U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN LASCELLES and U.S. POSTAL SERVICE,
POST OFFICE, Sahuarita, AZ

Docket No. 00-332; Submitted on the Record;
Issued June 22, 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 terminated appellant's compensation effective July 20, 1997.

On July 30, 1996 appellant, then a 38-year-old rural carrier, filed a claim for an occupational disease for an overuse sprain/strain of the right wrist. She stated that she heard a pop and felt pain in her wrist as she was sorting a letter at the end of June 1996. The Office accepted that appellant sustained a muscle strain of the right wrist and paid appellant compensation for temporary total disability during her absence from work from July 22 through October 10, 1996.

Following a notice of proposed termination of compensation and medical benefits issued on June 2, 1997, the Office, by decision dated July 11, 1997, terminated appellant's compensation effective July 20, 1997 on the grounds that she had no residuals of her employment-related condition. She requested a hearing, which was held before an Office hearing representative on May 5, 1999. By decision dated July 16, 1999, an Office hearing representative found that the weight of the medical evidence established that appellant was no longer suffering from any wrist problem causally related to her employment.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.[1] The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.[2] To terminate authorization for medical treatment,

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[1] *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

[2] *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

the Office must establish that appellant no longer has residuals of an employment-related condition which require further treatment.[3]

The Board finds that the Office properly terminated appellant's compensation effective July 20, 1997.

To obtain a second opinion whether appellant continued to have residuals of her accepted employment-related condition, the Office referred appellant, prior medical reports and a statement of accepted facts to a panel of physicians: Dr. John S. LaWall, who is Board-certified in neurology, Dr. Eugene Y. Mar, who is Board-certified in physical medicine and rehabilitation and Dr. Raymond J. Schumacher, who is Board-certified in internal medicine and in preventive medicine. In a report dated January 30, 1997, these physicians reviewed appellant's history and her past medical reports, including x-rays, a magnetic resonance imaging scan and an arthrogram. The panel diagnosed right wrist strain, resolved and concluded:

> "The mechanism of injury does not suggest a liability for disruption of any ligamentous structure. A mild strain or sprain of muscle, tendon or ligament might be produced by such an occupational activity as described in medical records and by [appellant] today, but such a strain or sprain is unlikely to be more severe than grade I or at worst, mild grade II.
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> "Today's examination is objectively normal. Subjective responses to examination maneuvers include slight irritability of the right ulnar nerve at the right ulnar groove without significant evidence on the remainder of the examination of ulnar nerve dysfunction. This finding is of no clinical significance."
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> "In regard to the upper extremities, today's examination, which is objectively normal, does not in any way substantiate [appellant's] subjective complaints. While we recognize the possibility that mild disease may present without objective findings, there is no plausibility to the notion that [she] should still have symptoms related to her occupational injury of July 17, 1996, given the mechanism of injury and the currently available medical findings. We agree with Dr. Gibeault that findings on wrist arthrography are not clinically significant. We consider [appellant's] current symptoms to be considerably disproportionate to either the objective findings available or any hypothesis of disease that might be present but too mild to produce objective findings."
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> "[W]e do not find cause for any restriction of physical activity related to occupational injury or otherwise.… We do not find evidence of a need for treatment with regard to the July 17, 1996 occupational injury, either active or supportive.

[3] *Furman G. Peake*, 41 ECAB 361 (1990).

> "We do not take issue with the assessments of physician previously examining this patient regarding assignment of temporary disability status prior to today's evaluation. We submit that the date on which temporary disability, partial or total, should be regarded to have ceased would most appropriately be the date of today's evaluation."

The opinion of Drs. LaWall, Mar and Schumacher is consistent with that of appellant's attending physician from October 3, 1996 to February 19, 1997. In a report dated January 3, 1997, Dr. Debra A. Walter, who is Board-certified in physical medicine and rehabilitation, stated: "I have kept her on light duty mainly based on her symptom level. There is really not a good documentable diagnosis." In a report reviewing a February 19, 1997 Office visit with appellant Dr. Walter stated, "I really feel that [appellant's] symptoms also are far out of proportion to anything objective. This makes me very hesitant to suggest anything further in the way of treatment which could of course have side effect[s] and would only worsen her problem."

Two physicians supported that appellant had continuing disability causally related to her employment. In a report dated June 25, 1997, Dr. Susan B. Fleming, a Board-certified surgeon who had been treating appellant since March 3, 1997, stated that appellant's right wrist injury was the result of her job injury, that further aggravation would occur if she continued her job as a mail carrier and that appellant should "not participate in any type of activity that requires heavy lifting or sustained or repetitive motion of the right hand." She, however, did not provide a diagnosis of any employment-related condition or any objective findings on examination. Dr. Fleming's opinion consisted essentially of a repetition of appellant's complaint that she hurt too much to work, which, without objective sings of disability, does not constitute a basis for payment of compensation.[4] In a report dated March 4, 1997, Dr. Marilyn M. Hart, a Board-certified family practitioner, stated that appellant's pain in her right hand disabled her from work. This report suffers from the same deficiencies as those of Dr. Fleming: no diagnosis and no rationale.[5]

The reports of Dr. J. David Gibeault, a Board-certified orthopedic surgeon, are speculative regarding appellant's condition and its relation to her employment. In a report dated January 10, 1997, Dr. Gibeault stated that he thought that appellant had "an attritional tear of the triangular fibrocartilage and that is causing a chronic synovitis of the radial carpal joint." The basis of this opinion is unclear since Dr. Gibeault acknowledged in this same report that an arthrogram of appellant's right wrist showed that the triangular fibrocartilage was intact. Similarly speculative and not supported by rationale is Dr. Gibeault's statement in a June 27, 1997 report: "I think the original incident in June 1996 was probably a tendon that snapped over a bony prominence around the wrist as she moved her wrist and that started an acute inflammatory response that has since become chronic." Dr. Gibeault did not comment on whether appellant was disabled for work and his opinion on further medical care, contained in an

[4] *John L. Clark*, 32 ECAB 1618 (1981).

[5] Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof. *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

April 15, 1997 report, indicates this care would be for future injuries sustained after appellant returned to work.[6]

The reports of Drs. LaWall, Mar, Schumacher and Walter are sufficient to establish that appellant had no residuals of her accepted employment-related condition after July 20, 1997. For the reasons stated above, the opinions of Drs. Gibeault, Hart and Fleming are entitled to less probative value. At the hearing held on May 5, 1999 appellant's attorney contended that Dr. Schumacher could not properly render a second opinion because he performed fitness-for-duty examinations for the employing establishment. The Office hearing representative confirmed with the employing establishment that it did not have a contract with Dr. Schumacher to perform such examinations. In any event, physicians performing fitness-for-duty examinations are prohibited only from serving as impartial medical specialists resolving conflicts of medical opinions; they are allowed to perform second opinion evaluations.[7]

The decision of the Office of Workers' Compensation Programs dated July 16, 1999 is affirmed.

Dated, Washington, DC
June 22, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

[6] The possibility of a future injury does not constitute an "injury" under the Federal Employees' Compensation Act. *Barbara A. Dunnavant*, 48 ECAB 517 (1997).

[7] *Anthony LaGrutta*, 37 ECAB 602 (1986).