

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD D. HEMPHILL and U.S. POSTAL SERVICE,
POST OFFICE, Santa Barbara, CA

*Docket No. 00-2200; Submitted on the Record;
Issued July 2, 2001*

DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation for the periods from June 7 through 25, 1999 and from September 17 through October 29, 1999.

On September 3, 1999 the Office accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral ulnar neuropathy at the elbow. On November 16, 1999 appellant sought compensation for the period from September 17 through October 29, 1999 for 48 hours and on November 24, 1999 appellant sought compensation for the period from June 7 through 25, 1999 for 120 hours.

In a report dated June 2, 1999, Dr. Ju-Sung Wu, a Board-certified psychiatrist and neurologist, considered appellant's history of injury, performed a physical examination and reviewed nerve conduction studies and an electromyogram (EMG). He diagnosed bilateral carpal tunnel syndrome of moderate degree, right side worse than the left, bilateral ulnar neuropathy at the elbow and diabetic peripheral neuropathy.

On June 4, 1999 appellant's treating physician, Dr. Jeffrey L. Ballard, a Board-certified surgeon, stated that appellant was being treated for her left shoulder and arm, diagnosed "radiculopathy v[ersu]s pin syndrome," and stated that appellant was disabled for three weeks.

In a report dated July 20, 1999, Dr. Ballard stated that he was treating appellant for carpal tunnel syndrome and ulnar neuropathy and that appellant had a history of diabetes with some element of peripheral neuropathy. He stated that due to his repetitive-type motion at work, appellant developed carpal tunnel syndrome. Dr. Ballard stated that appellant's right carpal tunnel syndrome was mild by nerve conduction studies and was asymptomatic.

In an attending physician's report dated October 1, 1999, Dr. Ballard diagnosed bilateral carpal tunnel syndrome, ulnar neuropathy and peripheral neuropathy, and checked the "yes" box that the conditions were work related and stated, "repetitive motion injury." He stated that

appellant was totally disabled from June 7 through 27, 1999 and partially disabled as of July 23, 1999. On November 1, 1999 Dr. Ballard stated that appellant could return to work with restrictions on November 1, 1999.

In a report dated September 28, 1999, a second opinion physician, Dr. Philip Ente, a Board-certified psychiatrist and neurologist, considered appellant's history of injury, performed a physical examination and reviewed the electrodiagnostic studies. He diagnosed diffuse, nondiagnostic left upper extremity pain of unclear etiology. Dr. Ente stated that the pain could not be explained in terms of appellant's two accepted diagnoses of carpal tunnel syndrome and ulnar neuropathy. He noted that the electrodiagnostic studies showed bilateral carpal tunnel syndrome but stated appellant was not showing the more common symptoms of the condition such as dropping objects from his hands or finger numbness. Dr. Ente stated:

"The issue of the relation of diabetes to the veteran's diagnoses of carpal tunnel syndrome and ulnar neuropathy is unclear. Diabetes certainly predisposes patients for developing carpal tunnel syndrome and ulnar neuropathy due to diabetic[-]related nerve damage. At the same time, it is impossible in any specific case to determine whether the carpal tunnel syndrome or ulnar neuropathy is due exclusively to the diabetes and in most cases it is due to a combination of diabetic[-]related polyneuropathy and work injury."

He stated that although Dr. Wu's diagnosis of diabetic polyneuropathy based on the electrodiagnostic studies supported that diagnosis, clinically, he found no significant features of a diabetic polyneuropathy.

Dr. Ente further stated that appellant's factors of employment "[were] sufficient in themselves to cause carpal tunnel syndrome" and it was unlikely that they would also cause cubital tunnel syndrome "since cubital tunnel syndrome [was] much more related to underlying anatomic deformities than simply due to repetitive motion damage." He concluded that appellant's carpal tunnel syndrome was directly related to his work but that his cubital tunnel syndrome was not caused by his work.

By letter dated November 9, 1999, the Office asked Dr. Ballard to respond to Dr. Ente's report.

On November 10, 1999 the Office issued a notice of proposed termination of medical benefits stating that the medical evidence established that the bilateral ulnar neuropathy was not a result of appellant's work activities.

By letter dated December 3, 1999, the Office asked Dr. Ballard to submit a narrative medical report explaining why appellant was disabled for the period he indicated in his disability notes. In the letter, the Office accidentally referred to appellant as "Jeffrey Ballard."

In a report dated November 1, 1999 which was received by the Office on December 5, 1999, Dr. Ballard performed a physical examination and rediagnosed left carpal tunnel syndrome, elbow ulnar neuropathy and peripheral neuropathy. He prescribed surgery for appellant's condition. In an attending physician's report dated November 11, 1999, Dr. Ballard reiterated that appellant was totally disabled from June 7 through 27, 1999 and stated that

appellant was partially disabled from September 17 through October 29, 1999 due to left ulnar neuropathy, peripheral neuropathy and bilateral carpal tunnel which he indicated was due to a repetitive motion injury at work.

