

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY M. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Kearny, NJ

*Docket No. 99-1663; Submitted on the Record;
Issued June 19, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers Compensation Programs properly terminated appellant's compensation and medical benefits; and (2) whether the Office abused its discretion in refusing to reopen appellant's claim for further consideration of the merits pursuant to 5 U.S.C. § 8128.

On January 19, 1995 appellant, then a 47-year-old clerk, filed an occupational disease claim for compensation (Form CA-2), alleging that the pain in the palm of her right hand resulted from her federal employment.¹ Appellant stopped work on March 16, 1995 but returned to limited duty on August 21, 1995.

In a March 9, 1995 medical report, Dr. Dong W. Cho, a Board-certified physical medicine and rehabilitation specialist, performed an electromyography (EMG) and nerve conduction studies on appellant and determined that there was a significant abnormal finding of prolonged conduction velocity of the right ulnar motor nerve across the elbow segment and that this was indicative of tardy ulnar syndrome.

In an attending physician's report (Form CA-20), dated March 16, 1995, Dr. Nathan E. Doctry, an orthopedic surgeon, diagnosed appellant as suffering from tardy ulnar nerve palsy and clinical carpal tunnel syndrome. By letter dated March 30, 1995, the employing establishment controverted the claim.

On March 18, 1995 appellant filed a notice of recurrence of disability and submitted a medical report by Dr. David J. Greifinger, a Board-certified orthopedic surgeon, who opined that appellant had symptoms of tendinitis more so on the dorsum of the wrist and hand. He noted that she did not appear to have clinical stigmata of carpal tunnel. Dr. Greifinger recommended some restriction of appellant's keying function.

¹ The record indicated that appellant was previously diagnosed with diabetes.

In a medical report dated March 29, 1995, Dr. Doctry reviewed Dr. Cho's studies and opined that appellant's complaints of January 10, 1995 were directly related to the diagnosis of tardy ulnar nerve palsy and ganglion cyst, as shown on the EMG. He found appellant to be totally disabled from work until there were signs of clinical improvement related to her hand.

On April 17, 1995 Dr. Doctry stated: "In no way, shape, or form is her diabetes related to the pain and injury that she has suffered due to a recurrent repetitive traumatic action on her job causing this problem." He also opined that repetitive use of the muscles of her forearm and persistent keying have caused "aggravation of the microcirculation to the nerves at her elbow and that this has caused her condition." Dr. Doctry noted that appellant would require ulnar nerve decompression and possibly anterior ulnar nerve transposition, followed by physical therapy. He later noted that on July 19, 1995 appellant underwent an ulnar nerve decompression and anterior transposition.

By decision dated April 19, 1995, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office found that a medical condition resulting from the accepted trauma or exposure was not supported by medical evidence.

By letter dated May 10, 1995, appellant requested a hearing, which was held on December 15, 1995. At the hearing, appellant testified that her treating physician was Dr. Doctry, that she had surgery on July 19, 1995 and that she only has trouble with her right side. Appellant noted that she returned to limited-duty work one month after her surgery.

In a decision dated February 27, 1996, the hearing representative set aside the Office's April 19, 1995 decision denying benefits and remanded the case to the Office "for acceptance of right carpal tunnel syndrome and authorization of the ulnar nerve decompression and anterior transposition procedures performed on July 19, 1995" and payment of appropriate compensation.

By letter dated March 27, 1996, the Office accepted appellant's claim for right carpal tunnel syndrome. In addition, the ulnar nerve decompression and anterior transposition surgical procedures that appellant underwent on July 19, 1995 were retroactively approved.

In an attending physician's report dated September 3, 1996, Dr. Buel A. Stagers, a Board-certified orthopedic surgeon, diagnosed carpal tunnel syndrome, ganglion cyst and ulnar nerve lesion. In response to questions propounded by the Office, Dr. Stagers stated on January 26, 1997 that appellant should limit the use of her right upper extremity, with no lifting greater than 15 pounds and no keying or repetitive motion of her right wrist and elbow. He recommended permanent light duty and stated that the tardy ulnar nerve palsy and carpal tunnel syndrome were causally related to appellant's employment.

In a medical report dated August 1, 1996, Dr. Arthur T. Canario, a Board-certified orthopedic surgeon, reviewed appellant's medical reports and concluded that the EMG did not show carpal tunnel syndrome, but did show ulnar nerve entrapment. He added that appellant had good results from her treatment and no longer needed physical therapy.

On March 18, 1997 appellant filed a notice of recurrence of disability claiming that the continuing pain in her right hand and wrist were caused by her work duties. Appellant stopped work and requested physical therapy.

