

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EDDIE L. SMITH and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS AFFAIRS MEDICAL CENTER, St. Louis, MO

*Docket No. 97-2086; Submitted on the Record;  
Issued October 20, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met his burden of proof to establish that he was disabled from April 28 to August 22, 1993 due to his accepted employment injury; and (2) whether appellant has established that he sustained carpal tunnel syndrome causally related to factors of his federal employment.

On April 15, 1993 appellant, a food service worker, filed an occupational disease claim alleging that he sustained tendinitis of the right wrist causally related to factors of his federal employment. The Office of Workers' Compensation Programs assigned the claim Office File Number A11-0124806 and, by decision dated October 13, 1993, denied appellant's claim on the grounds that the evidence did not establish fact of injury.

On May 27, 1993 appellant filed an occupational disease claim for bilateral carpal tunnel syndrome due to factors of his federal employment. The Office assigned the claim Office File Number A11-126104.

In a form report, Dr. S. Vic Glogovac, a Board-certified orthopedic surgeon and appellant's attending physician, diagnosed bilateral carpal tunnel syndrome and found that he was totally disabled from April 28, 1993 to August 19, 1994.<sup>1</sup> He checked "yes" that the condition was caused or aggravated by employment. In treatment notes dated June and July 1993, Dr. Glogovac attributed the diagnosed condition to appellant's performance of repetitive motion in his employment. In a September 1993 treatment note, Dr. Glogovac released appellant to return to limited duty on August 23, 1993.

By decision dated January 26, 1994, the Office denied appellant's claim for carpal tunnel syndrome on the grounds that the evidence did not establish fact of injury.

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<sup>1</sup> From the context of his other reports, it appears that Dr. Glogovac meant August 19, 1993 as the date of the end of disability rather than August 19, 1994.

In a memorandum dated January 31, 1994, the Office doubled File Number A11-124806 into A11-126104.

By letter dated February 9, 1994 appellant, through his attorney, requested a hearing before an Office hearing representative.

In a report dated December 29, 1993, received by the Office on February 4, 1994, Dr. Glogovac discussed his initial treatment of appellant on April 28, 1993. He stated that appellant related that his work at the employing establishment since 1977 required “repetitive type motions that he used with his hands and wrists over this period.” Dr. Glogovac related, “Exam[ination] on that visit was quite consistent with bilateral carpal tunnel syndromes with positive Phalen’s test at 20 seconds bilaterally.” He noted that conservative treatment did not improve appellant’s symptoms and that he consequently underwent right and left carpal tunnel releases in June and July 1993. Dr. Glogovac related that, after healing from the surgery, appellant returned to light duty in September 1993 and stated:

“With work he notes that with increasing tasks and repetitive motion he still has some numbness and tingling but he is able to tolerate the lighter type of work. He has had some episodes of tendinitis also which have been treated conservatively. His overall picture is one of cumulative trauma and as you are probably well aware cumulative trauma does not respond as dramatically to surgical intervention when it involves the median neuritis. Therefore, we have seen improvement with surgery but he may have some permanent residuals and have restrictions as far as how much he can do with his hands.”

In a decision dated August 19, 1994, the hearing representative vacated the Office’s January 26, 1994 decision after finding that the December 29, 1993 report from Dr. Glogovac constituted sufficient evidence to require further development on the issue of whether appellant had carpal tunnel syndrome causally related to factors of employment.

In accordance with the instructions of the hearing representative, the Office referred appellant to Dr. Richard Coin, a Board-certified surgeon, for a second opinion evaluation.

In a report dated October 3, 1994, Dr. Coin noted that the statement of accepted facts revealed that appellant worked in a limited-duty capacity. He discussed appellant’s history of medical treatment, described current complaints and listed findings on examination. Dr. Coin diagnosed low grade chronic tenosynovitis with primarily subjective findings. He stated:

“[Appellant’s] history suggests the possibility of carpal tunnel syndrome, but with nerve conduction studies that were normal it is impossible for me in retrospect to confirm a specific diagnosis of carpal tunnel syndrome, particularly based on [his] continued complaints of pain and numbness and tingling. [Appellant] does not give a history of numbness and tingling resolved by surgery only to recur again. He indicates that his symptoms have basically persisted.

“In regard to the relation to his employment, the job description described and indicated by [appellant], although somewhat repetitive, is not a typical

occupational endeavor that one sees with carpal tunnel syndrome. The occupational duties appear somewhat light and although possible, do not appear to be the substantial factor. [His] findings outside of the work sector do not show any other nonwork[-]related causes, however.

“It would therefore be my conclusion that it is possible that [appellant’s] occupational endeavors could be contributory to his symptoms, but his occupational duties do not put him at high risk for the same.”

Dr. Coin found that appellant could continue his regular duties.

