

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GABRIEL REGA and U.S. POSTAL SERVICE,
NEWARK MAIN POST OFFICE, Newark, NJ

*Docket No. 99-1485; Submitted on the Record;
Issued January 6, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation and medical benefits.

On August 10, 1994 appellant, then a 57-year-old postal clerk, filed a claim for tension and cramping in his fingers and pain extending from the right wrist to the right shoulder. He indicated that his job required the continuous flipping of mail which required holding the mail with his right hand and using the left thumb and left index finger in a fanning motion.¹ In a subsequent statement, appellant indicated that he had been given this assignment as a rehabilitated employee and developed the pain a week after he began the assignment. He noted that he was reassigned after he filed his claim for compensation but the duties involved were similar to the previous position in the use of his hands and wrist.

In a September 29, 1994 report, Dr. Orlando P. Ricciardelli, a Board-certified orthopedic surgeon, indicated that appellant showed signs of bilateral carpal tunnel syndrome and recommended that he undergo an electromyogram (EMG). In a November 2, 1994 report, Dr. Mark A. Filippone, a Board-certified psychiatrist, stated that an EMG showed evidence of a left C5-6 cervical radiculopathy, and denervation of the muscles innervated by the midcervical dorsal rami bilaterally. He noted that there was an abnormality consistent with a mild, early left carpal tunnel syndrome. In a November 11, 1994 report, Dr. Ricciardelli indicated that appellant gave a history that was consistent with repetitive trauma that would cause carpal tunnel syndrome. He therefore related appellant's condition to his employment. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and paid temporary total disability of compensation for intermittent periods of compensation, often for four hours a day. Appellant underwent surgery on April 19, 1995 for carpal tunnel release of the left wrist and neurolysis of the left median nerve. On July 17, 1995 appellant underwent surgery for carpal tunnel release of

¹ Appellant was working four hours a day and receiving compensation for time he was not working due to a previous employment injury.

the right wrist and neurolysis of the right median nerve. He subsequently had surgery for revision of the scar of the left hand because of a painful neuroma. On April 4, 1997 appellant underwent surgery for de Quervain's disease of the left wrist, consisting of tenolysis of the extensor tendon to the left wrist and release of stenosing tenosynovitis of the left middle finger. The Office authorized all the operations and accepted them as employment related. The Office began payment of temporary total disability compensation effective July 17, 1997. In an April 14, 1998 decision, the Office terminated appellant's compensation and medical benefits effective April 7, 1998 on the grounds that his employed-related disability had ceased.² In a November 28, 1998 letter, appellant requested reconsideration. In a February 5, 1999 merit decision, the Office denied appellant's request for modification of the April 14, 1998 decision.

The Board finds that the Office improperly terminated appellant's compensation and medical benefits.

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 disability has ceased or that it is no longer related to the employment.³

The Office accepted appellant's claim for bilateral carpal tunnel syndrome and the subsequent surgeries on the basis of Dr. Ricciardelli's reports. In a January 3, 1996 report, Dr. Ricciardelli noted that appellant had returned to work after his carpal tunnel surgical decompressions. He indicated that appellant, in his position, was constantly flipping mail, using both thumbs, and after a half hour of work would notice pain radiating down the outer aspect of the thumbs. Dr. Ricciardelli concluded that appellant had chronic tendinitis of the extensor tendons of both thumbs. In an April 10, 1996 report, he indicated that appellant was showing signs of stenosing tenosynovitis of the left third and fourth fingers as well as the tendinitis of the extensor tendons of the thumbs.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Anthony Cirillo, an orthopedic surgeon, for an examination and second opinion. In an April 29, 1996 report, Dr. Cirillo indicated that appellant had full range of motion of the wrists and fingers. He reported appellant had negative Tinel's and Phalen's tests. Dr. Cirillo noted no atrophy in the thenar or hypothenar areas. He diagnosed status post carpal tunnel syndrome and related appellant's injuries to his occupation. Dr. Cirillo concluded that appellant did not need any further physical therapy. In a June 20, 1996 report, he stated that appellant could perform repetitive motions of the wrists and elbows and could work eight hours a day.

In a November 4, 1996 report, Dr. Ricciardelli indicated that appellant had pain in the radial aspects of both hands, especially in ulnar and radial deviation of the wrists. He concluded that appellant had bilateral de Quervain's disease. Dr. Ricciardelli stated that appellant was able

² The employing establishment offered appellant a position as a modified distribution clerk which he accepted. Appellant returned to work on April 13, 1998 for four hours a day.

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

to work part time at his current position but suggested that he might need surgery if his symptoms persisted. He estimated that appellant had a 40 percent to 50 percent loss of function of his hands secondary to his condition. In a January 9, 1997 report, Dr. Arthur E. Taubman, an orthopedic surgeon, stated that appellant had bilateral de Quervain's tendinitis secondary to his August 8, 1994 employment injury.

