

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY M. ROBINSON and U.S. POSTAL SERVICE,
POST OFFICE, Milwaukee, WI

*Docket No. 98-2445; Submitted on the Record;
Issued May 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that she sustained a recurrence of disability in June 1996 causally related to her accepted employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On April 26, 1990 appellant, then a 38-year-old postal clerk, filed an occupational disease claim, alleging that she sustained bilateral carpal tunnel syndrome due to factors of her federal employment. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and authorized a June 28, 1995 left carpal tunnel release and a July 12, 1995 right carpal tunnel release. Appellant returned to limited-duty employment following her surgeries in September 1995.¹

On August 8, 1997 appellant filed a notice of recurrence of disability alleging that in June 1996 she sustained a recurrence of disability causally related to her accepted employment injury. On the claim form, appellant asserted that "this is not a recurrence but a continuation of the same problem..." Appellant did not stop work.

By decision dated July 8, 1997, the Office denied appellant's claim on the grounds that the evidence failed to establish that she sustained a recurrence of disability in June 1996. In a letter dated August 4, 1997, appellant requested a review of the written record by an Office hearing representative. By decision dated December 3, 1997 and finalized December 4, 1997, the hearing representative affirmed the Office's July 8, 1997 decision.

By letter dated March 27, 1998, appellant requested reconsideration of her claim. In support of her request, appellant submitted a permanent modified job offer from the employing

¹ By decision dated November 4, 1996, the Office granted appellant a schedule award for a 10 percent permanent impairment of the upper extremities.

establishment, which she accepted on February 13, 1998. In a decision dated April 7, 1998, the Office found that the evidence submitted in support of the request for reconsideration was irrelevant and thus insufficient to warrant review of the prior decision.

The Board has duly reviewed the case record in the present appeal and finds that the case is not in posture for decision.

Where 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.²

In the present case, appellant sustained bilateral carpal tunnel syndrome for which she underwent bilateral carpal tunnel releases. Appellant subsequently returned to work in a limited-duty capacity. In a statement to the Office dated June 28, 1997, appellant related that following her surgeries her condition improved until early 1996, when she experienced growing pain in her hands and wrists. Appellant indicated that in May 1996 she went to her physician who recommended that she ask her supervisor for other assignments. Appellant related that the employing establishment modified her job to decrease the repetitive use of her hands, which eased her condition.

In an office visit note dated June 28, 1996, Dr. David S. Haskell, a Board-certified orthopedic surgeon and appellant's attending physician, listed findings relevant to her right shoulder condition. He noted that she had a negative Tinel's sign and Phalen's test. Dr. Haskell opined that appellant had a two percent loss of function of the wrist and found that she could work "with permanent restrictions that preclude repetitive high speed twisting and turning activities with her hands."³

In an office visit note dated May 6, 1997, Dr. Haskell diagnosed bilateral carpal tunnel syndrome and stated that, "due to continuing pain in the wrists, we recommend that the [employing establishment] aid [appellant] in relocating within the company to a position that helps alleviate her wrist problem."

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

³ In a duty status report dated August 8, 1996, Dr. Haskell noted that appellant had been released to return to work with permanent restrictions of "no repetitive twisting or turning with both hands" in September 1995.

In an office visit note dated June 27, 1997, Dr. Haskell related:

“[Appellant] is engaged in repetitive twisting and turning activities at work, which have produced recurring carpal tunnel symptoms. Surgery was performed in 1995 for carpal tunnel syndrome. [Appellant’s] symptoms did improve following carpal tunnel release, but have never resolved completely. Her right shoulder injury is also due to the repetitive nature of her job.”

While appellant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.⁴ When an uncontroverted inference of causal relationship is raised, the Office is obligated to request further information from an employee’s attending physician.⁵

In the instant case, the employing establishment modified appellant’s job duties based upon the information submitted from her attending physician, Dr. Haskell, who diagnosed carpal tunnel syndrome and found that due to her continuing wrist pain she should relocate from her present position. While Dr. Haskell’s report is not sufficiently rationalized to discharge appellant’s burden of proving by the weight of the reliable, substantial and probative evidence that she had a recurrence of disability due to her accepted condition of bilateral carpal tunnel syndrome, it constitutes sufficient evidence in support of appellant’s claim to require further development of the record by the Office.⁶ The Board notes that there is no medical evidence of record refuting a causal relationship between appellant’s current condition and her employment injury. On remand, the Office should refer appellant, together with the case record and a statement of accepted facts, for examination by an appropriate medical specialist. After such further development as the Office deems necessary, it should issue a *de novo* decision.⁷

⁴ *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.*

⁷ In view of the Board’s disposition of the merits, the issue of whether the Office properly denied appellant’s request for reconsideration under section 8128 is moot.

The decisions of the Office of Workers' Compensation Programs dated April 7, 1998 and December 3, 1997 and finalized December 4, 1997 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, D.C.
May 15, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member