

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TERRY L. ADAMS and DEPARTMENT OF DEFENSE,  
LOWRY AIR FORCE BASE, CO

*Docket No. 00-1859; Submitted on the Record;  
Issued May 18, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability in April 1997, causally related to her November 1, 1991 accepted bilateral carpal tunnel syndrome.

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the August 13, 1998 decision of the Office of Workers' Compensation Programs' hearing representative is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.<sup>1</sup>

By letter dated August 13, 1999, appellant through her representative, requested reconsideration and submitted two medical reports.<sup>2</sup>

In a report dated August 2, 1999, Dr. Nicholas K. Olsen, an osteopath Board-certified in physical medicine and rehabilitation, noted that on May 19, 1997 appellant underwent electrodiagnostic testing, which revealed mild sensory neuropathy in the left wrist. Dr. Olsen opined that on July 31, 1997 appellant reached maximum medical improvement and had no permanent impairment or disability related to her employment at Bullwackers Casino in 1996. He recommended permanent work restrictions, including avoidance of repetitive wrist flexion and extension and data entry and opined that these restrictions were related to appellant's prior carpal tunnel surgery.

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<sup>1</sup> The Office hearing representative affirmed a September 18, 1997 Office decision, rejecting appellant's claim for a recurrence of disability on the grounds that appellant was no longer a federal employee due to base closure and that intervening work factors from her private sector employment were involved.

<sup>2</sup> As the hearing representative's August 7, 1998 decision, was not mailed until August 13, 1998, this reconsideration request was timely filed. *See* 20 C.F.R. § 10.607(a).

In a report dated August 12, 1999, Dr. Douglas R. Schmidt, a Board-certified plastic surgeon, noted that in October 1996 he opined that appellant had reached maximum medical improvement and did not need any work restrictions. However, since working at Bullwackers she had developed symptoms of carpal tunnel syndrome including numbness and pain and when she stopped work her symptoms ceased. Dr. Schmidt opined that “the work at Bullwackers caused an aggravation of a preexisting tendency towards compression neuropathy and that her flare of symptoms, while caused by her current work at Bullwackers, was related to her underlying carpal tunnel syndrome.” He opined that appellant’s current inability to work at repetitive jobs requiring the use of her hands was related to her original on-the-job injury.

By decision dated October 5, 1999 the Office denied appellant’s request, finding that the evidence submitted in support was insufficient to warrant modification of the prior decision.

By letter dated April 12, 2000, appellant requested reconsideration and submitted further medical evidence.

On December 28, 1999 Dr. Olsen opined that appellant’s flare up of symptoms while working at Bullwackers was causally related to her federal employment and that if she had returned to federal employment she could have expected an identical aggravation of her symptoms.

On February 3, 2000 Dr. Schmidt opined that appellant’s symptoms and restrictions were directly related to her carpal tunnel syndrome while working for the employing establishment. He opined that appellant’s “problem with her relatively easy job at Bullwackers cannot be considered a new injury but rather an aggravation of her old injury.” Dr. Schmidt recommended permanent restrictions.

By decision dated April 17, 2000, the Office denied modification of the October 5, 1999 decision.

The Board finds that appellant has failed to establish that she sustained a recurrence of disability commencing in April 1997.

An individual who claims a recurrence of disability due to an accepted employment 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. 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.<sup>3</sup> Causal relationship is a medical issue and can be established only by medical evidence.<sup>4</sup>

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<sup>3</sup> *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

<sup>4</sup> *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

In this case, the medical evidence submitted failed to provide such medical opinion. Neither Dr. Olsen nor Dr. Schmidt provided a discussion of the pathophysiology which would relate appellant's exacerbation of symptomatology in April 1997 while working at Bullwackers to her November 1, 1991 federal employment injury or to her continued federal employment through July 31, 1994, the date of her involuntary termination due to base closure.

The Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500(3) (April 1997) defines a recurrence as follows:

“Recurrence of Disability. This term includes certain kinds of work stoppages, which occur after an employee has returned to work after a period of disability.

(1) It includes a work stoppage caused by:

(a) A spontaneous material change, demonstrated by objective findings, in the medical condition which resulted from a previous injury or occupational illness *without an intervening injury or new exposure to factors causing the original illness*. (Emphasis added.)

(b) A return or increase of disability due to an accepted consequential injury; or

(c) Withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury. This withdrawal must have occurred for reasons other than misconduct or nonperformance of job duties.

(2) It does not include a work stoppage caused by the following factors (*see* FECA PM 2-0814.12 concerning these situations):

(a) Termination of a temporary appointment, if the claimant was a temporary employee at the time of the injury;

(b) Cessation of special funding for a particular position or project (*e.g.*, “pipeline” grants);

(c) True reductions in force (RIFs) where employees performing full-duty as well as those performing light duty are affected;

(d) *Closure of a base or other facility*; ... “ (Emphasis added.)

In this case, appellant was: (1) terminated from her employment as a result of a base closure, a noncompensable work factor; (2) released to full duty without restrictions on November 6, 1995; and (3) exposed to new intervening injury/exposure as a result of her new employment duties as a change person in the private sector.

The Board has stated that, where there is no direct relation between an employment-related injury and a subsequent nonemployment injury, the second injury is an independent,

intervening incident and is not compensable. On the other hand, where the second injury is sustained as a consequence of an impairment residual of the employment injury, the second injury is deemed, because of the chain of causation, to arise out of and to be in the course of employment and is compensable.<sup>5</sup>

Appellant's onset of disabling symptomatology, which occurred in April 1997, developed out of and in the course of her private sector employment duties and not her federal employing establishment duties, which ended on July 31, 1994. Therefore, appellant's disabling symptomatology was not a direct and natural result of the 1991 employment injury. Nor was it sustained as a consequence of 1991 employment-injury residuals, as appellant was released to full duty at her former occupation without restrictions on November 6, 1995 and was found to be without injury residuals or permanent physical impairment at that time.<sup>6</sup>

The Board finds that, therefore, appellant experienced an intervening injury or new exposure<sup>7</sup> as a result of the duties of her private sector employment, which broke the chain of causation with her 1991 work-related condition. Because appellant's physical impairment resulted from the duties of her private sector employment, she has not established that her disability commencing in April 1997 was in any way causally related to her 1991 accepted bilateral carpal tunnel syndrome.

The April 17, 2000 and October 5, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
May 18, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member

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<sup>5</sup> See *Morris Saks*, 13 ECAB 532 (1962); *Howard S. Wiley*, 7 ECAB 126 (1954).

<sup>6</sup> See, e.g., *John R. Knox*, 42 ECAB 193 (1990).

<sup>7</sup> Increased activity at work, carrying more change as well as doing some increased work at home, including laundry and moving furniture.