In a medical report dated March 11, 1997 and received by the Office on May 20, 1997, Dr. Ruth L. Clark diagnosed severe carpal tunnel syndrome and bells palsy due to pain and swelling in appellant's right wrist. She suggested that appellant take off from work duties, rest for five days and wear a wrist brace.

In a decision dated August 4, 1997, the Office denied appellant's claim for recurrence because the evidence of record did not establish either a change in the nature or extent of injury-related disability, or the nature and extent of her limited-duty position.

On October 1, 1997 the Office referred appellant to Dr. Charles Granatir, a Board-certified orthopedic surgeon, for a second opinion. In a report dated October 14, 1997, Dr. Granatir noted that appellant had "a very significant over amplification of complaints." He explained that the Tinel's test was negative at the wrist and that the Phalen test was negative. Dr. Granatir noted full motion to shoulders, elbows, wrists and hands. He opined that appellant clearly did not demonstrate evidence of carpal tunnel syndrome and that her complaints did not comply with the standards of a work-related injury. Dr. Granatir recommended appellant return to full-work capacity including keying. No orthopedic intervention was necessary.

In a decision dated November 19, 1997, the Office found that the weight of the medical evidence established that appellant had no continuing work-related disability as a result of the injury of January 10, 1995. Accordingly, the Office terminated compensation.

In a decision dated December 29, 1997, the Office proposed terminating appellant's medical benefits. By decision dated February 3, 1998, the proposed termination of medical benefits was made final.

On January 29, 1998 appellant requested a review of the written record by a hearing representative. In a decision dated July 9, 1998, the hearing representative affirmed the Office's decisions to terminate benefits.

By letter dated January 25, 1999, appellant requested reconsideration. By decision dated February 4, 1999, the Office denied reconsideration as the evidence was not sufficient to warrant a review of the prior decisions.

The Board finds that the Office met its burden of proof in terminating compensation and medical benefits.

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 disabling condition has ceased or that it is no longer related to the employment.² To terminate authorization for medical treatment, the Office has the burden of

² *Patricia A. Keller*, 45 ECAB 278 (1993).

establishing that appellant no longer has residuals of the employment-related condition that requires further medical treatment.³

In the instant case, in terminating benefits the Office relied on the well-reasoned opinion of Dr. Granatir, dated October 14, 1997. He noted that, his impression was that appellant had “mild complaints of tendinitis right upper extremity [sic] and a very significant over amplification of complaints. [Appellant] clearly does not demonstrate evidence of carpal tunnel syndrome.” Dr. Granatir concluded that appellant’s complaints do not comply with the standards of a work-related injury and recommended that appellant return to full-work capacity including keying. He reviewed the medical records of Drs. Stagers and Canario but concluded, “[i]t is not a tinnable stand to state [appellant]’s symptoms now 2½ years later related to a 6 month period of key operating.” Dr. Granatir concluded, appellant’s carpal tunnel condition had resolved and that she could return to her regular duty. The Board finds that the Office properly terminated appellant’s entitlement to compensation and medical benefits based on the well-rationalized opinion of Dr. Granatir.⁴

The Board finds that the refusal of the Office to reopen appellant’s case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees’ Compensation Act,⁵ the Office regulations provide that a claimant may obtain review of the merits of the claim by submitting evidence or argument that; (1) shows that the Office erroneously applied or interpreted a specific point of law, (2) advances a relevant legal argument not previously considered by the Office, or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁶ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.

In this case, appellant has not raised any new arguments that the Office erroneously applied or interpreted a point of law. Nor has appellant submitted any new relevant and pertinent evidence not previously considered by the Office. Accordingly, the Office properly denied appellant’s request for a review on the merits.

³ *Jose Hernandez*, 47 ECAB 288, 295 (1996).

⁴ The Board rejects appellant’s contention that as the hearing representative authorized ulnar nerve decompression and anterior transposition, that she also accepted the claim for more than carpal tunnel syndrome, as authorizing treatment is not the same as accepting a work-related condition.

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.606(b)(2).

The decisions of the Office of Workers' Compensation Programs dated February 4, 1999 and July 9, 1998 are hereby affirmed.⁷

Dated, Washington, DC
June 19, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁷ The Board notes that its jurisdiction is limited to decisions filed within one year of the date appellant filed his appeal. As this appeal was filed on April 26, 1999, the only decisions presently before this Board are the July 9, 1998 decision terminating benefits and the February 4, 1999 decision denying reconsideration. The earlier decisions regarding whether appellant sustained a recurrence of disability are not before the Board at this time.