

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY M. MILLER and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Detroit, MI

*Docket No. 99-52; Submitted on the Record;
Issued June 12, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant's disability beginning December 3, 1996 is causally related to her accepted September 1, 1994 employment injury.

On February 27, 1995 appellant, then a letter sorting machine clerk, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that her left arm had developed epicondylitis at the elbow and that this was caused or aggravated by her employment in September 1994. She also noted that her right and left arm and hands have been diagnosed and treated for carpal tunnel syndrome since 1992. The employing establishment controverted the claim, alleging that the medical evidence of record did not establish a causal relationship between appellant's condition and the factors of employment.

By letter dated October 27, 1995, the Office of Workers' Compensation Programs accepted appellant's claim for left lateral epicondylitis. The Office's acceptance was based, in part, on the September 12, 1995 report of Dr. Sheila Prasad Meftah, a Board-certified internist, who noted that appellant's duties as a mail distributor included specific repetitive work which could have caused appellant's left lateral epicondylitis. The Office's acceptance of the claim was further supported by the May 8, 1995 medical report of Dr. Donald M. Ditmars, Jr., a Board-certified plastic surgeon and division head of Plastic and Reconstructive Surgery at Henry Ford Hospital. He reviewed appellant's history at the hospital and noted that, after appellant failed to respond to conservative treatment, she underwent a left lateral epicondyle drilling on March 7, 1995. Dr. Ditmars noted that at the present time she could only do light-duty work. In a medical report dated June 1, 1995, he noted that both appellant's bilateral carpal tunnel syndrome and her left lateral epicondylitis were work related.

On February 8, 1996 the Office approved appellant's request to change her physician to Dr. Ronald L. Little, a Board-certified orthopedic surgeon, who began his treatment of appellant on May 1, 1996 for epicondylitis of the left upper extremity and noted that appellant should continue on light duty with no repetitive lifting or lifting over five pounds.

On July 12, 1996 appellant saw Dr. Marvin Goldberg, an osteopath, who referred her to physical therapy for treatment of her left lateral epicondylitis. On August 23, 1996 he opined that appellant was not able to work until further notice. On September 13, 1996 Dr. Goldberg released appellant to return to work with restrictions of no excessive twisting, no lifting weights of more than five pounds and no repetitive use of either hand.

On December 3, 1996 appellant filed a notice of recurrence of disability and claim for compensation, alleging a recurrence of her September 1994 injury commencing November 1, 1996, for which she stopped work on December 3, 1996.

The employing establishment requested that the claim for recurrence be denied, noting that appellant returned to work as a lobby director on September 22, 1995 and continued to work at this assignment until December 3, 1996. The employing establishment noted that the position of lobby director required no significant physical activity other than verbal responses. The employing establishment attached a memorandum dated August 28, 1996 from the employing establishment signed by appellant wherein she accepted the employment establishment's job offer as lobby director. Her hours were listed as from 12:30 a.m. to 9:00 a.m. and her duties were listed as follows:

“Greets each customer, recommend available services, direct customers to vending machines [and] special services, answer customer questions, accept changes of address, P.O. box applications and requests for vacation holds.

“Performing other administrative duties within [appellant's] restrictions as assigned by the [s]upervisor:”

Appellant's restrictions were listed as “no repetitive work with either hand. No lifting more than 5 pounds with either hand.”

Appellant submitted an attending physician's report, Form CA-20, from Dr. Syed Hussein, the physician responsible for appellant's physical therapy, dated December 14, 1996. He opined that appellant was suffering from carpal tunnel syndrome (right) and left epicondylitis, status post surgery. Dr. Hussein opined that this condition was caused by appellant's employment because “repeated trauma can cause it.” He also issued disability certificates, wherein he noted that appellant was disabled from December 31, 1996 through February 28, 1997.¹ An associate of Dr. Hussein's, Dr. Rodney Moret, extended this period of disability through March 25, 1997.

Appellant also submitted a medical report dated March 25, 1997, wherein Dr. Hussein noted that appellant suffered from bilateral carpal tunnel syndrome, left lateral epicondylitis and right hand reflex sympathetic dystrophy. He indicated that appellant's condition was related to work activity, in that she had a recurrence as of June 1996 as a result of repetitive work-related activity during the period the fall of 1995 through December 3, 1996. Dr. Hussein further noted that she was disabled from December 3, 1996 through the present. Appellant also submitted

¹ Dr. Hussein had previously excused appellant from work November 1 through December 31, 1996.

monthly reports by Drs. Moret, Hussein and Goldberg, which indicated that she was disabled from August 9, 1996 through June 3, 1997.

By decision dated March 7, 1997, the Office disallowed appellant's claim for recurrence, finding that the evidence of record was insufficient to establish that the claimed recurrence was causally related to the approved injury.

