

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN FELDER and U.S. POSTAL SERVICE,
EINSTEIN STATION, Bronx, NY

*Docket No. 99-2119; Submitted on the Record;
Issued May 17, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective August 17, 1996.

On April 22, 1988 appellant, then a 40-year-old custodian, was mopping a floor when a coworker opened a safe, striking appellant in the left elbow. In an October 5, 1988 report, Dr. Richard E. Memoli, an orthopedic surgeon, stated that appellant had a positive Tinel's sign with numbness of the left fourth and fifth fingers. An electromyogram was positive for ulnar nerve entrapment at the left elbow. Dr. Memoli diagnosed ulnar nerve neuropathy.

The Office accepted appellant's claim for contusion of the left elbow and ulnar nerve neuropathy. Appellant stopped working on September 22, 1989. The Office began payment of temporary total disability compensation.

In a July 29, 1996 decision, the Office terminated appellant's compensation effective August 17, 1996 on the grounds that the weight of the medical evidence established that his work-related disability resulting from the factors of employment had ceased. In a July 7, 1997 letter, appellant's representative requested reconsideration. In a March 4, 1999 merit decision, the Office denied modification of its prior decision.

The Board 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.¹

¹ Jason C. Armstrong, 40 ECAB 907 (1989).

Dr. Memoli, in a series of progress reports, indicated that appellant was totally disabled due to his elbow condition. In an April 1, 1991 report, Dr. Salvatore Lenzo, a Board-certified orthopedic surgeon, stated that appellant had a positive Tinel's sign at the ulnar nerve in the cubital tunnel, which extended into the fourth and fifth fingers of the left hand. Dr. Salvatore noted a negative Tinel's sign at the Guyon's canal. Sensory examination showed decreased sensation in the ulnar enervated fingers, along with decreased sensation on the dorsal ulnar aspect of the left hand. Dr. Salvatore concluded that appellant had a proximal ulnar nerve neuropathy.

The Office referred appellant, a statement of accepted facts and the case record to Dr. Martin Barschi, a Board-certified orthopedic surgeon, for an examination and second opinion. In a July 22, 1993 report, Dr. Barschi noted appellant's claim that he injured his lower back as well as his left arm in the April 22, 1988 employment incident. However, none of the medical records indicated any original injury to the low back.

Dr. Barschi reported that appellant's left elbow had tenderness along the medial side but no atrophy of the arm or forearm. He noted weakness of the first dorsal interosseous and abduction and adduction of the fingers, indicating weakness to the ulnar nerve. Dr. Barschi indicated that appellant exhibited a mild partial disability of the left elbow regarding compression of the ulnar nerve. He commented that, were it not for appellant's lower back condition, he would be able to return to work with some mild restrictions on use of his left arm.

In a January 5, 1994 report, Dr. Memoli indicated that, when he first examined appellant on September 14, 1988, he detected weakness of grasp in the left hand. He also found tenderness at the ulna notch with a positive Tinel's sign and numbness of the left fourth and fifth fingers and hypothenar eminence. Dr. Memoli noted in a May 7, 1990 examination that appellant complained of increased pain and numbness of the left hand and arm, secondary to the ulna nerve entrapment. He related that appellant had injured his lower back at work on April 22, 1988. Dr. Memoli concluded that appellant had been unable to work since August 1989, appellant was still symptomatic in his low back and left arm on October 9, 1993 and Dr. Memoli stated appellant remained totally disabled due to the employment injury.

The Office referred appellant to a rehabilitation service which, in turn, referred him to Dr. Arthur H. Sadler, a Board-certified orthopedic surgeon, for an examination. In a September 11, 1995 report, Dr. Sadler commented that appellant's symptoms were "monumental," compared to the trauma as described and the injuries sustained. He noted that appellant had a full range of motion of the left arm and diminution of sensation of the left arm compared to the right, on both the median and ulnar sides of the left arm. He stated that the Tinel's sign was positive over the cubital fossa but negative over the wrist and the canal of Guyon in the wrist.

