

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN H. PEARSON and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 00-2046; Submitted on the Record;
Issued June 5, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained a recurrence of disability on March 6, 1999 that was causally related to her employment injury of January 8, 1999.

On January 8, 1999 appellant, then a 40-year-old letter carrier, was injured in the performance of duty when she fell down steps while delivering the mail and hurt her thumb. She was treated at the emergency room, where she was diagnosed with a right thumb sprain, a soft tissue mass of the right thumb and contusion of the right hand. Initially no time was lost from work. Appellant was then out from January 22 to February 16, 1999 for surgery to remove a giant cell tumor of the tendon sheath, right thumb. The Office of Workers' Compensation Programs accepted appellant's traumatic injury claim for a right hand sprain and she received appropriate compensation benefits. Appellant returned to limited duty on February 17, 1999 and returned to full duty on March 1, 1999.

In a report dated January 19, 1999, Dr. Albert A. Weiss, a Board-certified orthopedic surgeon, noted that appellant returned to his office complaining that her previous carpal tunnel syndrome from 1996 had increased. He related that appellant complained of pain and swelling in her right hand following a fall at work approximately two weeks ago when she grabbed a banister in an attempt to stop a fall. Dr. Weiss reported that appellant had a 2^{1/2} centimeter firm volar soft tissue mass under the metacarpophalangeal joint of her right hand which did not move with flexor tendon motion. He stated:

“Based on her history of trauma, I at least entertained the possibility that this was a firm hematoma and attempted to aspirate it, but got absolutely nothing back. It is most likely a giant cell tumor, and its relation to the trauma is at least unclear. She needs to have it excised for a definitive diagnosis.”

Appellant subsequently underwent surgery on January 22, 1999, consisting of an excision of a mass of the right hand, first web space mass.

In a report dated March 9, 1999, Dr. Christine V. Soutendijk, a Board-certified internist, opined that appellant injured her hand on January 9, 1999 when she grabbed a banister with her right hand in order to break a fall. Dr. Soutendijk related appellant's medical history, noting that appellant resumed "regular duty the week of [March 1, 1999], and developed significant pain in the thumb that radiated over the thumb and 1st digit and up the arm to the shoulder, that worsened with increasing use. [Appellant] felt mildly weak with repetitive right hand movements. By the end of the week the pain was so severe, her whole right side felt sore." On physical examination, Dr. Soutendijk reported mild swelling on the right, well-healed scars, full range of motion, normal sensation and strength. She stated, "I am unclear if [appellant's persistent right thumb pain] is due to postoperative scarring of the tendon or nerve or other pathology."

In a March 11, 1999 report, Dr. Soutendijk noted that appellant had recently suffered an injury and had surgery on her right hand. She reported that appellant was experiencing pain and swelling of the hand, which was significantly worsened with use. Dr. Soutendijk recommended that appellant not lift objects more than five pounds, that she not perform repetitive activities with her right hand and that she not case mail, or perform her usual letter carrier duties until at least April 1999.

Dr. Soutendijk referred appellant to Dr. Pedro K. Beredjiklian, a Board-certified orthopedic surgeon. In a report dated March 18, 1999, Dr. Beredjiklian discussed appellant's history of injury, symptoms and physical findings. He diagnosed possible cervical radiculopathy of the right upper extremity, and noted that appellant was status post a successful excision of a giant cell tumor of the tendon sheath, right thumb. Dr. Beredjiklian recommended that appellant undergo electrodiagnostic testing.

On March 26, 1999 appellant filed a claim for a recurrence of disability beginning March 6, 1999. She noted that she was still in pain from her surgery and was unable to work.

In a (CA-20) attending physician's report dated March 30, 1999, Dr. Weiss diagnosed an excised giant cell tumor of the right thumb, which he indicated was not related to the January 8, 1999 work injury. The period of disability was listed as January 22 to February 16, 1999.¹

In an April 8, 1999 report, Dr. Beredjiklian noted that electromyogram (EMG) studies revealed a moderately severe median sensory neuropathy of the right wrist and a mild median sensory neuropathy on the left. He prescribed conservative treatment with Futuro splints on the right wrist along with medication.

In a decision dated July 2, 1999, the Office denied appellant's claim for compensation on the grounds that the evidence was insufficient to establish a causal relationship between appellant's claimed recurrence of disability and the work injury of January 8, 1999.

Appellant filed a request for reconsideration and submitted several new reports and results of EMG testing.

