

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAMTAZ M. KHAN and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Loma Linda, CA

*Docket No. 98-1521; Submitted on the Record;
Issued March 3, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained a recurrence of disability on April 8, 1997 or beginning April 11, 1997 related to her accepted conditions of the right arm; and (2) whether appellant sustained a left arm injury as a consequence of her accepted conditions of the right arm.

On May 1, 1995 appellant, then a 52-year-old registered nurse, filed a claim for an injury to her right arm and hand sustained on that date while moving a patient from a bed to a gurney. Appellant returned to work on May 3, 1995 performing light duty. The Office of Workers' Compensation Programs accepted that appellant sustained lateral epicondylitis of the right elbow, tendinitis of the right shoulder and carpal tunnel syndrome of the right wrist due to her May 1, 1995 injury and to cumulative trauma. Appellant again stopped work on July 22, 1995 and the Office paid compensation for temporary total disability from July 23, 1995 until she returned to light duty on May 14, 1996. The Office also authorized and paid for surgery performed on appellant's right arm on January 4, 1996, which was described as a de Quervain's release and tenosynovectomy of the flexor tendon and neurolysis of the median nerve of the right wrist.

On November 4, 1996 appellant filed a claim for left forearm and hand pain and tingling and left elbow pain, which she attributed to overuse of her left hand due to her right hand injury. By decision dated March 27, 1997, the Office found that the alleged overuse of appellant's left arm had not been factually established and that the medical evidence failed to establish a left hand or arm condition.

On April 8, 1997 appellant did not work; she filed a claim for compensation for this day. By decision dated May 1, 1997, the Office found that appellant's position of modified registered nurse at the employing establishment fairly and reasonably represented her wage-earning capacity and that she had no loss of wage-earning capacity. By decision dated May 22, 1997, the Office found that the evidence did not establish that appellant was disabled on April 8, 1997.

On June 19, 1997 appellant filed a claim for a recurrence of disability. Appellant stated that her disability was continuous and she did not list a date of recurrence or a date she stopped work after the recurrence. The employing establishment reported that appellant had stopped work on April 11, 1997 and had not returned. By decision dated July 17, 1997, the Office found that the medical evidence did not establish that appellant sustained a recurrence of disability beginning April 11, 1997.

By letter dated August 12, 1997, appellant requested reconsideration of the Office's March 27, 1997 decision, finding that her left arm condition was not related to her employment and its July 17, 1997 decision, finding that she did not sustain a recurrence of disability beginning April 11, 1997. By decisions dated August 21 and 27, 1997, the Office found that the additional evidence was not sufficient to warrant modification of these prior decisions. By letter dated September 24, 1997, appellant requested reconsideration of the Office's decision finding that her left arm condition was not related to her employment. By decision dated October 24, 1997, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions. By letter dated October 22, 1997, appellant requested reconsideration of the Office's decision, denying her claim for a recurrence of disability. By decision dated January 20, 1998, the Office found that the additional evidence was not sufficient to warrant modification of its prior decisions. By letter dated November 24, 1997, appellant requested reconsideration of the Office's decision, finding that her left arm condition was not related to her employment. By decision dated February 5, 1998, the Office found that the additional evidence was repetitive, irrelevant and immaterial and not sufficient to warrant review of its prior decisions.

The Board finds that the evidence does not establish that appellant sustained a recurrence of disability on April 8 or beginning April 11, 1997 related to her accepted conditions of the right arm.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 to show that he or 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.¹

With regard to April 8, 1997, appellant's attending physician, Dr. V. Prabhu Dhalla, a Board-certified orthopedic surgeon, stated in an April 9, 1997 report: "The patient indicated that yesterday her pain was too severe and she could not work. She had called my office and had been advised to stay off work. She was seen in my office today for that reason." In this report, Dr. Dhalla stated that appellant could return to her modified duty. This report is not sufficient to meet appellant's burden of proof because the doctor's conclusion that appellant was disabled on April 8, 1997 was based on a telephone conversation with appellant, without the benefit of an

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

examination.² When Dr. Dhalla examined appellant the following day, he declared her able to perform the modified duty she had been performing.