Based on Dr. Coin’s opinion, as reviewed by the Office medical adviser, by letter dated December 9, 1994, the Office informed appellant that it had accepted his claim for bilateral low grade tendinitis, which did not prevent the performance of his duties.

On March 23, 1995 appellant submitted a claim for compensation on account of traumatic injury or occupational disease (Form CA-7) requesting compensation from April 28 to August 22, 1993.

In a report dated April 10, 1995, Dr. Glogovac stated that he performed bilateral carpal tunnel releases on appellant which resulted “with a reasonable degree of medical certainty from his required work tasks of repetitive type motions since 1977, working in the dietary department at the [employing establishment.]” Dr. Glogovac stated that on examination on November 20, 1994 appellant had a positive Phalen’s test and opined that he had a 20 percent impairment of each hand.

By letter dated August 7, 1995, appellant, through his attorney, requested reconsideration of the claim contending that the Office should have accepted the condition of carpal tunnel syndrome as related to his federal employment.

By decision dated February 22, 1995, the Office denied appellant’s request after finding that his only accepted condition was bilateral low grade tendinitis, which did not cause disability for employment.

In a report dated May 8, 1995, Dr. Glogovac discussed appellant’s history of repetitive activity at work since 1977 and his diagnosis and treatment of appellant for carpal tunnel syndrome. Dr. Glogovac indicated that examination during the carpal tunnel releases showed “notable flattening of the nerve on the left side as well as the right.”

In a letter dated January 17, 1996, appellant, through his attorney, requested a hearing. Appellant submitted, *inter alia*, operative reports from Dr. Glogovac. Dr. Glogovac performed a right carpal tunnel release on appellant on June 21, 1993, which revealed a “quite flattened” nerve. On July 9, 1993 Dr. Glogovac performed a left carpal tunnel release on appellant which revealed a flattened and “slightly hyperemic” nerve.

In a report dated April 18, 1996, Dr. Jerome F. Levy diagnosed, *inter alia*, status post bilateral carpal tunnel release and chronic strain of both wrists and found that appellant had a permanent impairment of his knees and hands.

In a decision dated February 19, 1997, the Office hearing representative affirmed the Office's February 22, 1995 decision.

The Board finds that the case is not in posture for a decision.

In the present case, an Office hearing representative found that the December 29, 1993 report from Dr. Glogovac, a Board-certified orthopedic surgeon and appellant's attending physician, was sufficient to require further development on the issue of whether appellant had sustained carpal tunnel syndrome causally related to factors of his federal employment. In his December 29, 1993 report, Dr. Glogovac discussed appellant's repetitive use of his hands at the employing establishment since 1977, related that objective studies yielded results consistent with bilateral carpal tunnel syndrome and stated that he had performed bilateral carpal tunnel releases on appellant. He further explained that appellant had cumulative trauma, which "does not respond as dramatically to surgical intervention when it involves the median neuritis" and that he continued to have employment restrictions due to his condition. In a report dated April 10, 1995, Dr. Glogovac opined that he performed bilateral carpal tunnel releases on appellant which resulted "with a reasonable degree of medical certainty from his required work tasks of repetitive type motions..." In a form report, Dr. Glogovac diagnosed bilateral carpal tunnel syndrome and opined that appellant was disabled from employment for the period April 28, 1993 to August 19, 1994.

The Office referred appellant to Dr. Coin, a Board-certified surgeon, for a second opinion examination. Dr. Coin indicated that appellant's work duties appeared too light to be a substantial factor in causing carpal tunnel syndrome and noted that appellant complained of continued symptoms even after the bilateral carpal tunnel releases.<sup>2</sup> Dr. Coin diagnosed tenosynovitis and found that appellant could perform his usual employment without restrictions. Dr. Coin did not list any periods of disability.

The Board finds a conflict in opinion between Dr. Glogovac and Dr. Coin regarding whether appellant had carpal tunnel syndrome and whether appellant has any employment-related work limitations. Section 8123(a) of the Federal Employees' Compensation Act<sup>3</sup> provides that where there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Office shall appoint a third physician who shall make the examination.<sup>4</sup> The case must therefore be remanded for resolution of the conflict. The impartial specialist should also indicate whether appellant had any employment-

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<sup>2</sup> The Board notes that the statement of accepted facts provided to Dr. Coin described only appellant's limited-duty employment. On remand, the Office should prepare a new statement of accepted facts, which includes the duties of appellant's regular position and the date in which these duties were performed.

<sup>3</sup> 5 U.S.C. § 8123(a)

<sup>4</sup> *Debra S. Judkins*, 41 ECAB 616 (1990).

related disability for the period April 28 to August 22, 1993. After such further development as it may deem necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated February 19, 1997 is set aside and the case remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, D.C.  
October 20, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member