

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSIE SPRINGER and U.S. POSTAL SERVICE,
POST OFFICE, Jersey City, NJ

*Docket No. 00-628; Submitted on the Record;
Issued May 2, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a three percent impairment of her left upper extremity for which she received a schedule award.

On March 14, 1994 appellant, then a 37-year-old casual mailhandler, filed an occupational disease claim alleging that she sustained a ganglion cyst of the left wrist causally related to factors of her federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for a left ganglion cyst and authorized a surgical excision.

Appellant submitted a report dated November 17, 1994 from Dr. Joseph T. Barmakian, a Board-certified orthopedic surgeon and her attending physician, who diagnosed right carpal tunnel syndrome and a left ganglion cyst and attributed the conditions to appellant's employment. He found that appellant could perform light-duty clerical work with no lifting.

The Office referred appellant to Dr. Melvin Vignman, a Board-certified neurologist, for a second opinion evaluation. In a report dated August 29, 1995, Dr. Vignman opined that appellant did not have carpal tunnel syndrome or any neurological condition and that she could return to work without restrictions.

On February 29, 1996 the Office referred appellant to Dr. Samir G. Nakhla, a Board-certified orthopedic surgeon, for resolution of a conflict in medical opinion. In a report dated March 25, 1996, Dr. Nakhla diagnosed a ganglion cyst of the left wrist and recommended surgical excision. He further found that appellant did not have carpal tunnel syndrome. Dr. Nakhla opined that appellant could perform her regular employment duties but would require four to six weeks off following the surgical removal of the cyst.

Based on the report of Dr. Nakhla, by decision dated June 4, 1996, the Office terminated appellant's compensation effective May 30, 1996 on the grounds that she had no further disability causally related to her employment injury. The Office further determined that

appellant had no employment-related condition other than the ganglion cyst of the left wrist. In a decision dated December 24, 1996, a hearing representative affirmed the Office's June 4, 1996 decision.

On March 14, 1997 Dr. Barmakian performed a surgical excision of the ganglion cyst on appellant's left wrist. In a follow-up report dated May 15, 1997, Dr. Barmakian found that appellant was "[s]tatus post excision of volar ganglion cyst, left wrist with excellent result." He found that appellant could resume her regular employment on May 19, 1997.

On May 22, 1998 the Office received appellant's claim for a schedule award. In support of her claim, appellant submitted a report dated March 31, 1998 from Dr. Ronald J. Potash, a Board-certified surgeon, who discussed appellant's complaints of pain, numbness and stiffness of both wrists and the right shoulder. On examination he noted a positive Tinel's sign of both wrists. Dr. Potash opined that appellant had a 10 percent impairment of the right and left wrist due to median nerve entrapment. He further opined that her condition was causally related to her employment injury.

On October 13, 1998 an Office medical adviser reviewed Dr. Potash's findings of carpal tunnel syndrome but noted that the Office had previously denied appellant's claim for this condition. He found that appellant was entitled to a three percent permanent impairment of the left upper extremity due to residual palmar tenderness of the left wrist.

By decision dated October 26, 1998, the Office granted appellant a schedule award for a three percent permanent impairment of the left upper extremity, which was affirmed by a hearing representative in an August 3, 1999 decision.

The Board finds that the case is not in posture for decision due to a conflict in medical opinion.

In this case, appellant underwent a surgical excision of a ganglion cyst on her left wrist in March 1997. She subsequently submitted a report from Dr. Potash, a Board-certified surgeon, who diagnosed carpal tunnel syndrome causally related to her employment injury and found that she had a 10 percent permanent impairment of the left wrist. The Office medical adviser, on the other hand, determined that appellant did not have carpal tunnel syndrome and that she had a three percent impairment of the left upper extremity due to palmar tenderness. Dr. Nakhla, the impartial medical specialist, also found that appellant did not have carpal tunnel syndrome; however, he examined her prior to her surgery. The record, therefore, contains a conflict in medical opinion regarding whether appellant, subsequent to the surgical removal of her ganglion cyst, has a bilateral wrist condition, including carpal tunnel syndrome and the degree of permanent impairment of the upper extremities.

Section 8123(a) of the Federal Employees' Compensation Act,¹ provides in pertinent part: "[I]f there is a disagreement between the physician making the examination for the United

¹ 5 U.S.C. §§ 8101-8193.

States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination.”²

Consequently, the case is remanded for the Office to refer appellant, together with the case record and a statement of accepted facts, to an appropriate Board-certified specialist for a rationalized medical opinion resolving the conflict in opinion regarding whether appellant has a bilateral wrist condition and the extent of the permanent impairment of her upper extremities.

The decision of the Office of Workers’ Compensation Programs dated August 3, 1999 is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
May 2, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

² 5 U.S.C. § 8123(a).