

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SONDRA WILLIAMS and U.S. POSTAL SERVICE,
PLANT & DISTRIBUTION CENTER, Southeastern, PA

*Docket No. 00-1641; Submitted on the Record;
Issued May 14, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has any permanent impairment arising from her May 7, 1995 employment injury; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation and medical benefits.

On May 7, 1995 appellant, then a 29-year-old mail distribution clerk, was pushing a heavy cart of magazines when she developed pain in both arms. In an August 31, 1995 report, Dr. Daniel A. Cirigliano, a physiatrist, stated that an electromyogram (EMG) and nerve conduction studies showed mild carpal tunnel syndrome bilaterally, more on the right than the left. In a November 10, 1995 report, Dr. John D. Caggiano, a Board-certified orthopedic surgeon, related appellant's bilateral carpal tunnel syndrome to the May 7, 1995 employment injury.

On March 19, 1996 appellant stopped working and underwent surgery for carpal tunnel releases on arms. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and began payment of temporary total disability compensation effective March 19, 1996. Appellant returned to work in a limited-duty position on November 25, 1996.

The Office referred appellant, with a statement of accepted facts and the case record, to Dr. Lawrence H. Schneider, a Board-certified orthopedic surgeon, for an examination and second opinion. In a February 21, 1997 report, Dr. Schneider reported that appellant had normal sensation in the right hand with no Tinel's sign and an absent Phalen's sign. He found a full range of motion in the both arms. In the left arm, Dr. Schneider indicated that appellant complained of decreased sensation in the fingers in the median nerve distribution. He noted appellant had tenderness in the scar of the left palm. Dr. Schneider noted appellant had no true Tinel's sign. He diagnosed status post bilateral carpal tunnel releases and irritation of the sensory nerves in the left palm.

Dr. Schneider stated that appellant had recovered completely in the right arm. He commented that in the left arm appellant might have some minor ongoing neuropathy but, in view of the minor electrical studies taken prior to surgery, expressed doubt that appellant had carpal tunnel syndrome. Dr. Schneider stated that the pain in the left palm was probably caused

by some involvement of the palmar cutaneous branch of the median nerve, which was involved in the scar. Appellant had similar symptoms in the right arm postoperatively, which subsequently resolved.

In a September 25, 1997 report, Dr. Caggiano stated that appellant was having difficulty in both hands, with complaints involving the dorsum of her hands, wrists and forearms. He commented that this was not within the clinical distribution of the median nerve and therefore raised the question of what was causing the problem.

Appellant's attorney submitted a February 20, 1998 report from Dr. Ronald J. Potash, a Board-certified surgeon, who diagnosed bilateral carpal tunnel syndrome with bilateral release. Dr. Potash noted that appellant complained of pain in both hands with aching, numbness and swelling. He related appellant's difficulty with her left index finger and noted that both hands were sensitive to cold exposure. Appellant had a restricted range of dorsiflexion bilaterally but both Tinel's and Phalen's signs were negative bilaterally. Dr. Potash stated that the neurological examination revealed a sensory deficit in the left index finger but the radial, median and ulnar nerves were intact bilaterally.

Dr. Potash found that appellant had 50 degrees of dorsiflexion in the right wrist and 40 degrees of dorsiflexion in the left wrist. He indicated that appellant had nine kilograms (kg) of force in each hand as measured by the Jamar Hand Dynamometer. Dr. Potash related appellant's subjective and objective findings to the May 7, 1995 employment injury.

Dr. Potash calculated that appellant had a 10 percent permanent impairment bilaterally for nerve entrapment, a 2 percent permanent impairment for loss of dorsiflexion in the right wrist and a 4 percent permanent impairment for loss of dorsiflexion in the left wrist. Dr. Potash concluded appellant had a total permanent impairment of 12 percent in the right arm and 14 percent in the left arm.

The Office referred appellant, with a statement of accepted facts and the case record, to Dr. Mario J. Arena, a Board-certified orthopedic surgeon, for an examination. On April 13, 1998 Dr. Arena reported that appellant had full range of motion in the wrist or hand movement bilaterally. He reported Tinel's and Phalen's maneuvers yielded localized discomfort only over appellant's scars. Dr. Arena concluded that appellant had resolved bilateral carpal tunnel syndrome with residual scar sensitivity but no evidence of neurologic compromise. He commented that the scar sensitivity was only subjective and there was no objective evidence of ongoing carpal tunnel syndrome. Dr. Arena added that appellant was capable of light-duty work.

In a July 13, 1998 memorandum, an Office medical adviser stated that appellant had no ratable impairment residual to the employment injury. He concluded that the carpal tunnel syndrome had resolved.

The Office, to resolve the conflict in the medical evidence, referred appellant, with a statement of accepted facts and the case record, to Dr. Lewis S. Sharps, a Board-certified orthopedic surgeon. In an October 2, 1998 report, Dr. Sharps stated that Tinel's and Phalen's signs in the left wrist were negative. In the right wrist, the Tinel's sign produced subjective complaints of tingling and the Phalen's sign produced a sensation of tingling and discomfort in the palmar distribution. Dr. Sharps indicated that sensory patterns were normal and noted no evidence of thenar atrophy.

Appellant demonstrated a full range of motion in the fingers of both hands although she complained of stiffness in the index finger. Dr. Sharps reported that appellant had flexion of 60 degrees in the right hand and 80 degrees in the left hand. He indicated that strength testing showed 12 kg on the right in three different settings and 16, 24 and 18 kg in three settings on the left.

