

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JANET D. SIMMS and U.S. POSTAL SERVICE,
POST OFFICE, St. Louis, MO

*Docket No. 99-669; Submitted on the Record;
Issued May 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on November 19, 1996 causally related to her April 21, 1995 employment injury; and (2) whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on April 20, 1998 causally related to her accepted employment injury.

The Board has duly reviewed the case on appeal and finds it not in posture for decision.

Appellant, a clerk, filed a claim on July 27, 1995 alleging that she developed numbness in her hands on April 21, 1995 due to factors of her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome on March 1, 1996. The Office also approved surgical release in both hands in June 1996. Appellant's attending physician released her to light duty on August 15, 1996 and she accepted a light-duty position on September 6, 1996. Appellant filed a notice of recurrence of disability on December 6, 1996 alleging that on November 19, 1996 she sustained a recurrence of total disability. The Office denied her claim for recurrence on November 19, 1996, by decision dated February 27, 1997. Appellant requested reconsideration on August 18, 1997. By decision dated November 14, 1997, the Office denied modification of the February 27, 1997 decision.

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 of establishing 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.¹ 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 6, 1996 and her July 27, 1995 employment injury.² 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.³

Appellant's surgeon, Dr. Herbert N. Shapiro, a Board-certified surgeon, completed a duty status report on August 12, 1996 and indicated that appellant could return to work on August 15, 1996 with no fine manipulation and no reaching above the shoulder. Dr. Shapiro completed a form report on August 19, 1996 and indicated that appellant could resume light work with no repetitive or delicate hand movements. Appellant accepted a light-duty position on September 6, 1996, which required eight hours of simple grasping.

The Office referred appellant for a second opinion evaluation on October 16, 1996. In a report dated October 25, 1996, Dr. R.E. Crandall, a Board-certified plastic surgeon and second opinion physician, noted appellant's history of injury and recommended nerve conduction studies. He stated that appellant could continue with her current work restrictions. In his December 12, 1996 report, Dr. Crandall found that appellant had reached maximum medical improvement and that her November 27, 1996 nerve conduction test was normal. He stated that there were no indications for revisionary surgery and that appellant demonstrated anatomically inappropriate responses to subjective testing.

Dr. Shapiro completed a report on August 7, 1997 and noted appellant's history of injury. He stated that appellant had persistent complaints of pain in both wrists and hands and that he felt that she probably had a recurrence of her carpal tunnel syndrome. Dr. Shapiro stated that a July 25, 1997 nerve conduction study demonstrated the presence of recurrent bilateral carpal tunnel syndrome and he recommended further surgery on both hands. Dr. Shapiro stated, "[i]t is my belief that the patient's symptoms and treatment following those symptoms from 1995 to the present time have been the result of injuries sustained as the result of her employment.... Her multiple evaluations, physical therapy, surgical operation on both hands and anticipated reoperation is related to those work-related injuries."

Section 8123(a) of the Federal Employees' Compensation Act,⁴ provides, "[I]f there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." In this case, the second opinion physician, Dr. Crandall, found no objective evidence of carpal tunnel syndrome and concluded that appellant could continue light duty.

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

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-9 (1982).

³ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

⁴ 5 U.S.C. §§ 8101-8193, 8123(a).

Appellant's attending physician, Dr. Shapiro, reviewed additional diagnostic studies and found that appellant demonstrated nerve velocities indicative of carpal tunnel syndrome, he offered an opinion that this condition was related to appellant's accepted employment condition and recommended further surgical treatment. Due to the differences of the medical opinion regarding the extent of appellant's carpal tunnel syndrome, the Board finds a conflict of medical opinion evidence, which requires resolution. On the remand, the Office should refer appellant, a statement of accepted facts, a list of specific questions and authority for diagnostic testing to an appropriate Board-certified physician to determine the extent appellant's current condition and the relationship to her previously accepted employment injury.

The Board further finds that appellant has failed to establish a recurrence of disability on or after April 20, 1998 causally related to her accepted employment injury.

Appellant filed a claim on May 21, 1998 alleging that on April 20, 1998 she sustained a recurrence of disability causally related to her April 21, 1995 employment injuries. Appellant stated that she had ongoing pain and little strength in the hands. In a letter dated June 10, 1998, the Office requested additional factual and medical evidence in support of appellant's alleged recurrence of disability. By decision dated August 20, 1998, the Office denied appellant's claim as she failed to submit any evidence in support of her alleged recurrence of disability.

As noted above, appellant 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.⁵ Appellant stated on her claim form that she was instructed to face the mail and that this duty caused her hands to hurt. Appellant stated that she reported this to her supervisor and was not required to perform this duty again. Appellant's supervisor on April 21, 1998 Marie White, stated that she requested that appellant face the mail on April 21, 1998 and appellant reported that this activity bothered both hands. Although appellant has alleged a change in the nature and extent of her light-duty requirements, it is unclear from the evidence of record whether appellant performed the duties in question or whether she was merely requested to perform the duties and then excused when informed of her objection. Appellant did not respond to the Office's request for additional factual information and has failed to meet her burden of proof in establishing that her light-duty job requirements changed resulting in a recurrence of disability.

⁵ *Terry R. Hedman, supra* note 1.

The August 20, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed. The November 14, 1997 decision of the Office is hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
May 8, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member