

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONA G. HALEY and ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF SOLID WASTE & EMERGENCY RESPONSE, Arlington, VA

*Docket No. 98-587; Submitted on the Record;
Issued January 31, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective February 1, 1997 on the grounds that her disability causally related to her employment injury had ceased as of that date; and (2) whether appellant met her burden of proof to establish that she had any continuing disability causally related to her employment injury.

On January 24, 1993 appellant, then a 41-year-old program analyst, filed a claim for an occupational disease alleging that she sustained carpal tunnel syndrome, which she attributed to repetitive motion activities in her work including computer and data entry.

By decision dated July 12, 1994, the Office accepted appellant's claim for bilateral carpal tunnel syndrome.

On April 2, 1996 appellant was placed on the periodic compensation rolls to receive compensation benefits for temporary total disability.

The record shows that appellant underwent a carpal tunnel release of the left wrist on March 20, 1996.¹

By letter dated July 16, 1996, the Office referred appellant, along with the medical records and statement of accepted facts, to Dr. Bruce M. Freedman, a Board-certified plastic surgeon specializing in hand surgery, for an examination and evaluation as to whether appellant had any residuals from her bilateral carpal tunnel syndrome and whether she was capable of returning to her position as a program analyst.

¹ Appellant was scheduled for surgery on her right hand on June 12, 1996 but decided not to have the operation.

In a report dated August 5, 1996, Dr. Freedman indicated that he had evaluated appellant on July 30, 1996 and had reviewed pertinent medical records, the statement of accepted facts and appellant's job description. He provided a history of appellant's condition. Dr. Freedman provided detailed findings on examination and stated:

"Appellant has multiple upper extremity problems. The first is entrapment neuropathy of the median nerve at the wrist. The second is multiple trigger fingers. The third is generalized soft tissue swelling in her hands, fingers and wrists. Her left carpal tunnel syndrome had been treated surgically while her right carpal tunnel syndrome has not ... at this time, appellant appears to be recovering well from her carpal tunnel surgery. She states that some of her symptoms have been relieved. Her range of motion is good and her sensation has improved since surgery. Her grip strength testing was deficient but the straight-line response by Dynamometer testing indicated lack of volitional effort or malingering. She continues to have symptoms of right carpal tunnel syndrome and may benefit from surgical release in the future....

"In my opinion, [appellant's] carpal tunnel syndrome is not causally related to her work.... During her employment she performed routine clerical functions and was not placed at an increased risk for the development of carpal tunnel syndrome relative to the general population. She performed limited keying and spent most of her time doing light clerical work. It is my opinion [that appellant's] carpal tunnel syndrome was caused by underlying medical conditions. She has known risk factors for the development of carpal tunnel syndrome, which include morbid obesity, cigarette smoking and thyroid disease. In addition, she has a family history of rheumatoid arthritis and clinical symptoms consistent with a collagen vascular disease (CVD). There is a well-known association between CVD and carpal tunnel syndrome. In addition, there is a strong likelihood that [appellant] has diabetes. She has a family history of diabetes and has multiple trigger fingers on both hands. There is a strong association between multiple trigger fingers, carpal tunnel syndrome and diabetes. Finally, [appellant] had altered sensation in a stocking glove distribution in both hands even after her left wrist surgery. There is only one disease that causes a stocking glove distribution sensory loss and that is diabetes."

* * *

"I believe that [appellant] can return to the work force at this time. She has adequate upper extremity function to perform the job description of program analyst. As previously mentioned, she may benefit from right carpal tunnel release as well as treatment of her multiple trigger fingers. She requires no job modification or restrictions at this time. Should her upper extremity symptoms persist or worsen then she may require more aggressive medical treatment and may not be able to perform all of her job activities."

By letter dated November 20, 1996, the Office advised appellant that it proposed to terminate her compensation benefits based upon Dr. Freedman's report.

By decision dated January 16, 1997, the Office terminated appellant's compensation benefits effective February 1, 1997 on the grounds that the evidence of record established that appellant was no longer disabled due to her employment-related bilateral carpal tunnel syndrome.

By letter dated January 24, 1997, appellant requested an oral hearing before an Office hearing representative and she submitted additional evidence.

In a report dated January 24, 1997, Dr. Hampton J. Jackson, Jr., appellant's attending Board-certified orthopedic surgeon, related that appellant's left hand continued to improve but the right hand was worse than the left hand. He stated that there was a positive Tinel's and Phalen's sign with diminished grip strength on the right side.

