

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY CLARKE and U.S. POSTAL SERVICE,
REMOTE ENCODING CENTER, Salt Lake City, UT

*Docket No. 99-632; Submitted on the Record;
Issued May 9, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that her thoracic outlet syndrome is causally related to factors of her federal employment; and (2) whether the Office of Workers' Compensation Programs properly denied her request for a hearing as untimely.

On February 28, 1996 appellant, then a 50-year-old data conversion operator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that her disability was due to factors of her employment. On April 18, 1996 the Office accepted the claim for right wrist strain. Appellant was placed on light-duty work effective February 29, 1996.

In a June 10, 1996 report, Dr. W. Patrick Knibbe¹ diagnosed thoracic outlet syndrome based upon evidence nerve entrapment at the medial epicondyle and a positive Adson's maneuver. In addition, he indicated that a recent neurological test "indicated relative slowing of the right ulnar nerve conduction velocity across the elbow segment consistent with thoracic outlet syndrome or early ulnar palsy." Lastly, Dr. Knibbe noted:

"I have suggested on the basis of this positive testing that aggressive physical therapy regarding her thoracic outlet compression be reinstated and that [appellant] continue to be off keyboarding involving her right hand indefinitely. She could be more vigorous in using her left hand which is not affected by the symptoms. A major factor in her injury is the continued lifting with [appellant's] dominant [right] hand of up to 70 pounds in her work with the [employing establishment]."

On July 1, 1997 appellant filed an occupational disease claim alleging that her thoracic outlet syndrome ulnar neuropathy was due to her federal employment. She indicated that she

¹ An attending Board-certified internist and rheumatologist.

first realized that her disease was aggravated by her employment on February 12, 1996 and that her prior CA-2 form had been incorrect as to exposure and diagnosis.

In a report dated January 26, 1998, Dr. David T. Roberts,² based upon a physical examination and employment injury history, diagnosed work overuse syndrome due to overuse of her wrist and shoulder areas at work. He further noted that “[i]t would appear as though there was an element of thoracic outlet syndrome secondary to the chronic spasm impinging on the thoracic outlet region, with findings consistent with thoracic outlet syndrome or nerve conduction studies.” In conclusion, Dr. Roberts indicated his concurrence with Dr. Knibbe’s opinion regarding thoracic outlet syndrome and recommended that appellant continue with Dr. Knibbe’s treatment and the restrictions he had imposed.

In a March 27, 1998 letter, the Office requested Dr. Roberts to review the May 24, 1996 nerve conduction study performed by Dr. Dennis D. Thoen³ which was enclosed for his review and comment.

In a response dated April 3, 1998, Dr. Roberts indicated:

“I have reviewed the report findings. Based on the findings restricted to the right upper extremity, there is no evidence of prolongation on F wave latencies or on their calculated velocities across the thoracic outlet region. Therefore, at least in terms of the numbers on this nerve conduction study report, there is no evidence of nerve slowing across the thoracic outlet region. Additionally, supportive against thoracic outlet syndrome is the normal ulnar distal sensory latency and amplitude. Generally, the sensory distal latency amplitude of the ulnar nerve is diminished in this disorder as well.

“Certainly, the results of the nerve conduction study are not indicative of thoracic outlet syndrome.

“In response to your next inquiry regarding the time at which the condition resolved, certainly there is no consistent support of neurogenic thoracic outlet syndrome, although it has been my professional experience that occasionally patients will have symptoms which are highly suggestive of thoracic outlet syndrome, particularly with a work overuse syndrome, such as [appellant] suffered. At times, the nerve conduction studies will be entirely normal, despite clinical evidence to the contrary.

“Therefore, with the addendum regarding thoracic outlet syndrome on nerve conduction studies, the remainder of the work overuse syndrome impression is unchanged. Certainly, it would appear as though even the symptoms suggestive of thoracic outlet syndrome by and large resolved with physical therapy treatments and restrictions by Dr. Knibbe.”

