U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUANNA FUENTAS-RUIZ and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, NM

Docket No. 99-1448; Submitted on the Record;
Issued July 21, 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 November 23, 1996, causally related to her May 25, 1994 employment injury

Appellant, then a 29-year-old postal clerk, filed an occupational disease claim on June 13, 1994 alleging that she developed a throbbing pain in her hands while performing duties incidental to moving and processing mail at work. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome on October 28, 1994.[1] Appellant worked intermittently from June 25, 1994 through January 13, 1995 and received compensation for periods of disability until January 28, 1995, when she returned to work in a full-time limited-duty position as a modified postal clerk. By decision dated July 14, 1995, the Office found that appellant's modified position fairly and reasonably represented her wage-earning capacity and terminated her compensation benefits.

On December 20, 1996 appellant filed a recurrence of disability claim alleging that the original injury caused additional disability on or about November 23, 1996. Appellant alleged that, on or about November 23, 1996, her modified clerk position began causing her sharp pain in both hands due to increased use while performing her duties. On December 27, 1996 appellant informed the employing establishment that her duties such as filing, making folders and the temperature in the room was causing her pain. Appellant's supervisor discussed with her the restricted duties outlined by her physician and her ability to do her work and after appellant

[1] The medical record indicates that appellant has a history of accumulative trauma disorder of her upper extremities. Appellant had carpal tunnel release on the right side in 1992 and was diagnosed with left carpal tunnel syndrome prior to 1994. Appellant makes reference in her CA-2 form to having suffered similar pain two years prior, however, the record does not indicate that appellant filed a claim for workers' compensation prior to the instant claim.

indicated that she was unable to perform any of her duties, she was instructed to go home. Appellant has not worked since.

The record contains medical reports from Dr. Stephen C. Drukker, a Board-certified hand surgeon, who saw appellant on a monthly basis for her continued complaints of pain. In a January 9, 1997 report, Dr. Drukker noted appellant's previous diagnosis of carpal tunnel syndrome and that he received a call from the employing establishment inquiring whether light filing was acceptable to which he indicated yes. He related that the cold temperature at work really bothered appellant's hands, so Dr. Drukker indicated that she could use a neoprene thumb spica on both hands to keep them warm and tendons supple. He noted in a January 30, 1997 report that appellant could return to work and perform the restricted duties outlined in her modified job description. In a February 27, 1997 report, Dr. Drukker restricted appellant to lifting no more than five pounds and no repetitive work. In a March 31, 1997 report, he indicated that appellant's therapist noted she was still having pain in the right upper extremity, however, during her examination he found no pain, numbness or tenderness on her left side. He stated "[o]verall I do not have a good explanation for her continuing discomfort.…" Dr. Drukker approved regular work duties for appellant but restricted her to 4 hours a day with 10-minute breaks every hour.

By decision dated April 22, 1997, the Office denied appellant's recurrence of disability claim on the grounds that the evidence failed to establish that the claimed recurrence was causally related to the May 25, 1994 injury.

The Office received additional medical reports dated May 22 through December 15, 1997 subsequent to the April 22, 1997 decision. Dr. Drukker's report dated May 22, 1997 was submitted in which he noted that he saw no swelling, inflammation or tenderness in appellant's hands. He stated "I am at a loss to explain this woman's continued pain complaints. We have tried therapy, a TENS unit, anti-inflammatory medications with Elavil. She has had a bone scan done which is fairly nonspecific. Plain x-rays are normal." Dr. Drukker referred appellant to Dr. Donald Vichick, a Board-certified orthopedic surgeon, for a second opinion and requested that he carry through with appellant's treatment. Progress notes from Dr. Vichick, dated from June 27 through December 15, 1997 were also submitted to the Office. He found in a June 27, 1997 report that appellant suffered from a "multiplicity of work-related problems" affecting her upper extremities including what he referred to as tendinitis of both wrists. Dr. Vichick noted that appellant underwent electrical testing and that there was no electrophysiologic evidence for median neuropathy at the wrist or forearm, or ulnar neuropathy at the wrist or elbow. In a July 14, 1997 report, he noted that the pain that appellant reported during her visit related to other problems in her upper extremities, that she felt no numbness or tingling in the right hand and that her wrist felt better when she wore a splint. Dr. Vichick indicated in an August 8, 1997 report that appellant's right wrist and forearm were totally pain free with the short arm splint, but with wrist motion and the splint removed, she noted mild dorsal ulnar pain as well as pain along the course of the first dorsal compartment. In a September 5, 1997 report, he indicated that appellant was totally pain free while wearing her wrist splint and performing light activities with the splint removed, however, such activities as pushing, pulling and lifting, including housework while not wearing the splint continue to produce occasional pain. In a report dated

December 15, 1997, Dr. Vichick reiterated that appellant had continued to feel "okay" when wearing her splint but noted radial wrist pain when cold.

In a letter postmarked June 9, 1997, appellant requested an oral hearing before an Office hearing representative. On September 3, 1998 a hearing was held. During the hearing appellant alleged that her initial supervisor did not require her to perform repetitive duties or duties that caused her pain, however, when her supervisor took leave in November and she reported to someone new, similar accommodations were not made. Appellant alleged that on December 27, 1996 she gave her initial supervisor, who had returned, a copy of her work restrictions and related her inability to perform her duties such as filing and making folders. Appellant alleged that her supervisor called Dr. Drukker and subsequently told her "we do n[o]t have light duty for you, you [wi]ll have to go home."

