, 1994 employment injury. He recommended surgical ulnar neurolysis and transposition of the left elbow. In his work restriction evaluation dated December 5, 1994, Dr. Kurtz listed appellant's problem as ulnar nerve entrapment and indicated that appellant could not work.

In another report dated December 5, 1994, Dr. Kurtz stated that appellant reported diminished pain in her neck and arms, improved range of motion in the neck but still had hypesthesia in the ring and little fingers of the left hand. On examination, he found that appellant had restricted motion of the left side of her cervical spine of 10 to 15 degrees. He reiterated his diagnosis of ulnar nerve entrapment and recommendation for surgery and stated that appellant's cervical strain should be treated with physical therapy. In an addendum to the report, he stated that appellant was totally disabled and would be until surgery was performed and she had rehabilitated herself from the surgery.

In a report dated March 19, 1995, Dr. Ralph Davidoff, a Board-certified orthopedist and second opinion physician, who examined appellant on March 17, 1995, considered appellant's history of injury, noted that the MRI scan was negative and diagnosed cervical sprain and, based on the EMG, diagnosed ulnar nerve entrapment in the left elbow. He noted that appellant had no objective findings except for the EMG studies and those did not explain appellant's terrible cervical pain, although they explained her decreased sensation of the fourth and fifth fingers. Dr. Davidoff opined that appellant could return to work on a limited basis with some restriction on repetitive lifting with the left upper extremity. He stated that surgery of the left elbow might relieve appellant's discomfort of the numbness in the fourth and fifth finger but would not affect her complaint of cervical pain. On a work restriction form dated March 17, 1995, Dr. Davidoff opined that appellant could work eight hours a day, could not lift more than 30 pounds and could not perform repetitive reaching with the left upper extremity.

By letter dated May 5, 1995, the employing establishment offered appellant a position of carrier in a limited-duty capacity based on Dr. Davidoff's March 17, 1995 report. The physical requirements of the job were intermittent sitting, walking, bending and twisting, intermittent lifting of 0 to 13 pounds and no reaching above the shoulder. The Office requested that appellant respond within five days and informed her that if she declined to accept the position, her benefits could be terminated. In responding to the offer on June 5, 1995 appellant signed her name both for accepting and not accepting the position.

By letter dated June 14, 1995, the Office informed appellant that the job she had been offered was still available, that it was suitable to her work capabilities and that she had 30 days

to respond. The Office reiterated that if she failed to accept the position and if she failed to demonstrate the failure was justified, her benefits would be terminated.

By letter dated June 20, 1995, appellant stated that she received the June 14, 1995 letter, and stated that she was neither refusing nor accepting the position until she received further instructions from her treating physician with whom she had an appointment on July 6, 1995.

In reports dated July 6 and July 25, 1995, Dr. Kurtz diagnosed cubital tunnel syndrome and hypesthesia in the ring and little fingers of appellant's left hand, recommended surgery and recommended that appellant return to light work "within her comfort tolerance only."

By decision dated September 13, 1995, the Office terminated appellant's compensation effective July 21, 1995 on the grounds that appellant had refused suitable work.

In a duty status report dated September 21, 1995, Dr. Kurtz diagnosed cubital tunnel syndrome. He indicated that appellant could work four hours a day and could intermittently perform activities including walking, sitting and standing.

In a report dated December 7, 1995, Dr. Kurtz reiterated his early diagnoses of hypesthesia ulnar nerve distribution in the left hand and cubital tunnel syndrome. He noted that appellant tried to perform light work but was sent home on October 26, 1995 because there no work available to her and recommended that attempt to resume work with the restrictions he had previously indicated. Dr. Kurtz stated that appellant had recurrent pain and muscle spasm in her entire left upper extremity starting at the cervical spine particularly on cold days. Dr. Kurtz stated that, regarding appellant's cervical spine, there were little objective neurologic findings and she had full range of motion.