Dr. Sharps remarked that appellant's demonstration of identical strength ratings on the right in three different settings would indicate some degree of subjective control. He stated that appellant's complaints referable to both hands were subjective in origin. Dr. Sharps noted, however, that she showed a difference in right hand motion when compared to the left hand. He compared his results with the wrist motions demonstration in Dr. Potash's examination and pointed out that palmar flexion was found to be equal bilaterally by Dr. Potash whereas his examination showed a 20 degree difference. Dr. Sharps indicated that dorsiflexion was greater on the right than the left in Dr. Potash's examination where the opposite was true in his examination. He commented that a physiological explanation could not be determined, but noted that the differential of strength in the right side being weaker than the left indicated the possibility of subjective control as the etiologic factor behind the discrepancy.

Dr. Sharps concluded that, from an objective standpoint, appellant had fully recovered from the employment injury. He stated, however, that, given appellant's subjective complaints and subjectively controlled physical efforts, she continued to demonstrate a partial disability, as compared to her preoperative level. Dr. Sharps recommended that appellant continue to work at modified duty with a 20-pound lifting restriction and minimal repetitive motion. He indicated that appellant had a 3 percent permanent impairment due to loss of extension in the right wrist and a 20 percent permanent impairment due to loss of strength for a total 22 percent permanent impairment of the right arm.

In a February 25, 1999 memorandum, an Office medical adviser noted Dr. Sharps' 22 percent permanent impairment rating but pointed out that Dr. Sharps' grip strength readings in the right hand indicated some degree of patient control. Dr. Sharps also indicated that Dr. Potash's report had shown equal strength bilaterally. The medical adviser cited to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,¹ which stated that individuals not exerting maximum effort in strength testing would produce results yielding a straight line, the result found by Dr. Sharps. Under the A.M.A., *Guides*, suspicion or evidence of less than maximal effort invalidated the grip strength measurements for establishing impairment.² The medical adviser stated that the other factor used by Dr. Sharps, wrist extension, could not be explained since the findings were reversed in Dr. Potash's examination.

In an April 9, 1999 decision, the Office terminated appellant's compensation benefits on the grounds that the residuals of her May 7, 1995 employment injury had ceased. The Office also denied appellant's claim for a schedule award.

In an April 13, 1999 letter, appellant's attorney requested a hearing, which was held on October 25, 1999. In a June 14, 1999 report, Dr. Caggiano stated that, despite normal EMG studies and two operations, appellant had persistent problems with pain in her hands and arms.

¹ A.M.A., *Guides* (4th ed. 1993).

² A.M.A., *Guides*, page 64.

He noted that she had easy fatigability, numbness in the thumb, index and ring fingers of both hands, and pain up the volar aspect of her forearm, occasionally up to her shoulder. Dr. Caggiano admitted that he could not explain appellant's symptoms and recommended that she be referred to a hand center.

In a January 3, 2000 decision, the Office hearing representative found that the Office had properly terminated appellant's compensation because the medical evidence showed she had no residuals connected with the employment injury.

The Board finds that appellant has no permanent impairment due to the May 7, 1995 employment injury.

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of members or functions of the body listed in the schedule. However, neither the Act nor its regulations specify the manner in which the percentage loss of a member shall be determined. For consistent results and to ensure equal justice to all claimants, the Board has authorized the use of a single set of tables in evaluating schedule losses, so that there may be uniform standards applicable to all claimants seeking schedule awards. The A.M.A., *Guides*⁵ has been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁶

Dr. Potash indicated that appellant had a 14 percent permanent impairment of the left arm and 12 percent permanent impairment of the right arm due to nerve entrapment and loss of dorsiflexion. Dr. Sharps found that appellant had no permanent impairment of the left arm and a 22 percent permanent impairment of the right arm due to loss of flexion and strength in the right arm.

The Office medical adviser, however, pointed out that appellant showed equal strength in both arms in Dr. Potash's examination but showed a loss of strength in the right arm in Dr. Sharps' examination. He also noted that the strength testing showed a straight line of results in the right arm which indicated a less than maximum effort in the testing, a conclusion Dr. Sharps had also reached. The medical adviser concluded that the strength tests results, therefore, were invalid.

Dr. Sharps and the medical adviser also pointed out that, in comparing Dr. Potash's results with Dr. Sharps' appellant showed inconsistent loss of motion results. The medical adviser therefore concluded that these results were insufficient to show a permanent impairment of the arms. Dr. Sharps concluded that appellant had objectively recovered from the May 7, 1995 employment injury. The evidence from Dr. Sharps, as reviewed by the Office medical adviser, does not establish that appellant has any permanent impairment due to nerve entrapment.

³ 5 U.S.C. § 8107(c).

⁴ 20 C.F.R. § 10.304.

⁵ A.M.A., *Guides* (4th ed. 1993).

⁶ *Thomas P. Gauthier*, 34 ECAB 1060, 1063 (1983).

The Office, therefore, properly concluded that appellant had no permanent impairment due to the May 7, 1995 employment injury.

The Board also finds that the Office properly terminated appellant's compensation.

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.⁷

In situations when there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸ Dr. Sharps indicated that from an objective standpoint appellant had fully recovered from the employment injury. He noted that she showed a partial disability only from subjectively controlled physical efforts. Dr. Sharps' report therefore established that appellant had no residuals from the May 7, 1995 employment injury. He based his report on an accurate history and a full examination of appellant. Dr. Sharps' report therefore is entitled to special weight and, in the context of this case, constitutes the weight of the medical evidence. The Office properly terminated appellant's compensation and medical benefits, based on Dr. Sharps' report.

The January 3, 2000 and April 9, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 14, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁷ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁸ *James P. Roberts*, 31 ECAB 1010 (1980).