² A second opinion physician.

³ A Board-certified neurologist.

In a decision dated April 23, 1998, the Office denied appellant's claim for compensation. In the attached memorandum, the Office found the opinion of Dr. Roberts to constitute the weight of the evidence that appellant did not have thoracic outlet syndrome.

By letter dated June 30, 1998, appellant requested a hearing and noted that she had not received a copy of the April 23, 1998 decision. In a decision dated August 21, 1998, the Office denied appellant's request for a hearing as untimely and found that the matter could be further pursued through the reconsideration process.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the essential elements of his or her claim.⁵ The claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁶ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁷ The Office has an obligation to see that justice is done.⁸

In this case, appellant submitted a June 10, 1996 report from Dr. Knibbe which stated that appellant's thoracic outlet syndrome was related to her employment duties. The Office referred appellant to Dr. Roberts for a second opinion. Dr. Roberts, in his January 26, 1998 report, diagnosed overuse syndrome and stated his concurrence with Dr. Knibbe's diagnosis. In response to an Office request for Dr. Roberts to review a nerve conduction test and provide his opinion on the test, Dr. Roberts noted that, while the test did not support a finding of thoracic outlet syndrome, he did note that nerve conduction tests might be normal in individuals with overuse syndrome. Although Dr. Knibbe's report is insufficient to completely discharge appellant's burden of establishing by the weight of the reliable, substantial and probative medical evidence that her thoracic outlet syndrome is causally related to factors of her employment, it constitutes

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Ruthie M. Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

⁶ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁷ *Udella Billups*, 40 ECAB 260, 269 (1989); *Dorothy Sidwell*, 36 ECAB 699 (1985).

⁸ *John J. Carlone*, 41 ECAB 354, 360 (1989).

sufficient evidence in support of appellant's claim to require further development of the record by the Office.⁹ Furthermore, contrary to the Office's April 23, 1998 decision, Dr. Roberts did not unequivocally state that appellant did not have thoracic outlet syndrome. Dr. Roberts wrote in his April 3, 1998 report that the evidence was not consistent as to the diagnosis of thoracic outlet and opined that, in his "professional experience that occasionally patients will have symptoms which are highly suggestive of thoracic outlet syndrome, particularly with a work overuse syndrome, such as [appellant] suffered. At times, the nerve conduction studies will be entirely normal, despite clinical evidence to the contrary." Thus, the Office erred in finding that appellant did not have thoracic outlet syndrome as Dr. Knibbe diagnosed. In addition, Dr. Roberts in his first opinion concurred with Dr. Knibbe and his supplemental report does not conclusively rule out the diagnosis of thoracic outlet syndrome. The Office also failed to consider Dr. Roberts' diagnosis of overuse syndrome, which he attributed to appellant's federal employment, nor did the Office require further development on Dr. Roberts' diagnosis. It should be pointed out that both Drs. Knibbe and Roberts have diagnosed conditions which they opined resulted from factors of appellant's employment.

Therefore, upon remand the Office should refer appellant, together with a statement of accepted facts, questions to be answered and the complete case record, to an appropriate medical specialist for an evaluation and rationalized medical opinion on whether appellant's 1994 claimed recurrence is causally related or aggravated by factors of her employment. After such further development as it may deem necessary, the Office shall issue a *de novo* decision. In view of the Board's disposition, the issue of whether appellant timely requested a hearing is moot.

⁹ *Cheryl A. Monnell*, 40 ECAB 545, 551 (1989); *see also Horace Langhorne*, 29 ECAB 820, 821 (1978) (when the attending physician provided no rationale for his conclusion that appellant's hearing loss was causally related to his occupational noise exposure and the Office medical adviser provided no rationale for his conclusion that appellant's hearing loss was not so related, the medical evidence was insufficient to establish appellant's claim but was sufficient in support thereof to require further development of the record by the Office).

The decisions of the Office of Workers' Compensation Programs dated August 21 and April 23, 1998 are set aside and the case remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.
May 9, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member