In a report dated February 8, 1996, Dr. Kurtz noted that appellant's chief complaint was numbness in her ring and little fingers of the left hand. He stated that appellant's cervical strain symptoms had persisted but were of diminished magnitude. Dr. Kurtz stated that both appellant's cervical strain and her cubital tunnel syndrome were closely related to her January 28, 1994 employment injury. Dr. Kurtz reiterated that appellant required surgery for her left elbow and extensive rehabilitation for the cervical spine and entire left upper extremity.

In a report dated March 28, 1996, Dr. Davidoff noted that Dr. Kurtz performed surgery on appellant's elbow three weeks earlier and there had been no change in the symptoms of numbness in her fourth and fifth fingers. He performed a physical examination and diagnosed cervical sprain and ulnar nerve entrapment in the left elbow, postsurgery. Dr. Davidoff reiterated that he found no objective findings to explain appellant's severe complaints of neck pain. He opined that the ulnar nerve entrapment was not related to the January 28, 1994 employment injury because appellant's complaints were strictly of the cervical spine. He reiterated his recommendation that appellant return to limited duty consisting of some restrictions on reaching and lifting with the left upper extremity and no lifting more than 30 pounds.

By decision dated May 17, 1996, the Office denied appellant expenses for surgery because the evidence of record failed to establish that appellant's ulnar nerve entrapment was related to the January 28, 1994 employment injury.

On August 19, 1996 appellant requested reconsideration of the Office's decisions. To support her request, appellant submitted additional evidence consisting of medical reports from Dr. Kurtz dated December 19, 1991 and February 15, 1996, and a memorandum from a nurse dated December 12, 1994, to the Office summarizing correspondence between her and Dr. Kurtz as to the status of appellant's ability to work and stating that a referee was not needed. In his December 19, 1991 report, Dr. Kurtz stated that he had treated appellant since September 11, 1990 and although he had recommended that appellant undergo an appropriate therapy and rehabilitation program for her injury, approval of the treatment had not been forthcoming. He perceived this delay as materially diminishing the likelihood of appellant's being able to return to full duties. In his February 15, 1996 report, Dr. Kurtz reiterated his findings in all his reports and concluded, as before, that appellant required surgery of her left elbow and extensive rehabilitation of her cervical spine, and that appellant's cervical neck strain and cubital tunnel syndrome were causally related to her January 28, 1994 employment injury. He also stated that "this" was a continuation of appellant's 1990 work-related injury.

By decision dated September 18, 1996, the Office denied appellant's reconsideration request.

The Board finds that the Office properly determined that appellant has not met her burden of proof in establishing that the surgery she underwent for her ulnar nerve entrapment was causally related to the January 28, 1994 employment injury.

Section 8103(a) of Federal Employees' Compensation Act provides for furnishing to an injured employee "the services, appliances and supplies prescribed by a qualified physician'' which the Office under authority delegated by the Secretary of Labor, "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.''[2] In order to be entitled to reimbursement of medical expenses by the Office, appellant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Proof of causal relation in a case such as this must include supporting rationalized medical evidence.[3] Appellant has failed to provide such rationalized medical evidence supporting causal relation in this case.

In his report dated January 31, 1994, Dr. Kurtz noted that appellant slipped on the ice and developed pain in the cervical spine radiating with a burning sensation down the left upper extremity to the dorsum of her hand. He diagnosed cervical strain and left C7 radiculitis. Once the electrodiagnostic studies were performed, in his December 5, 1994 report, Dr. Kurtz opined that appellant had ulnar nerve entrapment which required surgery. Although he consistently stated that appellant's ulnar nerve entrapment was causally related to the January 28, 1994

[2] 5 U.S.C. § 8103(a); *William C. Thomas*, 45 ECAB 591, 594 (1994).

[3] *William C. Thomas, supra* note 2 at 594; *Delores May Pearson*, 34 ECAB 995 (1983).

employment injury in that report and subsequent reports, Dr. Kurtz did not provide a rationalized opinion explaining how appellant's January 28, 1994 employment injury caused or contributed to the ulnar nerve entrapment. The Board has held that reports consisting solely of conclusory statement without supporting rationale are of little probative value.[4] Dr. Kurtz's conclusory statements that appellant's ulnar nerve entrapment was work related are, therefore, of diminished probative value and are insufficient to support appellant's claim.