With regard to the period beginning April 11, 1997, Dr. Dhalla stated that appellant was seen on that date crying and stating that she was having too much pain in both arms to perform even modified work. Dr. Dhalla then stated: "The patient has been seen three times this week with increased complaints. Her findings have remained unchanged. At present, she will be taken off work and remain on temporary disability." In a report dated April 30, 1997, Dr. Dhalla stated that he was keeping appellant temporarily disabled because she complained of significant pain and of inability to perform even light duty. In a report dated May 28, 1997, he stated that appellant was being kept off work because of her subjective complaints. These reports amount essentially to Dr. Dhalla's repetition of appellant's complaint that she hurt too much to work, which is not a basis for finding a recurrence of disability in the absence of a change in physical findings.³ In a report dated June 18, 1997, he stated that appellant's "current disability in regard to both upper extremities would preclude this patient from performing heavy lifting with the right and left upper extremities. The patient would also be precluded from performing any repetitive movements of the wrist and fingers involving the right and left hands." These restrictions would allow appellant to perform the modified duty she stopped performing on April 11, 1997. Appellant has not established a change in her injury-related condition beginning April 11, 1997 such that she could not continue to perform the modified duty she was assigned.

The Board finds that the case is not in posture for a decision on the issue of whether appellant sustained a left arm injury as a consequence of her accepted conditions of the right arm.

Appellant claim that she injured her left arm by overusing it because of her accepted right arm injury sets forth a potentially compensable situation involving a consequential injury.⁴

In a report dated June 28, 1996, Dr. Dhalla noted that appellant lifted charts and performed computer input mostly with her left hand and stated that appellant's "left shoulder complaints are secondary to the overuse of the left upper extremity as a result of problems of the right upper extremity." Checking charts and transcribing doctor's orders were two of the duties listed in appellant's May 14, 1996 light-duty assignment. Appellant's left arm complaints were first reported on June 1, 1995, one month after her accepted injury to her right arm and on June 16, 1995 appellant reported that she had been using the left arm more than usual and was getting pain in her left wrist and elbow. In a report dated May 14, 1997, Dr. Russell Compton, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion

² See *Bertha L. Arnold*, 38 ECAB 282 (1986). (The Board found a report based on a telephone conversation rather than a physical examination was of no probative value.)

³ See *Paul D. Weiss*, 36 ECAB 720 (1985); *Anna Chrun*, 33 ECAB 829 (1982); *John L. Clark*, 32 ECAB 1618 (1981).

⁴ It is an accepted principle of workers' compensation law, and the Board has so recognized, that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct. *Sandra Dixon-Mills*, 44 ECAB 882 (1993).

evaluation, diagnosed lateral epicondylitis of both elbows and indicated this condition was "medically connected to the work injury by direct cause." Although Dr. Jeffrey A. Bounds, a Board-certified neurologist to whom the Office referred appellant for a second opinion evaluation, stated in an October 25, 1996 report, that there was no evidence to support that appellant's new symptoms in the left upper extremity were based upon excessive left arm activity because of the right arm injury, the Board finds that the reports of Drs. Dhalla and Compton are sufficient to require further development of the evidence.

The Office should prepare a statement of accepted facts describing in detail the duties appellant performed from May 3 to July 21, 1995, from May 14 to September 2, 1996 and from September 3, 1996 until April 9, 1997. Appellant and this statement of accepted facts should be referred to an appropriate medical specialist for a reasoned medical opinion of whether appellant's left arm conditions are causally related to appellant's employment duties during these periods and, if so, the specialist should provide an opinion of whether these left arm conditions disabled appellant from work beginning April 8, 1997. The Office should then issue an appropriate decision on this issue.

The decisions of the Office of Workers' Compensation Programs dated January 20, 1998, August 27, July 17 and May 22, 1997 are affirmed. The Office's decisions dated February 5, 1998, October 24, August 21 and March 27, 1997 are set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
March 3, 2000

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member