By letter dated March 18, 1997, received by the Office on March 24, 1997, appellant requested a hearing. On that same date, the Office received a medical report dated January 7, 1997, in which Dr. Walter L. Everett, a Board-certified orthopedic surgeon and an associate of Dr. Little's, stated that he could not explain the marked hyperalgesia noted on the physical examination about the left elbow. He recommended that she return to Dr. Hussein.

Appellant submitted a medical report dated January 9, 1997, in which Dr. Joseph J. Weiss, a Board-certified internist, found that she had unusual incisional pain at the site of her right carpal tunnel release and within the tissues of her left elbow arthroplasty.

In a medical report dated August 14, 1996, Dr. Lee R. Silverman, a Board-certified neurologist, examined appellant and found:

“Complaints of numbness in [appellant's] hands which is subjective in nature. She has a normal neurological evaluation today. EMG [electromyogram] and nerve conduction studies were performed today and are also normal and reveal no evidence of nerve entrapment or radiculopathy. I do n[o]t have a good explanation for her complaints.”

Appellant also submitted some earlier medical reports that linked appellant's pre-December 1996 condition with her employment.

An EMG dated April 7, 1997 by Dr. Salahuddin S. Ahmad, a neurologist, was abnormal. In addition to the evidence of carpal tunnel syndrome in the right wrist, he also found electrophysiological evidence suggestive of right C5-6 radiculopathy. Appellant had previously been examined by Dr. Ahmad on July 12, 1996, who at that time found bilateral carpal tunnel syndrome and left elbow tenosynovitis versus epicondylitis.

In a medical report and case review dated October 13, 1997, Dr. Moret noted that appellant was initially diagnosed with left lateral epicondylitis and that the physicians afterwards found evidence of a herniated nucleus pulposus and right C5-6 radiculopathy. He noted that when he last saw appellant, she continued to complain of neck pain and stiffness and numbness, and tingling and pain in both hands and that her range of motion continued to be restricted. Dr. Moret believed that there was a direct correlation between appellant's work history and her current condition, noting that her continued lifting requirements, combined with the injuries sustained on November 7, 1979 and September 15, 1990, contributed to her disability. In an addendum dated December 9, 1997, he reiterated his belief that appellant's incapacities are directly attributed to her history.

A hearing was held on January 29, 1998. At the hearing, appellant testified that she worked through October 15, 1994, that she had been using her left hand to throw cases and that she started getting pain from the bottom of her arm through her fingers. She noted that she had surgery in March 1995. Appellant returned to work in September 1995 as a lobby director and in a few months she started to distribute and manually count mail, assist customers in taping and bundling up large parcel boxes and packages, push U-carts to customers in the lobby, transport large mail packages from customer's cars to U-carts. Although she was still on restriction from lifting more than 5 pounds, she alleged that she lifted letter trays weighing 25 to 30 pounds out of the U-carts, stocked lobby with large boxes of material and pushed large U-carts containing 30 to 50 pounds of mail in other areas of postal station. She also testified that she was being harassed on the job. Appellant believed that, if they kept her as lobby director with restrictions, she would have been able to continue performing her duties.

By letter dated February 10, 1998, appellant submitted a chronology of and description of her duties for the employing establishment from 1967 to December 3, 1996. At this time, appellant submitted a February 22, 1998 medical report by Dr. Miguel A. Lis-Planells, a neurosurgeon, who opined:

“[Appellant had] persistent bilateral carpal tunnel symptoms related either to recurrence or fibrocyst of the nerve at the carpal tunnel. The presence of allodynia and the hyperpathia point to the direction of sympathetically maintained pain, which is a known complication following carpal tunnel release. [Appellant] also presents with cervical disc herniations that at this time show evidence of radiculopathy but no myelopathy.”

By letter dated March 3, 1998, the employing establishment submitted evidence in response to the hearing and requested that the claim for recurrence be denied. The employing establishment noted that appellant never complained to the employing establishment about being worked outside of her restrictions. It was noted that appellant was responsible for reducing the weight of material by taking handfuls weighing five pounds or less and that none of her other tasks were considered repetitive in nature. The employing establishment also noted that, on appellant's claim of recurrence filed on December 3, 1996, she made no mention of the alleged violation of her restrictions. It was also noted that, although appellant filed an occupational claim for a herniated disc, this was denied as it was found to be nonjob related by the Office.

The employing establishment also submitted statements from appellant's colleagues. Marian Pugh stated that, during the time that appellant was in the unit, she only “asked her to do as I was instructed to. Concerning the lifting, I lifted the boxes of envelopes for her until she told me she could not do this work. At that time I told her to tell management.” The head supervisor, Theresa Kimbrough, submitted a statement stating that she did not have knowledge regarding the alleged harassment, that appellant worked the midnight shift and that she worked days, that she only observed appellant standing in lobby and that she never assumed the duties assigned to her were without restrictions. She noted that stocking the lobby with blank forms or packing would not violate her restrictions because she could pick up the forms as she deemed comfortable to her, and that the packing could have been separated and taken to the lobby without violating her restrictions. Finally, she noted that appellant never picked up any sacks or

moved anything from the unit while she was detailed to the main facility. The employing establishment also submitted a description of appellant's limited duty, which was signed by her.

