U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD B. HEGEMAN and DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, Philadelphia, PA

Docket No. 01-204; Submitted on the Record;
Issued December 20, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective December 2, 1999.

The Office accepted that on September 17, 1997 appellant, then a 31-year-old crane operator, sustained bilateral carpal tunnel syndrome. He underwent surgical releases on December 9, 1997 for the right and on January 13, 1998 for the left. By report dated February 19, 1998, Dr. Eric D. Strauss, appellant's Board-certified orthopedic hand surgeon, noted that appellant's wounds were nicely healed, that he was neurovascularly intact, that he had moderated palmar swelling on the left, diminished on the right, and that he would be able to return to light duty on March 9, 1998.

By report dated March 12, 1998, Dr. Strauss noted that appellant had been involved in an automobile accident the day before and that his left hand had struck the steering wheel. He indicated that the accident caused swelling and pain in appellant's left hand over the incision and recommended continued light duty.

By report dated April 30, 1998, Dr. Strauss noted that appellant had had increasing pain and paresthesias in both hands subsequent to his accident. Injection of the left carpal tunnel was recommended to diminish inflammation. Dr. Strauss opined that appellant's current condition was related to both his work injury and aggravation from the accident. In a work capacity evaluation dated May 21, 1998 he indicated that appellant could return to work for eight hours a day with limits on lifting and repetitive movements.

The Office then determined that a second opinion evaluation was necessary and referred appellant, a statement of accepted facts, questions to be addressed and the relevant case record to Dr. Steven J. Valentino, an osteopathic physician specializing in orthopedics.

In a report dated July 27, 1998, Dr. Valentino noted that appellant complained primarily of right-sided low back and leg pain. He noted that appellant's treatment was directed to his

nonwork-related auto accident. A post accident magnetic resonance imaging (MRI) scan revealed two lumbar disc herniations and an annular tear. Dr. Valentino noted that upper extremity evaluation was normal, including two well-healed volar scars, without evidence of impingement or epicondylitis. He diagnosed "resolved bilateral carpal tunnel syndrome" and opined that appellant was "fully, totally and completely recovered from his work-related carpal tunnel syndrome," had reached maximum medical improvement, had no remaining disability, and needed no further medical treatment. Dr. Valentino opined that appellant was capable of returning to full-time employment without restrictions.

On October 13, 1998 the Office determined that there was a conflict in medical opinion regarding appellant's level of impairment,[1] and referred appellant, a statement of accepted facts, questions to be addressed and the relevant case record to Dr. William H. Simon, a Board-certified orthopedic surgeon, for resolution.

By report dated October 29, 1998, Dr. Simon reviewed appellant's factual and medical history, examined appellant and noted his claim that he did not get complete relief after the December 9, 1997 and January 13, 1998 operative procedures. Appellant returned to light duty until he injured his low back and neck on March 12, 1998 in the auto accident, and returned to work again following epidural steroid injections. Dr. Simon diagnosed "degenerative disc disease of the cervical spine with cervical nerve root irritation, and opined that appellant "still shows evidence of a mild double crush syndrome on the left wrist." He stated that appellant did not have "a true carpal tunnel syndrome," but had "cervical nerve root irritation from early degenerative disc disease causing his hand and forearm symptoms." Dr. Simon opined that appellant's problems were not work-related carpal tunnel syndrome and that he could work with no overhead reaching and no lifting more than 30 pounds. Appellant also needed to do stretching exercises for his cervical spine.

In a report dated December 3, 1998, Dr. Simon opined: "After my complete evaluation I felt that [appellant] most likely had a double crush syndrome rather than a true carpal tunnel syndrome. The double crush syndrome starts with compression of the nerve roots in the cervical spine."

By report dated May 24, 1999, Dr. Simon advised the Office that further radiographic evidence demonstrated cervical spine degenerative disc disease and confirmed that appellant's upper extremity subjective symptoms were due to cervical nerve root irritation rather than work-related carpal tunnel syndrome. Dr. Simon noted:

> "[Appellant] had early degenerative disc disease in the cervical spine at the time of this cervical MRI of April 17, 1998. This confirms my findings on October 29, 1998 that he had degenerative disc disease in the cervical spine, as demonstrated by flexion extension views of his cervical spine. This gives more credence to my theory that his subjective symptoms in his upper extremities are due to cervical nerve root irritation rather than work-related carpal tunnel syndrome (his carpal

[1] The Board notes that the physicians actually disagreed on whether appellant required restrictions when he returned to work full time.

tunnels having been released December 9, 1997 on the right and January 13, 1998 on the left)."

