

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENISE M. WEBB and DEPARTMENT OF COMMERCE,
PATENT & TRADEMARK OFFICE, Arlington, VA

*Docket No. 98-723; Submitted on the Record;
Issued November 12, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective August 29, 1995; and (2) whether appellant has established a recurrence of disability on or after December 7, 1995.

In the present case, the Office accepted that appellant sustained bilateral carpal tunnel syndrome causally related to repetitive work in her federal employment. Appellant returned to a light-duty position on September 19, 1994. By decision dated October 8, 1994, the Office determined that appellant had no loss of wage-earning capacity.¹

By decision dated August 29, 1995, the Office determined that residuals of the employment injury had ceased and terminated appellant's compensation benefits.

On January 3, 1996 appellant filed a claim for recurrence of disability. She indicated that she was off work December 7 and 8, 1995 and from December 14, 1995 to January 12, 1996.

In a decision dated October 11, 1996, an Office hearing representative vacated the August 29, 1995 decision. The hearing representative found that there was a conflict in the medical evidence and the case was remanded for referral to an impartial medical specialist.

By decision dated February 7, 1997, the Office again terminated compensation and medical benefits effective August 29, 1995. The Office also denied the claim for the recurrence of disability filed January 3, 1996. By decision dated November 4, 1997, an Office hearing representative affirmed the prior decision.

¹ The Office subsequently determined that appellant did continue to have a small loss of wage-earning capacity based on her date-of-injury pay rate and she was paid compensation accordingly.

The Board has reviewed the record and finds that the Office met its burden of proof in terminating compensation benefits effective August 29, 1995.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.² The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.³

In the present case, an Office hearing representative found a conflict in the medical evidence with respect to whether appellant continued to have an employment-related carpal tunnel syndrome. In a report dated May 10, 1995, Dr. George W. Settle, a Board-certified orthopedic surgeon, stated that there were no objective findings of carpal tunnel syndrome. Dr. Settle explained that even though an electromyogram (EMG) dated March 27, 1995 showed some slowing of conduction over the median nerve, many people without any symptoms show similar mild findings. In a report dated June 12, 1995, Dr. Settle indicated that there was no need for additional treatment for the accepted work injury, noting that an attending physician, Dr. Richard N. Norris, had reached the same conclusion.⁴ On the other hand, the hearing representative noted that a treating physician, Dr. Hampton J. Jackson, Jr., an orthopedic surgeon, had referenced the March 27, 1995 EMG findings and diagnosed carpal tunnel syndrome.

To resolve the conflict, appellant was referred to Dr. Robert E. Collins, a Board-certified orthopedic surgeon. Dr. Collins was specifically asked for an opinion as to whether the 1995 diagnostic testing supported an ongoing diagnosis of carpal tunnel syndrome. In a report dated January 27, 1997, Dr. Collins provided a history and results on examination and in response to the above inquiry stated:

“As far as her testing, we find frequently that tests will indicate some slowing of conduction time in the wrist, especially in people who are overweight and middle aged women and I think this is not related to her injury. Both Dr. Norris and Dr. Settle found in 1995 that she had no objective findings of carpal tunnel. There is no reason why she can[no]t do her regular work. Dr. Jackson’s records show that he gave her a slip to be off work in December for dorsal and lumbar strain and in January for dorsal and lumbar strain and in January again for lumbar strain and in April 1996 for symptoms in her neck and back with restrictions of motion of the head and neck. There is some inconsistency in that there are some

² *Patricia A. Keller*, 45 ECAB 278 (1993).

³ *Furman G. Peake*, 41 ECAB 361 (1990).

⁴ In a report dated November 30, 1994, Dr. Norris stated that there was little evidence of ongoing carpal tunnel syndrome and he had no further treatment to offer appellant.

increased nerve conductions, but I support Dr. Norris and Dr. Settle's 1995 diagnosis that she is able to do the work she [i]s doing and that she does not need to be off work because of the carpal tunnel diagnosis."

The Board finds that Dr. Collins provided a reasoned opinion that the March 1995 diagnostic tests did not show a continuing employment-related carpal tunnel syndrome. He noted that the nerve conduction results were consistent with appellant's age and weight and were not related to the employment injury. The Board finds that Dr. Collins' represents the weight of the medical evidence in this case. It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁵ Accordingly, the Board finds that the Office met its burden of proof in terminating compensation effective August 29, 1995.

The Board further finds that appellant has not established a recurrence of disability commencing December 7, 1995.

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 establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either 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.⁶

In this case, appellant did not submit probative medical evidence establishing a change in the nature and extent of her accepted employment injury during the period claimed. In a form report dated December 26, 1995, Dr. Jackson indicated that appellant was disabled from December 7, 1995 and checked a box "yes" that the condition was causally related to employment. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.⁷ In a treatment noted dated December 22, 1995, Dr. Jackson indicated that appellant was disabled, but he did not provide a reasoned opinion relating any disability to the employment injury. In the absence of probative medical evidence on causal relationship between disability for work and the accepted employment injury, the Board finds that appellant has not met her burden of proof in this case.

⁵ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

⁶ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁷ *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

The decisions of the Office of Workers' Compensation Programs dated November 4 and February 7, 1997 are affirmed.

Dated, Washington, D.C.
November 12, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member