

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUNE M. BEACH and DEPARTMENT OF DEFENSE,
DEFENSE FINANCE & ACCOUNTING SERVICE, Cleveland, OH

*Docket No. 00-736; Submitted on the Record;
Issued August 7, 2001*

DECISION and ORDER

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

The issue is whether appellant sustained a recurrence of total disability from October 27, 1998 to February 22, 1999 due to her accepted bilateral carpal tunnel syndrome.

The Office of Workers' Compensation Programs accepted that appellant sustained bilateral carpal tunnel syndrome in the performance of her duties as a computer programmer analyst. On June 19, 1998 appellant, who had been receiving compensation for temporary total disability, accepted an offer from the employing establishment of a position as a computer specialist (programmer analyst); the offer stated that "ergonomic accommodations such as a voice-activated computer system ... have been provided." Appellant returned to work on June 29, 1998 for four hours per day and the Office reduced her compensation on that basis.

Appellant stopped work on October 27, 1998, and filed a claim for a recurrence of disability beginning that date on November 30, 1998. On her claim form, appellant stated that she had never resumed any normal duties and that she had constant hand pain that increased with use of her hands. In a statement accompanying her recurrence claim, appellant stated that, after her return to work on June 29, 1998, the voice-activated computer system provided by the employing establishment was never operational, and that she just did training material and kept busy with books and paperwork at her desk. Appellant stated that working increased her hand usage which increased her symptoms, that even continuous light repetitive movements increased her pain, that she "had to bend the fingers, wrists and elbows repetitively to write, lifting and manipulating items," and that writing was very painful to her right arm. The employing establishment stated that the voice-activated computer and ergonomic equipment was not completely installed before appellant stopped work, that a special training plan was developed with instructions for appellant to refrain from using any equipment before the installation was completed, that no programming duties were assigned, and that the motor skills required to complete the training were turning on video and audio tapes and turning pages in a training manual.

In a statement dated December 1, 1998, appellant stated that the employing establishment was so upset about her statements about not being accommodated, that she would not file a new claim citing nonaccommodation as the good cause for not working. Appellant also stated that when she arrived for work on June 29, 1998 none of the ergonomic accommodations had been provided, that her supervisor informed her that she should not have returned to work until the accommodations were ready, that from June 29 to October 26, 1998 she was unable to perform her job duties because of the absence of the accommodations, and that this situation was very stressful, with the stress and anxiety interrupting her sleep and causing the chronic nerve pain from her carpal to “become unbearably aggravating and painful.”

By decision dated February 19, 1999, the Office found that the evidence failed to demonstrate a causal relation between appellant’s occupational injury and her claimed recurrence of disability. The Office continued to pay compensation on a four-hour per day basis. Appellant requested a hearing, which was held on July 19, 1999. By decision dated September 15, 1999, an Office hearing representative found that there was no evidence that appellant was required to perform repetitive use of her hands and wrists beyond her work tolerance limitations, that the medical evidence did not show a material change in the nature and extent of appellant’s injury-related condition, and that the fact that appellant did not perform her regular duties was irrelevant. The Office hearing representative affirmed the Office’s February 19, 1999 decision.

The Board finds that appellant has not established that she sustained a recurrence of total disability from October 27, 1998 to February 22, 1999 due to her accepted bilateral carpal tunnel syndrome.

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

Appellant has not established a change in the nature and extent of the light-duty job requirements such that they exceeded her work tolerance limitations.² Appellant’s work tolerance limitations were prescribed in a November 24, 1997 report by Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion evaluation. Dr. Kaffen stated that appellant could perform her regular duties as a computer specialist, but that she must wear wrist splints and work at the keyboard for a maximum of two hours, and that ergonomic changes such as computer pads and split keyboards were recommended to minimize the stress on her wrists. Appellant’s attending physician, Dr. Charles C. Shin, a Board-certified orthopedic surgeon, stated in an April 22, 1998 report that appellant could work only four hours per day, with occasional use of both hands. Dr. Shin also

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

² *See Fallon Bush*, 48 ECAB 594 (1997).

stated that work area changes and a voice computer system needed to be installed before appellant could return to work.

The evidence establishes that little, if any, of the ergonomic equipment recommended by Drs. Kaffen and Shin and by a company consulted by the Office was installed by the employing establishment before appellant returned to work on June 29, 1998, despite the statement in the employing establishment's June 11, 1998 job offer that ergonomic accommodations had been provided. These accommodations, including a voice-activated computer system, were needed in order for appellant to perform the offered position of computer specialist (programmer analyst). Appellant and the employing establishment agree that appellant did not perform such duties at any time from her return to work on June 29, 1998 until she stopped work on October 27, 1998.

Instead, during this period, appellant performed only training, primarily involving viewing of videocassettes, listening to audiocassettes and reviewing manuals. Appellant acknowledged that she did not use the computer, and her statement that the training required "continuous writing and paperwork" is contradicted by the written training plan, which states: "The training material to be used consists of reading material, videos, and requires some hand written responses to review and evaluation questions." Appellant's apparent exaggeration of the amount of writing required does not establish that the light-duty requirements changed such that they exceeded her work tolerance limitations.

Appellant also has not shown a change in the nature and extent of the injury-related condition. When appellant stopped work on October 26, 1998, the only medical evidence she provided to the employing establishment was an October 26, 1998 disability certificate from Dr. Shin indicating she was unable to work from October 26, 1998 to approximately February 22, 1999. In a report dated November 16, 1998, Dr. Shin stated that, on his most recent examination on October 26, 1998, appellant complained of severe pain and discomfort of both hands and wrists. In a report dated December 29, 1998, Dr. Shin stated that, when seen on October 26, 1998, appellant "had been complaining of intolerable, severe recurrent pain and discomfort of both wrists, hands and elbows with local tenderness and dysfunction with regular activities of daily living" and that this was "a recurrence of her preexisting carpal tunnel syndrome, work related." These statements from Dr. Shin amount essentially to a repetition of appellant's complaints that she hurt too much to work, which, without objective signs of disability, do not constitute a basis for payment of compensation.³ The absence of an objective basis for appellant's complaints of pain is illustrated by a January 7, 1999 report from Dr. Vinod Sahgal, a Board-certified physiatrist, who noted that "electrical studies have been unremarkable," and that "Examination was significant for the absence of fasciculation, objective sensory loss, or atrophy. There was no abnormality of reflexes." In light of this report and of appellant's December 1, 1998 statement attributing her increased pain to emotional distress, appellant has not established a change in the nature and extent of the injury-related condition such that she could no longer continue to perform her light-duty assignment.

³ *Anna Chrun*, 33 ECAB 829 (1982).

The decisions of the Office of Workers' Compensation Programs dated September 15 and February 19, 1999 are affirmed.

Dated, Washington, DC
August 7, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member