The employing establishment referred appellant to Dr. William Oppenheim, a Board-certified orthopedic surgeon, for an examination. Dr. Oppenheim described appellant's ranges of motion of the wrists and thumbs and noted that appellant had a negative Tinel's test of the right hand but a positive Tinel's test of the left hand. He also indicated that x-rays of the left wrist showed evidence of trapezial first metacarpal joint degenerative changes with some dorsal radial subluxation of the joint. Dr. Oppenheim also found ulnar osteophyte formation. He stated that x-rays of the right wrist demonstrated evidence of greater radial subluxation of the trapezial-first metacarpal joint with osteophyte formation over the base of the thumb and the ulnar aspect of the trapezium. Dr. Oppenheim concluded that appellant had bilateral carpal tunnel syndrome, a left de Quervain's syndrome and a left third trigger finger. He indicated that appellant had trapezial-first metacarpal joint arthritis bilaterally, worse on the right. Dr. Oppenheim stated that appellant demonstrated some residual numbness over the volar aspect of the distal phalanx of each thumb. He commented that appellant appeared to have some scarring or injury to the radial nerve branch which was a common problem with the release of a de Quervain's syndrome.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Sebastian Adibe, a Board-certified orthopedic surgeon, for an examination and second opinion. In a December 22, 1997 report, Dr. Adibe diagnosed bilateral degenerative arthritis of the carpal metacarpal joint of both hands. He stated that this condition was not caused by appellant's work-related injury of August 8, 1994 but was a degenerative condition present long before August 8, 1994. Dr. Adibe commented that appellant did not have any employment-related permanent aggravation of the degenerative arthritis of both thumbs because his condition was related to his age and not to his job in which he had only worked one week. He noted appellant had worked four hours a day prior to his April 4, 1997 surgery and indicated that there was nothing resulting from that surgery or the alleged August 8, 1994 injury that should prevent appellant from performing the duties of the position he held prior to the surgery. He stated that appellant should not continue to receive medical treatment for the alleged August 8, 1994 employment injury.

The Office based its decision on Dr. Adibe's report. Dr. Adibe based his opinion on a history of appellant having pain in his hands after one week of working in his position. However, this history was inaccurate. Although appellant indicated that he had been in the light-duty position for one week prior to filing his claim for compensation, he noted that he was transferred to another position which required essentially the same motion of his hands and fingers. In his January 3, 1996 report, Dr. Ricciardelli stated that appellant was currently in a position in which he was flipping mail with both thumbs. While Dr. Adibe attributed appellant's condition to age, Dr. Oppenheim attributed appellant's condition to scarring or an injury to the radial nerve branch which he indicated was a common finding after a de Quervain's release, an operation authorized and accepted by the Office as related to appellant's employment. As Dr. Adibe's report is based on an inaccurate history, it has reduced probative value and is

therefore insufficient to establish that appellant's employment-related condition ceased by April 7, 1998.

In a November 18, 1998 report, submitted with the request for reconsideration, Dr. Ricciardelli reviewed appellant's medical history, including all his operations for carpal tunnel syndrome and de Quervain's syndrome. He indicated that appellant first began to show pain over the first carpal metacarpal joints after the April 4, 1997 operation and had x-ray evidence of arthritis. Dr. Ricciardelli noted that appellant continued to flip mail in the course of his employment, even while he worked four hours a day. He concluded that appellant's progressive difficulties with both hands and wrist were related to sorting mail, using repetitive movements of both hands and wrist for many years. Dr. Ricciardelli indicated that appellant developed signs of both bilateral carpal tunnel syndrome and stenosing tenosynovitis of the left middle finger and was showing signs of progressive pain in the first carpal metacarpal joints bilaterally. He commented that, while degenerative arthritis can occur without trauma, the type of work performed by appellant aggravated his condition to the point where it was extremely difficult for him to work without support. Dr. Ricciardelli disagreed with Dr. Adibe's opinion that appellant's degenerative arthritis was present before August 8, 1994. He noted that appellant's symptomatology at that time related solely to carpal tunnel syndrome bilaterally. Dr. Ricciardelli concluded that appellant's degenerative arthritis began to develop in 1994 but was not radiographically evident until later when his symptoms became more localized over the carpal metacarpal joint. He stated that appellant's carpal tunnel syndrome and tendinitis were directly related to appellant's work and his degenerative arthritis, while not entirely related to his employment, was in all probability aggravated by the work he had to perform. Dr. Ricciardelli noted that it was hoped appellant could continue to work four hours a day with the use of wrist and thumb gauntlets. His report showed that appellant continued to have residuals of his employment-related conditions which restricted his hours of work and required medical treatment. This report provided further medical evidence that appellant's employment-related conditions has not ceased and conflicted with Dr. Adibe's conclusion on whether appellant's employment was causally related to the degenerative arthritis of the carpal metacarpal joint. The Office has failed to establish that appellant's employment-related disability has ceased.

The decisions of the Office of Workers' Compensation Programs dated February 5, 1999 and April 14, 1998 are hereby reversed.

Dated, Washington, D.C.
January 6, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member