In a report dated May 30, 1997, Dr. Jackson related that appellant was having significant problems with her right hand and achieved relief only when she was able to stay home and keep her hand elevated. He stated that her light-duty activities had caused significant pain in her hand. Dr. Jackson stated that appellant had a severely positive Tinel's sign. He stated his opinion that her condition was causally related to her employment and that she was totally disabled because she was unable to use her right hand and because of the pain that she was experiencing.

On July 22, 1997 a hearing was held before an Office hearing representative at which time appellant testified.

By decision dated November 6, 1997, the Office hearing representative affirmed the Office's January 16, 1997 decision.

The Board finds that the Office, in its January 16, 1997 decision, met its burden of proof in terminating appellant's compensation benefits effective February 1, 1997.

In this case, appellant sustained bilateral carpal tunnel syndrome in the performance of duty and was placed on the periodic compensation rolls to receive compensation benefits for temporary total disability.

It is well established that 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 his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it is no longer related to the employment.²

By letter dated July 16, 1996, the Office referred appellant, along with the medical records and statement of accepted facts, to Dr. Freedman, a Board-certified plastic surgeon specializing in hand surgery, for an examination and evaluation as to whether appellant had any residuals from her bilateral carpal tunnel syndrome and whether she was capable of returning to her position as a program analyst.

² See *Alfonso G. Montoya*, 44 ECAB 193, 198 (1992); *Gail D. Painton*, 41 ECAB 492, 498 (1990).

In a report dated August 5, 1996, Dr. Freedman indicated that he had evaluated appellant on July 30, 1996 and had reviewed pertinent medical records, the statement of accepted facts and appellant's job description. He provided a history of appellant's condition. Dr. Freedman provided detailed physical findings on examination and stated:

“During her employment [appellant] performed ... limited keying and spent most of her time doing light clerical work. It is my opinion [that appellant's] carpal tunnel syndrome was caused by underlying medical conditions. She has known risk factors for the development of carpal tunnel syndrome, which includes morbid obesity, cigarette smoking and thyroid disease ... family history of rheumatoid arthritis and clinical symptoms consistent with a collagen vascular disease.... In addition, there is a strong likelihood that [appellant] has diabetes. She has a family history of diabetes and has multiple trigger fingers on both hands. There is a strong association between multiple trigger fingers, carpal tunnel syndrome and diabetes. Finally, [appellant] had altered sensation in a stocking glove distribution in both hands even after her left wrist surgery. There is only one disease that causes a stocking glove distribution sensory loss and that is diabetes.”

* * *

“I believe that [appellant] can return to the work force at this time. She has adequate upper extremity function to perform the job description of program analyst...”

Accordingly, the Office met its burden of proof in terminating appellant's compensation benefits based upon the thorough and well-rationalized report of Dr. Freedman who opined that appellant could return to her regular work.

The Board further finds that the Office's November 6, 1997 decision is not in posture for a decision on appeal due to an unresolved conflict of medical opinion as to whether appellant had any continuing disability causally related to her employment injury.

When the Office, in its January 16, 1997 decision, met its burden of proof in terminating appellant's compensation benefits, the burden shifted to appellant to provide evidence sufficient to overcome the report of Dr. Freedman.³

In reports dated January 24 and May 30, 1997, Dr. Jackson, appellant's attending Board-certified orthopedic surgeon, stated that there was a positive Tinel's and Phalen's sign with diminished grip strength on the right side. He related that appellant was having significant problems with her right hand and achieved relief only when she was able to stay home and keep her hand elevated. Dr. Jackson stated that her light-duty activities had caused significant pain in her hand and he stated his opinion that appellant was totally disabled.

³ *Virginia Davis-Banks*, 44 ECAB 389, 392 (1993); *Joseph M. Campbell*, 34 ECAB 1389, 1396 (1983).

Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is disagreement between the physician making the examination of the United States evidence that physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁴

In this case, the Board finds that the reports of Dr. Jackson, appellant's attending physician, submitted after the Office's January 16, 1997 termination decision, are sufficient to create a conflict with the August 5, 1996 report of Dr. Freedman, the Office referral physician, as to whether appellant had any continuing disability causally related to her employment-related bilateral carpal tunnel syndrome. Therefore, in order to resolve this conflict, appellant must be referred to an appropriate impartial medical specialist for an examination and evaluation as to whether she had any continuing employment-related disability. Following such further development of the evidence as the Office deems necessary, the Office should issue a *de novo* decision.

The January 16, 1997 decision of the Office of Workers' Compensation Programs is affirmed. The November 6, 1997 Office decision is set aside and the case is remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
January 31, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

⁴ 5 U.S.C. § 8123(a).