Other medical reports by doctors appellant saw in 1994, the year she was injured, are also not probative because they do not address causation. In his October 11, 1994 report, Dr. Philip C. Su, a Board-certified psychiatrist and neurologist, noted that appellant complained of neck pain and pain in her left elbow since the January 28, 1994 employment injury and his diagnoses included possible injury to the ulnar nerve or brachial plexus. He recommended surgery to relieve the ulnar nerve entrapment. Dr. Su, however, did not address what caused the ulnar nerve entrapment. In his October 11, 1994 report, Dr. Afif R. Iliya, a Board-certified neurologist, noted that appellant had pain in the left side of the neck with numbness of the small and ring fingers on the left side of eight months duration. He stated that he could not explain appellant's symptoms and suggested the proposed electrodiagnostic studies might prove helpful. Dr. Iliya also did not address what caused the numbness in appellant's fingers.

The Board finds that the weight of medical opinion is represented by Dr. Davidoff. He performed an examination on March 17, 1995, which found no objective physical findings to explain appellant's cervical pain or pain radiating down the left upper extremity. He noted her MRI was negative and that the only support for the diagnosis of ulnar nerve entrapment appeared with the EMG studies of Dr. Su. He reiterated, however, that there was no evidence of trapezial spasm on examination and palpation of the ulnar nerve revealed no tenderness or complaint of parasthesias down the forearm. Dr. Davidoff concluded appellant could return to limited duty with restrictions. While he noted surgery might relieve some discomfort due to numbness, Dr. Davidoff noted it would have no effect on appellant's complaint of cervical pain with radicular pain down the left upper extremity.

The Board also finds that the Office properly terminated appellant's compensation effective September 13, 1995 on the grounds that she refused an offer of suitable work.

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation benefits. This includes cases in which the Office terminates compensation under 5 U.S.C. § 8106(c) for refusal to accept suitable work.[5]

Under section 8106(2) of the Act,[6] the Office may terminate compensation of an employee who refuses or neglects to work after suitable work is offered to, procured by, or

[4] *William C. Thomas*, *supra* note 2 at 594; *see Leon Harris Ford*, 31 ECAB 514 (1980).

[5] *Henry W. Sheperd, III*, 48 ECAB _____ (Docket No. 96-814, issued March 3, 1997); *Shirley B. Livingston*, 24 ECAB 855 (1991).

[6] 5 U.S.C. §§ 8101-8193.

secured for the employee.[7] Section 10.124(c) of the Office's regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured has the burden of showing that such refusal or failure to work was reasonable or justified and shall be provided with the opportunity to make such showing before a determination is made with respect to termination of entitlement to compensation.[8] To justify termination, the Office must show that the work offered was suitable and must inform appellant of the consequences of refusal to accept such employment.[9] The Board has required that if an employee presents reasons for refusing an offered position, the Office must inform the employee if it finds the reasons inadequate to justify the refusal of the offered position and afford appellant one final opportunity to accept the position.[10]

In this case, the Office has properly exercised its authority granted under the Act and the implementing federal regulations. The record demonstrates that following the Office's acceptance of appellant's claim the Office paid appropriate benefits and medical expenses. On May 5, 1995 the employing establishment offered appellant a position of carrier on limited duty consisting of no lifting more than 30 pounds, no reaching above the shoulder and intermittent activities including walking, sitting and standing. The employing establishment based its finding that the job was suitable on Dr. Davidoff's March 19, 1995 opinion, that appellant could return to light-duty work working eight hours day with the limitations as stated in the employing establishment's job offer. Appellant responded on June 5, 1995, stating that she both accepted and refused the offer and, therefore, in effect, refused the offer. On June 14, 1995 the Office complied with the procedural requirements by advising appellant of the suitability of the position offered, that the job remained open, and that her failure to accept the offer, without justification, would result in the termination of her compensation. The Office provided appellant 30 days within which to either accept the position offered or submit her reasons for refusal. By letter dated June 20, 1995, appellant stated that she did not wish to respond to the offer until she received instructions from Dr. Kurtz whom she was seeing on July 6, 1995. The Office subsequently terminated appellant's compensation benefits effective July 21, 1995.

