

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNELL NICHOLAS and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 00-2443; Submitted on the Record;
Issued July 12, 2001*

DECISION and ORDER

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

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after April 13, 1998 due to her employment injuries.

The Board finds that the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after April 10, 1998 due to her employment injury.

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.¹ 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 the employment injury and supports that conclusion with sound medical rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

In September 1997, the Office of Workers' Compensation Programs accepted that appellant, then a 46-year-old flat sorter machine operator, sustained an employment-related left trigger thumb. In November 1997, she underwent a left trigger thumb release which was authorized by the Office. Appellant began working in a limited-duty position but returned to her

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

full-duty position on January 5, 1998. The Office later accepted that she sustained employment-related right carpal tunnel syndrome.⁴

Appellant claimed that on April 13, 1998 she sustained a recurrence of total disability due to her employment injuries.⁵ By decisions dated December 14, 1998 and February 3, 1999, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after April 13, 1998 due to her employment injuries.⁶ By decision dated and finalized October 14, 1999, an Office hearing representative remanded the case to the Office for further development of the medical evidence. The Office hearing representative determined that the reports of Dr. Windsor Dennis, an attending Board-certified hand surgeon, were of insufficient probative value to establish appellant's claim but were of sufficient probative value to require the Office to further develop the medical evidence. He directed that, on remand, the Office refer appellant to an appropriate specialist for examination and an opinion regarding whether she sustained a recurrence of disability on or after April 13, 1998 due to her employment injuries.

In December 1999 the Office referred appellant to Dr. Walter R. Abbott, a Board-certified hand surgeon, for examination and an opinion regarding whether she sustained a recurrence of disability on or after April 13, 1998 due to her employment injuries. By decision dated January 27, 2000, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or after April 13, 1998 due to her employment injuries. By decision dated June 23, 2000, the Office affirmed its January 27, 2000 decision.

The Board finds that there is a continuing conflict in the medical evidence between an Office referral physician and an attending physician which requires that appellant be referred to an impartial medical specialist for examination and an opinion regarding whether she sustained a recurrence of disability on or after April 13, 1998 due to her employment injuries.

In his January 6, 2000 report, Dr. Abbott, a Board-certified hand surgeon who served as an Office referral physician, reported the findings of his examination, including findings for appellant's left thumb and right arm. He noted that appellant had symptoms of diabetic neuropathy in her feet and hands and that she had symptoms of carpal tunnel syndrome in the wrists which would benefit from surgery. Dr. Abbott stated:

“As far as disability from [appellant's] left thumb problem, from her pinching ability, it seems to be none and I would not give her a disability rating for this area of her anatomy. She does seem to have problems however that would necessitate some limitation in her activities at work and I have listed those in the

⁴ The files from appellant's left and right upper extremity injuries have been combined. On March 31, 1999 appellant received a schedule award for a 10 percent permanent impairment of her right arm.

⁵ Appellant initially indicated that she sustained a recurrence of disability due to her left trigger thumb, but she later claimed that her right carpal tunnel syndrome also contributed to her disability.

⁶ At the time of these injuries, the files for appellant's two injuries had not been combined and the Office issued a decision denying her claim for recurrence of disability in connection with each file.

appropriate place. I do think that [appellant] is able to return to work but it may necessitate a change in her job description. She can work eight hours per day.”⁷

In contrast, Dr. Dennis, appellant’s attending hand surgeon, indicated in several reports that appellant was totally disabled for periods after April 13, 1999 due to her employment injuries. In a report dated June 4, 1998, Dr. Dennis provided an extensive description of appellant’s factual and medical history and noted that she exhibited deficits in both extremities. He indicated that he examined appellant on April 24, 1998 and stated, “Because both hands were involved and especially because the left thumb was involved in the workers’ compensation injury, I felt that [appellant] could not carry out her usual light duty.” In a report dated August 3, 1998, Dr. Dennis diagnosed left trigger thumb and right carpal tunnel syndrome and detailed motion, strength and pain deficits in appellant’s left thumb and right wrist and hand. He indicated that these conditions rendered appellant totally disabled. In a report dated August 4, 1998, Dr. Dennis noted appellant’s employment injuries and that she was totally disabled due to her inability to use both hands. He stated, “She has loss of strength in both hands and severe pain in both hands that prevent her from performing her regular and light-duty work.”⁸

Section 8123(a) of the Federal Employees’ Compensation Act provides in pertinent part: “If 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.”⁹ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.¹⁰

Consequently, the case must be referred to an impartial medical specialist to resolve the conflict in the medical evidence between Drs. Abbott and Dennis regarding whether appellant sustained a recurrence of disability on or after April 13, 1998 due to her employment injuries, left trigger thumb and right carpal tunnel syndrome.

On remand the Office should refer appellant, along with the case file and the statement of accepted facts, to an appropriate specialist for an impartial medical evaluation and report including a rationalized opinion on whether she sustained an employment-related recurrence of disability on or after April 13, 1998. After such further development as the Office deems necessary, the Office should issue an appropriate decision regarding appellant’s claim.

⁷ Dr. Abbott attached a work restriction form in which he indicated that appellant could lift up to 30 pounds, push and pull up to 40 pounds and engage in repetitive wrist movements for 10 minutes per hour. He did not indicate whether these restrictions were necessitated by appellant’s right carpal tunnel syndrome.

⁸ As previously noted, the Office deemed this evidence to be of sufficient probative value to require further development of the medical evidence.

⁹ 5 U.S.C. § 8123(a).

¹⁰ *William C. Bush*, 40 ECAB 1064, 1975 (1989).

The June 23 and January 27, 2000 decisions of the Office of Workers' Compensation Programs are set aside and case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, DC
July 12, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member