

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELLE GOMEZ and U.S. POSTAL SERVICE,
POST OFFICE, Wichita, KS

*Docket No. 99-1094; Submitted on the Record;
Issued April 3, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs has met its burden to terminate compensation benefits effective January 28, 1998.

The Office accepted appellant's claim for right carpal tunnel syndrome and surgery performed on April 10, 1992. Appellant had been on light duty consisting of working no more than two eight-hour days per week and lifting no more than one pound since 1988. The Office also accepted appellant's claim for strain of the right flexor carpi ulnaris muscle for an injury she sustained on November 15, 1994.

In a report dated July 31, 1997, appellant's treating physician, Dr. Sharon McKinney, an osteopath, stated that appellant had a "number of myoligamentous problems secondary to her work" particularly carpal tunnel syndrome and tendinitis of her elbows and shoulders. She reiterated appellant's work restrictions including no "highly repetitive" activity such as throwing mail and limited fine manipulation.

In her report dated August 15, 1997, Dr. McKinney described appellant's work requirements and physical restrictions at length and reiterated that appellant could not work full time. She stated that appellant's problems in her shoulders and neck were work related in that due to her pain from her carpal tunnel syndrome, appellant began compensating with her elbow and shoulders which "[put] awkward strain on them and caused her to develop repetitive myofascial type injury to the shoulders."

The Office referred appellant to Dr. Bruce Silverberg, a Board-certified plastic surgeon, with a specialty in hand surgery, for a second opinion. In his report dated October 6, 1997, Dr. Silverberg considered appellant's history of injury, performed a physical examination and reviewed nerve conduction studies dated April 1991 and April 10, 1992 showing bilateral carpal tunnel syndrome of moderate severity. He noted that interval improvement was noted for the right median nerve following surgical decompression, the surgery performed on April 10, 1992 and that the 1992 nerve conduction study showed evidence of improved conduction times. Dr. Silverberg stated:

“Although [appellant] continued to represent mild symptomatic difficulty with less remarkable findings of persistent right carpal tunnel syndrome, this problem is far from the significant source of her distress. [Appellant] has consistently represented diffuse upper limb/multiple site pain and aggravation following a relatively insignificant stress insult in 1988.... Most direct stress/contact strain insults would anticipate a recovery interval, assuming significant ligamentous injury, of 3-4 months.”

He stated that appellant demonstrated multiple site diffuse upper limb tenderness but was “without structural difficulty without specific or a singularly remarkable structural difficulty.” As emphasized Dr. Silverberg stated:

“[Appellant] is clinically depressed, is overweight and demonstrated related poor postural habits with neurologic consequence. [Appellant] remarkably and consistently demonstrated sensitivity and tenderness about the proximal brachial plexus, recognizing a clinical thoracic outlet syndrome, of functional and not a fixed anatomic origin.... In this situation, related difficulties are not work related and would not warrant related responsibility for management.”

Dr. Silverberg queried the cause of appellant’s depression, noting that it had been attributed “to the course of initial and subsequent injury,” but did not actually state what the cause of it was. He opined that appellant could perform her usual work with no restrictions and that appellant’s “ability to do so would depend on her desire to do so.” Dr. Silverberg stated that if appellant’s depression was exogenous, resuming “greater exposure to working responsibilities ... would prevent her from sitting at home and obsessing about her limitations and difficulties.” He also opined that, if appellant suffered from fibromyalgia, working “and related exposure should facilitate joint and muscle limbering and therapeutically allow related relief...” The record contained a report from Dr. Silverberg dated November 17, 1997, which is verbatim the same as the October 6, 1997 report except that it appears on his letterhead stationery and is addressed to the Office.

By decision dated January 28, 1998, the Office terminated appellant’s compensation benefits, effective as of that date, stating that Dr. Silverberg’s opinion established that appellant was medically capable of returning to her unrestricted duties as a mail processor.

The Board finds that the Office has not met its burden of proof to terminate appellant’s compensation benefits effective January 28, 1998.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.¹ The Office’s burden of proof includes the necessity of furnishing rationalized medical evidence based on a and medical background.²

¹ *Patricia M. Mitchell*, 48 ECAB 371 (1997); *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Larry Warner*, 43 ECAB 1027 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

In the present case, the Office accepted appellant's claim for right carpal tunnel syndrome. In his report dated October 10, 1997, the referral physician, Dr. Silverberg, after considering appellant's medical history, performing a physical examination and reviewing the nerve conduction studies, concluded that appellant could return to work full time without restrictions. Dr. Silverberg's opinion is not well rationalized as his conclusion that appellant no longer required restrictions is not consistent with his review of appellant's most recent nerve conduction study of December 15, 1992 which indicated that appellant had improving conduction times, but never showed a normalization of nerve conduction. Although he stated that appellant's nerve conduction times had improved, Dr. Silverberg did not indicate that her carpal tunnel syndrome was no longer moderately severe. Furthermore, Dr. Silverberg noted that during his October 1997 examination appellant had related continued tingling and pain persistently into the right thumb, index and middle fingers, flexor wrist and thenar eminence. Dr. Silverberg noted that appellant's pain was intermittent and lasted from hours at a time to entire days and was aggravated by activities such as writing. The other conditions he described, the fibromyalgia and depression, were not accepted conditions but nonetheless Dr. Silverberg was equivocal as to whether appellant had fibromyalgia and he was equivocal as to what caused appellant's depression. Further, Dr. Silverberg's opinion that appellant had no specific or singularly remarkable structural difficulty was made in relation to her "multiple site diffuse upper limb tenderness," not her carpal tunnel syndrome. Dr. Silverberg opinion does not establish that appellant recovered from her carpal tunnel syndrome and is insufficient to justify the Office's termination of benefits.³

³ See *Larry Warner, supra* note 2 at 1032 (1992).

The decision of the Office of Workers' Compensation Programs dated January 28, 1998 is hereby reversed.

Dated, Washington, D.C.
April 3, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member