On April 20, 1998 appellant submitted a response to the evidence submitted by the employing establishment. She noted that, during the first few months, her restrictions were honored. Appellant alleged that, when she worked, she was called names by her fellow employees and worked in a very hostile work environment and that Ms. Kimbrough told her not to respond to the persons. She further stated that Ms. Giles initiated her into stocking the lobby and that Ms. Washington carried it out along with Ms. Pugh, and that this was the start of the restrictions not being honored. Appellant stated that stocking the lobby consisted of more than just putting out forms.

Appellant noted that with the pain already present it began to be more severe in view of the job duties that were assigned, that her head was hurting and that her neck, hands and arms were throbbing with pain and appellant informed Ms. Pugh that she could not continue with these duties and she told her to see management. She stated that injury compensation refused to discuss problems and was very uncooperative.

By decision dated July 21, 1998, the hearing representative found that, although the medical evidence was generally supportive of appellant's inability to perform her light-duty assignment, it is devoid of any probative rationale explaining how the claimant's light-duty employment would cause her symptoms or that her symptoms represented a change in her accepted conditions. Consequently, the hearing representative found that appellant had failed to meet her burden of proof as she did not submit sufficient rationalized medical evidence establishing that she was disabled for work on or after December 3, 1996 due to her accepted elbow injury. The hearing representative affirmed the decision of the Office dated March 7, 1996.

The Board finds that appellant failed to sustain her burden of proof in establishing that she had any periods of recurrent total disability due to her accepted left lateral epicondylitis commencing December 3, 1996.

An employee who claims benefits under the Federal Employees' Compensation Act,² has the burden of establishing the essential elements of her claim.³ 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.⁴

² 5 U.S.C. §§ 8101-8193.

³ *Richard E. Konnen*, 47 ECAB 388, 389 (1996).

⁴ *Gus N. Rodes*, 46 ECAB 518, 525-26 (1995); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

In the instant case, appellant has failed to establish a change in the nature or extent of her light-duty requirements or a change in her accepted injury-related condition. She returned to work from her September 1, 1994 employment injury on September 22, 1995, when she returned to work on a light-duty status. Appellant alleged that her duties were increased and that she suffered a recurrence on December 3, 1996 due to her accepted condition of epicondylitis in her left elbow. However, her allegations are contradicted by her colleagues and supervisors, who denied that appellant was required to perform work which exceeded her restrictions.

The Board further finds that there is no medical report that sufficiently supports appellant's recurrence of disability. The monthly reports submitted by Drs. Moret, Hussein and Goldberg note that appellant became totally disabled, without linking this disability to her employment activities. The disability certificates issued by Drs. Hussein and Moret are of little probative value. Dr. Hussein's attending physician's report of December 14, 1996, in which he found that appellant suffered from carpal tunnel syndrome and left epicondylitis causally related to work, explained his opinion by stating that "repeated trauma can cause it." His brief statement does not constitute a specific explanation as to how appellant's work after her return to limited-duty work caused the recurrence of disability commencing December 3, 1996. In Dr. Hussein's report of March 25, 1997, he described appellant's work and found that she suffered from bilateral carpal tunnel syndrome, left lateral epicondylitis and right hand reflex sympathetic dystrophy as a result of "repetitive work-related activity during the period fall [of] 1995 through December 3, 1996." His generalized statement that her injury was caused by "repetitive work-related activity" does not indicate which specific activities were repetitive. Furthermore, Dr. Hussein used appellant's description of her work activities, which as found above, was not supported by the statements of her supervisors. Dr. Everett candidly admitted that he could not explain her marked hyperalgesia noted on the physical examination of the left elbow. Neither Drs. Everett or Ahmad make any comment as to appellant's alleged recurrence of disability being caused by her employment. Dr. Moret found that there was a direct correlation between appellant's work history and her current condition, but he specifically stated that appellant's requirement for continued lifting, in combination with the injuries sustained on November 7, 1979 and September 15, 1990 contributed to her disability. These prior injuries, which appellant allegedly sustained on November 1979 and September 15, 1990, resulted in cervical spine injuries which were not accepted by the Office; Dr. Moret made no comment about appellant's epicondylitis being work related. The Board finally notes that the opinion of Dr. Lis-Planells did not address appellant's epicondylitis.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the belief that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁵ Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for recurrence.

The decision of the Office of Workers' Compensation Programs dated July 21, 1998 is affirmed.

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352-54 (1989).

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

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member