¹ Appellant worked limited duty from February 16 until March 1, 1999 when she returned to full duty.

In a July 20, 1999 report, Dr. Beredjiklian placed appellant on restricted light duty with no use of the right upper extremity.

In a report dated July 26, 1999, Dr. Jennie Yu, an internist, and an associate of Dr. Soutendijk, noted that appellant had been diagnosed with carpal tunnel syndrome. Dr. Yu recommended that appellant not return to her usual work duties until her carpal tunnel syndrome cleared or she risked a worsening of the condition. Medical restrictions were noted to be in effect through September 1999.

In a decision dated August 12, 1999, the Office denied modification of the prior decision following a merit review.

Appellant filed for reconsideration on February 1, 2000.

In support of her reconsideration request, appellant submitted a January 12, 2000 report by Dr. Scott M. Fried, an osteopath,² who noted that appellant injured her hand on January 8, 1999 when she grabbed a banister with her right hand to avoid a fall. Dr. Fried discussed appellant's history of symptoms and reviewed relevant medical records. After reporting physical findings, he diagnosed "status post direct median nerve contusion and brachial plexus tractioning injury secondary to slip and fall on January 8, 1999, median neuropathy right with proximal radiculopathy (cervical v[ersu]s brachial plexus involvement), disc space narrowing at C4-5 and C5-6 level, cervical ribs bilaterally 3 [centimeters] and radial neuropathy right." Dr. Fried opined:

"I feel [appellant] has had very good care to date but in spite of this she does remain quite symptomatic. She indeed evidences still a neuropathy in her right upper extremity and this is secondary to her initial injury. This was exacerbated by her [second] incident but caused by her first. She no doubt has a combination injury here. She came into this whole problem with low-lying clinically asymptomatic median nerve carpal tunnel problem. She had some symptoms during her pregnancy but these resolved uneventfully. This is obviously related to her repetitive work activities. She was stable with this though and able to perform her regular activities until the fall. At this time she set up a [seco]nd level of injury, tractioning her nerve at the neck and brachial plexus level setting up essentially a double crush syndrome and directly contusing her median nerve at the wrist and exacerbating this."

In a February 28, 2000 decision, the Office denied modification of the August 12, 1999 decision.

² X-rays performed on January 12, 2000 with lateral and oblique views of appellant's bilateral hands and wrists demonstrated "essentially unremarkable bilateral hands, no severe abnormality bilateral wrists, moderate volar synovitis right side greater than left, mild cystic change lunate right."

The Board finds that appellant has failed to establish that she sustained a recurrence of disability on March 6, 1999 that was causally related to her employment injury of January 8, 1999.³

As used in the Federal Employees' Compensation Act,⁴ the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ 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.⁶ 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 reasoning.⁷ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relationship.⁸

In this case, the Office accepted that appellant sustained a right hand sprain on January 8, 1999 in the performance of duty. During her treatment for the right hand sprain, appellant was also diagnosed with a giant cell tumor of the tendon sheath, which was excised. She returned to work on March 1, 1999 and then filed for a recurrence of disability beginning March 6, 1999. Appellant was then diagnosed with carpal tunnel syndrome. Although, she contends that her disability on or after March 6, 1999 is due to her work injury, there is no rationalized medical evidence⁹ of record that attributes appellant's diagnosed tumor or the condition of carpal tunnel syndrome to her work injury. Neither Drs. Weiss, Yu, Beredjikian nor Soutendijk provided an opinion on the issue of causal relationship. Although, Dr. Fried stated that appellant developed carpal tunnel syndrome due to her work duties, he did not provide rationale for his diagnosis. Moreover, he did not specifically relate the diagnosis to the January 8, 1999 work injury, which is important since appellant's original claim was for a traumatic injury and not an occupational disease.

³ The Board does not have jurisdiction to review evidence submitted by appellant subsequent to the Office's final decision dated February 28, 2000. *See* 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Eldon H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.57(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of the injury, has no disability as that term is used in the Act and is not entitled to disability compensation; *see Gary L. Loser*, 38 ECAB 673 (1987); *Cf.* 5 U.S.C. § 8107 (entitlement to schedule compensation for loss or permanent impairment of specified members of the body).

⁶ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

⁷ *Jose Hernandez*, 47 ECAB 288 (1996).

⁸ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁹ *Jose Hernandez*, *supra* note 7.

The decisions of the Office of Workers' Compensation Programs dated February 28, 2000, August 12 and July 2, 1999 is hereby affirmed.

Dated, Washington, DC
June 5, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member