The March 19, 1995 opinion of Dr. Davidoff, a Board-certified orthopedist and a second opinion physician, considered that appellant's MRI scan was negative and diagnosed cervical sprain. Based on the EMG, he also noted the diagnosis of ulnar nerve entrapment in appellant's left elbow. However, Dr. Davidoff found no objective physical findings except for the EMG results and concluded appellant could perform light-duty work 8 hours a day subject to restrictions including no lifting over 30 pounds and intermittent sitting, standing and walking. He based his conclusion on the fact he found no objective evidence to support appellant's complaints of severe cervical neck pain or radiculopathy into the left upper extremity. In his March 28, 1996 opinion, after appellant had undergone surgery on her left elbow, Dr. Davidoff

[7] *Henry W. Sheperd, III*, *supra* note 5; *Patrick A. Santucci*, 40 ECAB 151 (1988).

[8] 20 C.F.R. § 10.124(c); *see also Catherine G. Hammond*, 41 ECAB 375 (1990).

[9] *Karen L. Mayewski*, 45 ECAB 219 (1993).

[10] *Rosie E. Garner*, 48 ECAB _____ (Docket No. 95-74, issued December 6, 1996); *Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992).

reiterated his findings on appellant's cervical spine and again found that she could perform limited duty full time as a carrier. His opinion is well rationalized regarding the status of appellant's cervical spine.

The reports of Dr. Kurtz, a Board-certified orthopedist with a specialty as a physiatrist and appellant's treating physician, dated June 13 and December 5, 1994, July 6 and 25, September 21 and December 7, 1995 and February 8 and 15, 1996 do not establish that appellant was unable to perform light work as a carrier full time due to her cervical strain which was the accepted injury. Rather, Dr. Kurtz's reports documents that appellant's cervical strain improved as she progressed from 60 percent restricted motion in her cervical spine in Dr. Kurtz's June 13, 1994 report to having full range of motion and little objective neurologic findings in Dr. Kurtz's December 7, 1995 report. In one of his December 5, 1995 reports, Dr. Kurtz stated that appellant would be totally disabled until she underwent the surgery for her left elbow and rehabilitated herself. He did not mention her cervical spine in that report. In his September 21 and December 7, 1995 reports, which specifically address appellant's part-time work restrictions, Dr. Kurtz's diagnoses of hypesthesia ulnar nerve distribution in the left hand and cubital tunnel syndrome indicate that appellant was limited to part-time work due to those conditions. As the Board found above, appellant's condition of ulnar nerve entrapment has not been accepted as causally related to her employment. In his February 8, 1996 report, which was the last time he examined appellant, Dr. Kurtz noted that appellant's cervical strain symptoms had persisted but were of diminished magnitude. Further, Dr. Kurtz's statement in his February 15, 1996 report that appellant's condition was a continuation of her 1990 work-related injury is not supported by a medical rationale and, therefore, is not probative.[11] None of Dr. Kurtz's reports establish that appellant's inability to work limited duty full time as a carrier was due to the strain of her cervical spine. Dr. Davidoff's March 19, 1995 and his March 28, 1996 reports, in which he concluded that appellant could perform light work as a carrier eight hours a day subject to lifting, walking, sitting and standing restrictions are well rationalized regarding appellant's cervical spine and justify the Office's termination of benefits.

[11] *See William C. Thomas*, *supra* note 2 at 594.

The decisions of the Office of Workers' Compensation Programs dated September 18 and May 17, 1996 are hereby affirmed.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member