

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PHYLLIS N. MATLACK and U.S. POSTAL SERVICE,
POST OFFICE, Cincinnati, OH

*Docket No. 98-2158; Submitted on the Record;
Issued July 6, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,

The issues are: (1) whether appellant met her burden of proof to establish that she sustained carpal tunnel syndrome in the performance of duty; and (2) whether appellant sustained a recurrence of total disability on or after September 8, 1997 due to employment-related conditions, including fibromyalgia.

In 1991, the Office of Workers' Compensation Programs accepted that appellant, then a 37-year-old distribution clerk, sustained a left shoulder strain and left shoulder fibromyalgia due to a fall at work on January 17, 1991.¹ The Office accepted that on January 24, 1997 appellant had sustained employment-related cervical and bilateral trapezius strains.² In January 1998, appellant filed a claim alleging that she sustained total disability on September 8, 1997 due to "post-traumatic fibromyalgia."³ Appellant stopped work on September 8, 1997 and did not return.⁴ The Office treated this claim as a claim for a new injury and, by decision dated April 8, 1998, denied appellant's claim on the grounds that she did not sufficiently detail the work duties which she believed caused her condition. In February 1998, appellant filed a claim alleging that she sustained bilateral carpal tunnel syndrome due to work factors such as repetitively lifting and

¹ Appellant had received a schedule award for a 20 percent permanent impairment of her left arm; the award ran from December 14, 1992 to December 23, 1994.

² In a report dated June 2, 1997, Dr. James L. Jordan, an attending Board-certified orthopedic surgeon, indicated that appellant's cervical and bilateral trapezius strains had resolved. The record contains an August 20, 1997 decision, in which the Office denied appellant's claim for continuation of pay during the period January 24 to March 28, 1997. Appellant has not appealed this decision to the Board.

³ Appellant indicated that she first became aware of her condition on January 17, 1991.

⁴ Appellant had been working in a light-duty position since 1991. At the time she stopped work, appellant was working approximately 4 hours per day and the position required her to intermittently lift up to 25 pounds.

sorting mail.⁵ By decision dated April 23, 1998, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained employment-related carpal tunnel syndrome.

The Board finds that appellant did not meet her burden of proof to establish that she sustained carpal tunnel syndrome in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act⁶ has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁷ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

In support of her claim that she sustained employment-related carpal tunnel syndrome, appellant submitted the results of electromagnetic resonance imaging testing performed on August 25, 1997 which indicated that she had mild bilateral carpal tunnel syndrome. This report,

⁵ She noted on her claim form that her son had passed away on September 7, 1997, *i.e.*, the day prior to her stopping work on September 8, 1997. Appellant also suggested that her January 1991 employment injury contributed to her work stoppage.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁹ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

however, is of limited probative value regarding appellant's claim of employment-related carpal tunnel syndrome in that it does not contain an opinion on the cause of appellant's upper extremity condition.¹⁰ In a report dated April 6, 1998, Dr. Deborah Venesy, an attending physician Board-certified in physical medicine and rehabilitation, indicated that appellant had bilateral carpal tunnel syndrome, but she did not provide a clear opinion on the cause of this condition.¹¹ The record also contains a February 26, 1998 report, in which Dr. Gerald M. Papp, an attending osteopath, provided an opinion that appellant did not have carpal tunnel syndrome. Appellant has not submitted a rationalized medical report showing that she sustained employment-related carpal tunnel syndrome and the Office properly denied her claim in this regard.

The Board further finds that, due to a conflict in the medical evidence, the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she sustained a recurrence of total disability on or after September 8, 1997 due to employment-related conditions, including fibromyalgia.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹²

Section 8123(a) of the Act provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."¹³ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.¹⁴

The Board finds that there is a conflict in the medical evidence between the government physicians and appellant's physician on the issue of whether appellant sustained a recurrence of total disability on or after September 8, 1997 due to employment-related conditions, including

¹⁰ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹¹ The record contains other reports indicating that appellant had carpal tunnel syndrome, but these reports do not indicate an employment-related cause of the condition.

¹² *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

¹³ 5 U.S.C. § 8123(a).

¹⁴ *William C. Bush*, 40 ECAB 1064, 1975 (1989).

fibromyalgia.¹⁵ In a report dated September 1, 1997, Dr. Edward J. Berghausan, a Board-certified orthopedic surgeon acting as an Office referral physician,¹⁶ indicated that appellant continued to have employment-related left shoulder fibromyalgia and left shoulder strain. He determined, however, that appellant could perform work duties, which were within the restrictions of the light-duty job she performed when she stopped work on September 8, 1997.¹⁷ In a report dated April 8, 1998, Dr. Richard T. Sheridan, a Board-certified orthopedic surgeon acting as an Office referral physician,¹⁸ determined that appellant did not have employment-related fibromyalgia or otherwise have residuals of her January 1991 employment injury; he further determined that appellant could return to her job as a clerk. In contrast to these opinions, the record contains an April 23, 1998 report, in which Dr. Thomas Romano, an attending Board-certified internist, determined that appellant continued to have employment-related fibromyalgia which prevented her from performing the repetitive muscle tasks of both her regular job and her light-duty assignment.

Consequently, the case will be referred to an impartial medical specialist to resolve the conflict in the medical opinion evidence between the Office's referral physicians and appellant's physician, regarding whether appellant sustained a total recurrence of disability on or after September 8, 1997 due to fibromyalgia or any other employment-related condition. On remand the Office should refer appellant, along with the case file and the statement of accepted facts, to an appropriate specialist for an impartial medical evaluation and report including a rationalized opinion on this matter. After such further development as the Office deems necessary, the Office should issue an appropriate decision regarding appellant's claim in this regard.

¹⁵ In its April 8, 1998 decision, the Office misinterpreted appellant's January 1998 claim as a claim for a new fibromyalgia injury. However, appellant's January 1998 claim should properly be interpreted as a claim for recurrence of total disability on September 8, 1997 due to her accepted employment-related conditions, including fibromyalgia.

¹⁶ The Office referred to Dr. Berghausan as an impartial medical examiner, but it does not appear that, at the time of the referral, there was a conflict in the medical evidence regarding appellant's employment-related disability or work limitations.

¹⁷ Dr. Berghausen indicated that appellant could perform two-handed lifting of up to 40 pounds on a regular basis.

¹⁸ The Office also improperly referred to Dr. Sheridan as an impartial medical examiner in that it does not appear that, at the time of the referral, there was a conflict in the medical evidence regarding appellant's employment-related disability or work limitations.

The decision of the Office of Workers' Compensation Programs dated April 23, 1998 is affirmed. The decision of the Office dated April 8, 1998 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

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

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member