Dr. Sadler commented that all of appellant's symptoms were subjective and very little objective abnormality accounted for the extreme nature of his pain. He stated that the contusion of the left elbow and left ulnar neuropathy had not resolved. Dr. Sadler indicated that there was very little in the way of valid objective findings to indicate that the condition existed. He reported that appellant's pain extended from the tip of his fingers to the left shoulder.

Dr. Sadler stated that appellant was “apparently” unable to return to work due to the subjective nature and extreme degree of his complaints. However, it was “extremely unlikely” that specific pathological changes accounted for appellant’s disability in the absence of valid objective clinical findings and his apparent inability to improve over seven years.

In an October 13, 1995 report, Dr. Sadler indicated that he had a discussion with the supervisor of the rehabilitation service and had accordingly modified his view of appellant. He stated that, notwithstanding his complaints, appellant could return to work with some restrictions. Dr. Sadler commented that the restrictions would include stressful activities of the left arm. He noted that appellant suffered from a back condition, which would probably limit frequent bending and lifting. Dr. Sadler indicated, however, that appellant should be able to perform work duties while sitting or at least those that did not require prolonged walking, lifting or climbing.

The Office referred appellant, a statement of accepted facts and the case record to Dr. Richard Stern, a Board-certified orthopedic surgeon, for an examination.² In a May 21, 1996 report, Dr. Stern reported that appellant’s ranges of motion of the left shoulder, elbow and wrist were symmetrical and equal to the motion of right shoulder, elbow and wrist. He found no swelling or tenderness in the left elbow. Dr. Stern particularly found no tenderness or thickening on palpation of the ulnar nerve in the groove behind the medial epicondyle. He reported a negative Tinel’s sign on palpation and percussion of the ulnar nerve at the elbow with no tingling noted in the left hand. Dr. Stern also found no swelling or tenderness in the left hand. Appellant had no atrophy of the ulnar or median nerve innervated muscles and no atrophy of the hypothenar or thenar muscles. Dr. Stern stated that appellant’s sensation was intact in all the digits of the left hand and was equal to the sensation in the right hand. He indicated that appellant’s motor, sensation and reflexes were intact in both arms.

Dr. Stern stated that appellant’s mechanism of injury was consistent with a blow to the outside of the elbow which made it impossible to understand how anyone could make a diagnosis of left ulnar nerve neuropathy based on an injury to the outside of the elbow. He commented that appellant had no objective findings on examination of the left arm, particularly in the left elbow and the left ulnar nerve. Dr. Stern found no evidence of any causally related disability related to the April 22, 1988 injury. He concluded that, in regard to the left elbow, appellant could resume the normal duties of his former occupation. Dr. Stern also stated that appellant’s chronic lumbar condition was not related to the employment injury and did not present any objective findings on examination. He concluded that the lumbar condition, therefore, was not substantiated and, as a result, appellant had no evidence of any disability related to the lumbosacral spine.

Dr. Memoli noted appellant’s pain and weakness in the left arm and a positive Tinel’s sign in the left elbow. His reports described appellant’s subjective symptoms. Dr. Stern, however, reported that his examination of appellant’s left arm showed no atrophy, no tenderness, no loss of sensation and negative Tinel’s signs. He found no objective symptoms to support appellant’s claim of continuing disability due to his accepted condition. Dr. Stern also pointed

² The Office initially treated Dr. Stern’s report as the report of an impartial medical specialist but subsequently regarded him as a referral physician.

out that it was difficult to relate an ulnar neurological injury to the employment injury because of the site struck by the door.

Dr. Stern's examination was more thorough than those reported by Dr. Memoli and his report was more detailed and better rationalized. His reports therefore have greater probative value than those of Dr. Memoli's and, in the context of this case, constitute the weight of the medical evidence. While Drs. Lenzo and Barschi had reported positive Tinel's tests, their reports were not recent findings of appellant's current condition. Dr. Stern's report, as the most recent report, is more probative of appellant's current condition. His report established that appellant's disability from the employment injury had ceased. The Office therefore properly terminated appellant's compensation.

The March 4, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 17, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member