On October 2, 1998 appellant's employing establishment responded to appellant's allegations and stated that the duties approved by Dr. Drukker had been adhered to, however, when appellant returned with additional restrictions and stated that she could not perform any of the duties assigned to her, he was called for clarification. The employing establishment related that Dr. Drukker had previously restricted appellant to lifting no greater than 10 pounds in either hand and no repetitive work. He indicated by phone that filing or typing could be considered repetitive and that appellant would have to determine if she could do such work. Appellant asserted to her supervisor that filing, making folders, driving and the temperature in the room caused her pain and that there was no task in the office she felt she could perform. At that point, the employing establishment argued that appellant was asked to go home. The employing establishment also referred to progress notes of Dr. Drukker, in which he noted being at a loss to explain appellant's continued complaints of pain, that appellant complained of various other ailments unrelated to the accepted condition and that exhaustive studies were conducted that returned essentially normal results.

By decision dated December 1, 1998, the hearing representative found that the employing establishment did not violate the medical restrictions placed on appellant by either Drs. Drukker or Vichick. Further, he found that appellant did not establish that the nature and extent of the light-duty job requirements changed and that the medical evidence did not support a causal relationship between the claimed recurrence of disability and the accepted injury. The hearing representative also took note that appellant had worked in the light-duty position for the previous two years and that there did not appear to be a change in her job duties in terms of physical requirements.

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained a recurrence of disability on or about November 23, 1996 causally related to her May 25, 1994 accepted injury.

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 requirements.[2] Furthermore, 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 November 23, 1996 and her May 25, 1994 employment injury.[3] This 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.[4]

In this case, appellant asserted that she sustained a recurrence of disability commencing November 23, 1996 causally related to her May 25, 1994 bilateral carpal tunnel syndrome and that there had been a change in her light-duty requirements such that she can no longer perform the work. Appellant submitted in support of her claim treatment notes from Dr. Drukker, dated December 26, 1996 through March 31, 1997 and subsequently submitted progress notes from Dr. Vichick dated from May 22, 1997 until December 15, 1997.

With regard to appellant's ability to perform light work, appellant has not shown a change in the nature and extent of her light-duty requirements. Dr. Drukker approved the limited duties outlined in appellant's modified position and appellant's employing establishment asserted that it had been compliant in adhering to such duties and even made accommodations in allowing appellant opportunities to occasionally do other unrelated work activities. When the employing establishment inquired about appellant performing light filing duties, he indicated that light filing was acceptable. When appellant informed the employing establishment on December 27, 1996 that she had been restricted further from work duties and that all of her work duties caused her pain, the employing establishment discussed her situation with Dr. Drukker and subsequently instructed her to stop work. Appellant contends on appeal that her job duties changed, however, there is no reliable, probative and substantial evidence of record to indicate a change in the nature and extent of her light-duty job requirements.

Moreover, appellant has not shown a change in the nature and extent of the injury-related condition and in fact, the medical evidence of record establishes that appellant can perform the light-duty position. The medical record establishes that appellant's condition had not worsened but improved and Dr. Drukker related being at a loss to explain appellant's continued complaints of pain. After months of evaluation, her referral physician, he indicated that exhaustive studies, which had been conducted returned essentially normal results and he was more concerned with other ailments unrelated to the accepted condition. Appellant reported to Dr. Drukker on several occasions that she is virtually pain free when she wears wrist splints and after months of treatment, appellant reported that, without her splint she was only unable to perform duties such as pushing, pulling, lifting and housework duties. The record does not indicate whether appellant had been provided wrist splints for pain or a neoprene thumb spica for cold temperatures by December 27, 1996, when she asserted that she could no longer perform her duties and that the temperature in the room brought her pain. The medical evidence does

[2] *Terry R. Hedman*, 38 ECAB 222 (1986).

[3] *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

[4] *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

establish that after she left work on December 27, 1996 her symptoms had been relieved by taking such precautions and even if not taken prior to that day appellant could likely return to light-duty status wearing such devices for pain. The modified job description outlines sedentary job duties and none that require pushing, pulling or lifting. There is no substantial evidence that appellant sustained a total disability such that she can no longer perform light work duties.

With regard to a causal relationship, the medical evidence merely related that appellant suffered from work-related symptoms, provided a diagnosis of her condition at the time of each evaluation and outlined appropriate work restrictions. The reports of record provide no discussion of causal relationship. To be of probative value a physician must address the specific facts and medical condition applicable to appellant's case and support his or her findings with sound medical reasoning.[5] An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between her condition and her employment.[6] 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 her condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated the diagnosed condition.[7] As such, appellant has not met her burden of establishing by substantial, reliable and probative evidence that her alleged recurrence of disability is causally related to her May 25, 1994 employment injury.

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *William S. Wright*, 45 ECAB 498 (1993).

[7] *Id.*

The decision of the Office of Workers' Compensation Programs dated December 1, 1998 is affirmed.

Dated, Washington, D.C.
July 21, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member