

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY L. CLOUD and DEPARTMENT OF DEFENSE,
BARKSDALE AIR FORCE BASE, LA

*Docket No. 99-736; Submitted on the Record;
Issued July 12, 2000*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or about August 7, 1996 causally related to her August 2, 1995 accepted injury.

On August 11, 1995 appellant, then a 42-year-old sales/store checker, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she suffered from carpal tunnel syndrome of her left wrist as a result of her employment.¹ The Office of Workers' Compensation Programs accepted appellant's claim for tendinitis in her left wrist commencing on or about August 2, 1995.

On September 18, 1996 appellant filed a notice of recurrence of disability and claim for continuation of pay/compensation (From CA-2a) alleging that pain returned to her lower right arm around August 7, 1996 and into her left wrist around August 14, 1996.

In support of her claim for recurrence of disability, appellant submitted a medical report dated January 8, 1997 from Dr. John T. Knight, a Board-certified orthopedic surgeon, wherein he stated that appellant had medical neuropathy at both wrists, left greater than right subjectively. He recommended a left carpal tunnel release and based on its success, a release on the right as well. Appellant also submitted two medical reports dated February 11, 1997 from Dr. Marion E. Milstead, a Board-certified orthopedic surgeon, wherein he noted that he began treating appellant for carpal tunnel back in 1995, that he saw her again in August 1996, that she had all the classic signs of carpal tunnel syndrome with the numbness and tingling at night, that although she had a normal electromyogram (EMG), eight percent of people still have normal EMGs in the face of clinical carpal tunnel syndrome and that it was his opinion that appellant did have "bilateral carpal tunnel syndrome that is caused or related to the repetitive motion activity

¹ On September 7, 1995 appellant filed a notice of traumatic injury (Form CA-1), wherein she made the same allegations.

she was performing.” He concluded that she would probably need surgical release on both hands.

On April 7, 1997 the Office issued a decision denying appellant’s claim for compensation, finding that the evidence failed to establish that the claimed recurrence was causally related to the injury of August 2, 1995.

Appellant requested a hearing on April 15, 1997. At the hearing held on October 20, 1997, appellant testified that she claimed a recurrence in August 1996 because when she returned to working on the register regular hours for two days, the pain returned. She noted that she has been fine since her surgery. Appellant also submitted medical notes from Louisiana State University Medical Center detailing her surgery for left carpal tunnel release in May 1997.

In a decision dated February 11, 1998, the hearing representative found that appellant had not submitted any detailed rationalized medical evidence to support that her claim for recurrence was causally related to the accepted employment injury and accordingly, affirmed the Office’s decision of April 7, 1997. Specifically, the hearing representative noted that there was no rationalized medical evidence in support of appellant’s contentions that her condition after August 7, 1996 was causally related to her accepted work injury.

By letter dated April 27, 1998, appellant requested reconsideration. In support thereof, appellant submitted further medical reports from Dr. Milstead. In a report dated March 23, 1998, Dr. Milstead again noted that between eight to twenty percent of people who have carpal tunnel syndrome never develop a positive nerve test. He continued:

“With this understanding and the fact that [appellant] in my opinion does have this condition and she is despondent to all conservative treatment typical of an expected fashion, I feel she is in that percentage and that is the reason I am recommending the surgical release.”

In a medical report dated June 5, 1998, Dr. Milstead addressed causation of appellant’s carpal tunnel syndrome:

“Appellant had symptoms of carpal tunnel syndrome related to the repetitive motion she was performing as a checker. She did perform this activity for many years before the symptoms began to occur, but this is not unusual in carpal tunnel syndrome since it is an accumulative-type disorder and sometimes does take a long time before the symptoms begin to occur. As the synovitis occurs and continues to worsen, the symptoms do progress and get more and more severe with the continued same activity. This I [feel] [is] the reason it may have taken as long as it did for the symptoms to gradually occur.”

On November 9, 1998 the Office denied appellant’s request for reconsideration, finding that the additional evidence submitted was not sufficient to warrant modification of its prior decision.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on or about August 7, 1996 causally related to her August 2, 1995 accepted injury.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing on or about August 7, 1996 and her August 2, 1995 accepted injury.² The burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.³

Although Dr. Milstead did relate appellant's carpal tunnel syndrome to her duties as a checker, he did not provide a rationalized medical opinion explaining the relationship for his conclusion that appellant suffered from carpal tunnel syndrome despite her negative diagnostic tests. No other medical evidence addresses the issue of causal relationship. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁴

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between her condition and her employment. To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, states whether these employment factors caused or aggravated appellant's diagnosed conditions and present rationale in support of his or her opinion. Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.⁵

² *Mark A. Cacchione*, 46 ECAB 148 (1994).

³ *Id.*

⁴ *Id.*

⁵ *Corlisa L. Sims (Smith)*, 46 ECAB 172 (1994).

The decisions of the Office of Workers' Compensation Programs dated November 9, 1998 and April 7, 1997 are hereby affirmed.

Dated, Washington, D.C.
July 12, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member