Dr. Simon noted that the "classical finding of double crush syndrome is a carpal tunnel-like syndrome that is not relieved by an adequate carpal tunnel release such as was carried out in [appellant]."

On November 2, 1999 the Office issued a notice of proposed termination of benefits finding that the weight of the medical evidence of record established that he no longer had residuals of his work-related carpal tunnel syndrome which required further medical treatment. The Office advised that if appellant disagreed with the proposed termination, he had 30 days within which to submit further medical evidence.

By decision dated December 2, 1999, the Office terminated wage loss and medical benefits finding that appellant had recovered from the effects of his accepted carpal tunnel syndrome.

By letter dated December 6, 1999, appellant requested an oral hearing, which was held on May 25, 2000.

In support of his request, appellant submitted an August 12, 1999 report from Dr. David Levy, a Board-certified physiatrist, who reviewed conduction velocities dated May 11, 1998 and electromyography testing results. Dr. Levy concluded that testing demonstrated "[p]ositive carpal tunnel syndrome on the right (recurrent) [and] [n]o other entrapment at the wrist, elbow or brachial plexus bilaterally and no cervical radiculopathy."

Also submitted was a December 17, 1999 report from Dr. Gary Neil Goldstein, a Board-certified orthopedist specializing in the hand, who noted that he was treating appellant for the results of his motor vehicle accident. He opined that appellant's work-related injury was still an ongoing problem, added to by the auto accident. Appellant "still has some sequelae from his work-related injuries, particularly with regard to his right hand."

By decision dated July 11, 2000 and finalized on July 17, 2000, the hearing representative found that the weight of the medical evidence rested with the report of Dr. Simon, and established that appellant no longer had disability for work or injury residuals requiring further medical treatment, causally related to his accepted bilateral carpal tunnel syndrome.

The Board finds that the Office did meet its burden of proof in terminating benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[2] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.[3] Further, the right to medical benefits for an accepted condition is not limited to

[2] *Harold S. McGough*, 36 ECAB 332 (1984).

[3] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB

the period of entitlement to compensation for wage loss.[4] To terminate authorization for medical treatment, the Office must establish that appellant no loner has residuals of an employment-related condition that require further medical treatment.[5]

In his several reports, appellant's physician, Dr. Strauss, opined that appellant's present condition was related to both his work injury and to aggravation from the accident. Dr. Strauss indicated that appellant could return to work eight hours a day with limits on lifting and repetitive movements.

However, the second opinion specialist, Dr. Valentino diagnosed resolved bilateral carpal tunnel syndrome and opined that appellant had fully recovered from his work injury and could return to full-time employment without restrictions.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a) provides: "If there is a 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."

Because Dr. Strauss disagreed with Dr. Valentino, a conflict in medical evidence arose on whether appellant could work with or without restrictions and on whether his ongoing disability was due to both the work injury and the automobile accident, or solely the result of the latter. The case was, therefore, properly referred to a third physician, Dr. Simon, who conducted a complete impartial medical examination. Based on a complete factual and medical background and the results of his physical examination, Dr. Simon determined that appellant had no further disability resulting from the carpal tunnel syndrome and that the condition had fully resolved. He opined that appellant could return to work with restrictions.

In this case, Dr. Simon's report is based on a complete and accurate factual and medical background and is well rationalized. He reviewed appellant' history of injury and treatment for bilateral carpal tunnel syndrome. Dr. Simon diagnosed degenerative disc disease of the cervical spine with cervical nerve root irritation which caused appellant's hand and forearm symptoms. He stated that appellant did not have a true carpal tunnel syndrome but rather had a double crush syndrome related to his degenerative cervical disc disease. Dr. Simon concluded that appellant's continuing symptoms were not due to work-related carpal tunnel syndrome.

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the

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351 (1975).

[4] *Marlene G. Owens*, 39 ECAB 1320 (1988).

[5] *See Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[6]

In this case, Dr. Simon's report is based on a complete and accurate factual and medical background and is well rationalized.

Following the termination of compensation, appellant submitted additional medical reports from Drs. Levy and Goldstein. These reports identified ongoing carpal tunnel syndrome, particularly on the right, but did not distinguish between the effects of work and the auto accident, and lacked any rationale to support their conclusions. Because these additional reports from Drs. Levy and Goldstein were incomplete and unrationalized, they are insufficient not only to overcome the special weight accorded to Dr. Simon's opinion, but also to create a new conflict with it.

The decisions of the Office of Workers' Compensation Programs dated July 11, 2000 and finalized on July 17, 2000 and December 2, 1999 are hereby affirmed.

Dated, Washington, DC
December 20, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

[6] *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).