U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VALERIE F. DOWNEY and U.S. POSTAL SERVICE,
POST OFFICE, Long Beach, CA

Docket No. 98-1088; Submitted on the Record;
Issued November 19, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she developed carpal tunnel syndrome in the performance of duty, causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a second hearing under 5 U.S.C. § 8214.

On November 25, 1996 appellant, then a 47-year-old general clerk, filed a claim alleging that she developed multiple conditions causally related to her employment. However, following a January 9, 1997 telephone conference with the Office, appellant clarified that she was claiming only bilateral carpal tunnel syndrome.

On January 10, 1997 the Office requested that appellant submit comprehensive medical evidence supporting her carpal tunnel claim, and gave her 30 days within which to comply, however, no such evidence supporting that appellant developed employment-related carpal tunnel syndrome was received by the Office.[1]

By decision dated February 11, 1997, the Office denied appellant's claim finding that appellant had failed to establish fact of injury. The Office found that appellant failed to submit medical evidence supporting that a condition existed for which compensation was claimed.

By letter dated February 18, 1997, appellant requested an oral hearing on the denial of her claim. In support she submitted multiple medical reports.

A June 17, 1996 report from Dr. Eric D. Feldman, a Board-certified specialist in physical medicine, noted that when appellant took personal leave away from work to attend an ill parent,

[1] The medical evidence submitted to the record addressed appellant's other conditions including asthma, pulmonary hypersensitivity, chest pain, back pain, chemical sensitivities, headaches, emotional problems and myofascial pain syndrome.

she had felt significantly improved, but that after she returned back to work and returned to typing, she developed paresthesias and some numbing distally, mostly in the first three digits of the right greater than the left hand. Dr. Feldman referred appellant for electrodiagnostic testing to rule out carpal tunnel syndrome.

A June 25, 1996 report from Dr. Ann T. Vasile, a Board-certified specialist in physical medicine, noted that appellant complained of bilateral paresthesias of the hands which were worse after excessive work on the computer. Dr. Vasile reported electrodiagnostic findings and opined that appellant demonstrated evidence of right median sensory neuropathy as evidenced by prolonged absolute value as well as abnormal median to radial sensory comparison, and noted that her right ulnar sensory nerve also revealed prolonged distal latency.

In a July 8, 1996 follow-up report, Dr. Feldman indicated that appellant's electrodiagnostic testing demonstrated right median sensory neuropathy consistent with a carpal tunnel syndrome and right ulnar sensory neuropathy localized to the wrist possibly as a secondary effect of the carpal tunnel syndrome.

In a February 24, 1997 report, Dr. Feldman discussed the many other conditions for which appellant had been referred to him, noted that her pertinent physical findings included positive Phalen's and Tinel's sign over the right wrist, and he diagnosed right carpal tunnel syndrome, in addition to pain disorder, chronic low back pain, myofascial pain syndrome, multilevel degenerative disc disease, fibromyalgia, hypothyroidism, chronic sternal costochondritis, reactive depression, sensitive airways and allergic rhinitis. Dr. Feldman opined that appellant's "line of work requires repetitive activity and further can exacerbate her overall condition."

A hearing was held on September 24, 1997 at which appellant testified. The hearing representative agreed to hold the record open for 30 days for further medical evidence to be submitted following the hearing.

Following the hearing, on October 14, 1997 the Office received two further medical reports. A September 23, 1997 report from Dr. Ross Nathan, a Board-certified orthopedic surgeon specializing in hand surgery, noted appellant's history of hand pain, numbness and tingling of several years duration, noted that her history and examination revealed that she was suffering from carpal tunnel syndrome, and noted that positive findings included Tinel's and Phalen's signs and median nerve compression test. Dr. Nathan opined that this condition had "been caused or significant[ly] aggravated by her work activities which requires [sic] repetitive gripping with the wrist flexed. She gives no other medical conditions or activities which would apportion to this condition."

Also submitted was an October 6, 1997 report from Dr. Feldman which stated that appellant had seen Dr. Nathan who had agreed with his "impression of bilateral carpal tunnel syndrome and a cause and effect arising out of employment."

By decision dated November 17, 1997, the hearing representative rejected appellant's claim finding that the medical evidence submitted did not establish fact of injury. The hearing representative found that Dr. Feldman reported a vague diagnosis, that although

electrodiagnostic testing "apparently suggested" a carpal tunnel syndrome, Tinel's and Phalen's signs and sensory examinations were either equivocal or normal, that specific implicated repetitive activities were not cited, and that medical rationale was not provided.

The Board, however, notes that, in reviewing the record, Dr. Feldman on February 24 and October 6, 1997 unequivocally diagnosed right carpal tunnel syndrome, Dr. Nathan on September 23, 1997 unequivocally diagnosed right carpal tunnel syndrome and Dr. Vasile on June 25, 1996 unequivocally found clinical electrodiagnostic findings of right carpal tunnel syndrome. The Board further notes the positive Tinel's and Phalen's signs over the right wrist reported by Dr. Feldman on February 24, 1997 and positive Tinel's and Phalen's signs and positive median nerve compression reported by Dr. Nathan on September 23, 1997. The Board also notes that in his June 17, 1996 report Dr. Feldman noted that appellant's symptoms worsened when she returned to typing, and that on June 25, 1996 Dr. Vasile indicated symptom worsening with excessive work on the computer.

The Board therefore finds that this case is not in posture for decision.

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[2] This holds true in occupational disease claims as well as in initial traumatic injury claims. In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that she developed carpal tunnel syndrome causally related to factors of her federal employment, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship that is sufficient to require further development of the case record by the Office.[3] Additionally, there is no opposing medical evidence in the record.

Therefore, the case must be remanded to the Office for the preparation of a statement of accepted facts, including a description of appellant's employment duties and questions to be specifically addressed, and for referral, together with the relevant medical records to a Board-certified orthopedic hand specialist, for a well-rationalized medical opinion on whether appellant developed carpal tunnel syndrome in the performance of duty, causally related to factors of her federal employment.

As the Board is making this determination for the disposition of the first issue in this case, the second issue is rendered moot.

Consequently, the decisions of the Office of Workers' Compensation Programs dated January 30, 1998 and November 17, 1997 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

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[2] *William J. Cantrell*, 34 ECAB 1223 (1983).

[3] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

Dated, Washington, D.C.
November 19, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member