By letter to Dr. Ballard dated December 28, 1999, the Office stated that carpal tunnel surgery for appellant was authorized but not for the ulnar nerve. The Office requested that Dr. Ballard explain the medical connection between appellant's ulnar neuropathy and his employment.

By decision dated December 29, 1999, the Office denied the claim, stating that appellant failed to establish that he was unable to work for the time periods claimed from June 7 to 25, 1999 for 120 hours and from September 17 to October 29, 1999 for 48 hours.¹

By letter dated February 19, 2000, appellant requested reconsideration of the Office's decision. He claimed that he believed he erroneously received the Office's December 3, 1999 letter addressed to Dr. Ballard and therefore Dr. Ballard was not able to respond in time to the Office's request for additional information. Appellant submitted additional medical evidence including reports from Dr. Ballard dated November 15, 1999 and January 3, 2000. In his November 15, 1999 report, Dr. Ballard performed a physical examination and reiterated his diagnoses of bilateral ulnar neuropathy and bilateral carpal tunnel syndrome. He stated that he would proceed with carpal tunnel release and appellant should return to work on November 15, 1999 with restrictions. In response to the Office's letter dated November 9, 1999, Dr. Ballard stated:

"I feel the shoulder pain is shoulder/hand syndrome and is not 'of strict shoulder etiology,' as per the opinion of Dr. Ente. That the shoulder is related to [the] work injury is a complex question because the wrist pain or carpal tunnel syndrome is related to the work injury.

"As for the left upper extremity pain being of unclear etiology, I disagree with this and suggest that his pain is related to his ulnar neuropathy, carpal tunnel syndrome and, as well, peripheral neuropathy as I suggested previously."

He stated that Dr. Ente appeared to have available all the studies and still could not provide an etiology. Dr. Ballard stated that appellant's pain was related to his wrist, with shoulder/hand syndrome and that appellant should undergo bilateral carpal tunnel release.

In his January 3, 2000 report, Dr. Ballard stated that he had not received Dr. Ente's report (although he previously stated that he had) but noted that the Office's December 28, 1999 letter stated that Dr. Ente stated that the cubital tunnel syndrome "is much more related to underlying anatomic deformities." He stated that the x-rays of appellant's elbows did not reveal abnormality other than mild degenerative change with no specific osteophytes in the region of the cubital tunnel and therefore he questioned what anatomic deformity Dr. Ente was considering. Further, he opined that there was "a lighting up of an underlying condition due to

¹ The Office did not rule on whether appellant's benefits for the ulnar neuropathy should be terminated because it stated it was requesting additional information from Dr. Ballard.

the patient's repetitive motion-type injury and there was an underlying substance of neuropathy from his diabetes. He reiterated that the "lighting up" or exacerbation came from appellant's work.

In an attending physician's report dated February 22, 2000, Dr. Ballard reiterated his diagnoses of peripheral neuropathy, bilateral carpal tunnel syndrome and ulnar neuropathy due to repetitive motion injury and reiterated the periods of appellant's disability although he stated that appellant continued to be partially disabled since September 17, 1999.

By decision dated March 15, 2000, the Office denied appellant's request for reconsideration.

The Board finds that the Office erred in determining that appellant did not establish that he was totally disabled from June 7 through 25, 1999 and from September 17 through October 29, 1999.

Since the Office accepted appellant's claim for compensation, appellant had the burden of establishing his entitlement to disability causation, which was related to the employment injury.² In his attending physician's reports dated October 1 and November 11, 1999 and February 22, 2000, Dr. Ballard consistently diagnosed peripheral neuropathy, bilateral carpal tunnel syndrome and ulnar neuropathy due to repetitive motion injury at work and stated that appellant was totally disabled from June 7 through 27, 1999 and partially disabled since September 17, 1999. Because Dr. Ballard refers to all three conditions in finding that appellant was disabled for these time periods, his opinion establishes that appellant was disabled during these time periods at least in part due to his carpal tunnel syndrome and ulnar neuropathy which the Office accepted as work related. A conflict between Drs. Ballard and Ente exists as to whether appellant has cubital tunnel syndrome but no doctor of record explains what the significance of cubital tunnel syndrome is in relationship to appellant's other conditions. Dr. Ente's opinion that appellant did not have cubital tunnel syndrome therefore does not undermine Dr. Ballard's opinion that appellant was disabled for the relevant time periods at least due in part to appellant's work-related conditions. The Board has held that appellant's work-related condition does not have to be the sole cause of his disability for his disability to be compensable.³

² See *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

³ See *Rudy C. Sixta*, 44 ECAB 727, 731 (1993).

The decisions of the Office of Workers' Compensation Programs dated March 15, 2000 and December 29, 1999 are hereby reversed.

Dated, Washington, DC
July 2, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member