U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSEMARY HOWARD and U.S. POSTAL SERVICE,
EUCLID POST OFFICE, Euclid, OH

Docket No. 01-1351; Submitted on the Record;
Issued January 25, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits; and (2) whether appellant has established that her medical condition on and after August 8, 2000 is causally related to her accepted bilateral carpal tunnel syndrome.

On June 3, 1998 appellant, then a 43-year-old letter carrier, filed a notice of occupational disease alleging that she sustained bilateral hand and wrist conditions due to repetitive motion involved in casing and delivering mail over an approximate 20-year period.[1] The Office accepted the claim for bilateral carpal tunnel syndrome.

Dr. Laurence H. Bilfield, an attending Board-certified orthopedic surgeon, performed right carpal tunnel surgery on January 5, 1999 and left carpal tunnel surgery on February 9, 1999. He found appellant partially disabled for work from September 10, 1998 to April 7, 1999. Appellant was off work from January through April 6, 1999 and returned to limited duty on April 7, 1999.[2] Dr. Bilfield released appellant to light-duty work as of April 7, 1999, with simple

[1] A February 10, 1998 x-ray of the left hand was normal, without evidence of any arthritic changes. March 23, 1998 x-rays of both hands and wrists showed no fractures, dislocations or "significant arthritic change."

[2] Appellant received nurse rehabilitation services from January to June 1999.

grasping and lifting less than 10 pounds.[3] She remained on light duty through June 2000, when her light-duty status was terminated and appellant left federal employment.[4]

In an August 9, 1999 report, Dr. Sheldon Kaffen, a Board-certified orthopedic surgeon and second opinion physician, diagnosed postoperative tenderness which did not "preclude her from returning to her date[-]of[-]injury job" if she wore prescribed splints.

In an August 26, 1999 duty status report, Dr. Bilfield noted findings of "minor hand pain" due to carpal tunnel syndrome and restricted appellant to four hours per day simple grasping, two hours fine manipulation, "intermittent" computer keyboarding and proscribed typing.

In a September 28, 1999 report, Dr. Bilfield opined that appellant's carpal tunnel syndrome had reached maximum medical improvement with surgery, but still experienced "ongoing difficulty" and would "never be 100 percent perfect." Dr. Bilfield released appellant to "administrative duties as long as they are not repetitive in nature." He submitted reports through January 11, 2000 diagnosing carpal tunnel syndrome.[5]

February 3, 2000 electromyographic (EMG) and nerve conduction velocity (NCV) studies showed "[b]ilateral mild, chronic demyelinating median mononeuropathies at or distal to the wrists (consistent with carpal tunnel syndromes), but without active denervation."[6]

The Office found a conflict of medical opinion between Dr. Kaffen, for the government, and Dr. Bilfield, for appellant, regarding whether appellant still had residuals of the accepted bilateral carpal tunnel syndrome and was medically capable of returning to her date-of-injury position. To resolve this conflict, the Office referred appellant to Dr. Stanley Nahigian, a Board-certified orthopedic surgeon specializing in hand surgery.

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[3] In an undated May 1999 report, Dr. Bilfield described a 15 to 20 percent disability to the hands due to the accepted carpal tunnel syndrome. However, Dr. Bilfield did not provide specific percentages of impairment referring to the tables and grading schemes of the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* On May 26, 1999 appellant claimed a schedule award. In a June 13, 1999 letter, the Office advised appellant that the case was not in posture for a schedule award determination. There is no final decision of record regarding the May 26, 1999 schedule award claim; therefore, it is not an issue in this appeal. *See* 20 C.F.R. § 501.2(c).

[4] In a June 9, 2000 memorandum, Kelly Allen, an employing establishment official, stated that appellant's limited-duty assignment would be terminated effective June 10, 2000 based on Dr. Nahigian's opinion as impartial medical examiner that appellant no longer had any residuals of her occupationally-related carpal tunnel syndrome.

[5] A January 27, 2000 magnetic resonance imaging (MRI) scan of the cervical spine showed "noncompressive right uncovertebral joint arthrosis" at C3-4, "severe degenerative disc disease with disc space collapse, spondylotic endplate spur formation" and a congenital malformation at C4-5, "C6-7 disc desiccation with spondylotic spur formation and moderate right foraminal encroachment."

[6] In a February 28, 2000 report, Dr. Daniel J. Leizman, an attending Board-certified orthopedic surgeon, diagnosed bilateral carpal tunnel syndrome, a history of a June 1999 cervical spine injury, recommended continued limited-duty work and prescribed physical therapy.

In an April 27, 2000 report, Dr. Nahigian noted that a January 27, 2000 MRI scan of appellant's cervical spine showed significant degenerative changes capable of causing appellant's hand and wrist symptoms, as opposed to bilateral median nerve compression. He also noted severe arthritis of the carpometacarpal joints of both thumbs, causing pain at the base of the hands into the forearms, which appellant also could confuse with median nerve pain. Dr. Nahigian stated that there were no disabling residuals of the accepted carpal tunnel syndrome and that both median nerve releases resulted in complete decompression. He recommended that appellant continue working at her light-duty desk job, lifting up to 10 pounds. However, Dr. Nahigian also found appellant unable to return to full duty, as she could not load vehicles or deliver mail.

In a June 1, 2000 supplemental report,[7] Dr. Nahigian opined that appellant's federal duties prior to 1998 had temporarily aggravated her idiosyncratic bilateral thumb arthritis, but that such aggravation had ceased. He explained the carpometacarpal arthritis of the thumbs was related to age, gender and genetic predisposition and was "not associated with any type of work tasks." Dr. Nahigian stated that appellant's carpal tunnel syndrome had abated completely and did not require any work restrictions. He noted that appellant would require work restrictions due to her bilateral thumb arthritis.

By notice dated July 7, 2000, the Office advised appellant that it proposed to terminate her compensation benefits as the medical record indicated that she no longer had any residuals of the accepted bilateral carpal tunnel syndrome. The Office found that the weight of the medical evidence rested with Dr. Nahigian, who opined that appellant's work-related condition had ceased and that her symptoms were attributable to age-related degenerative arthritis of the carpometacarpal joints and cervical spine. Appellant was afforded 30 days in which to submit evidence or argument regarding whether she continued to have residuals of the accepted bilateral carpal tunnel syndrome. She did not respond.

By decision dated August 8, 2000, the Office terminated appellant's compensation benefits effective that day, on the grounds that her employment-related conditions had resolved with no residuals.

Appellant disagreed with this decision and in an August 8, 2000 letter, requested an oral hearing before a representative of the Office's Branch of Hearings and Review held December 18, 2000. At the hearing, appellant asserted that an August 9, 2000 EMG showed continued neurologic abnormalities and that her manager removed her from her job in June 2000 on the grounds that no work was available for her. She submitted additional evidence.

August 9, 2000 EMG and NCV studies showed a "slight distal median n[erve] dysfunction" consistent with "very mild carpal tunnel syndrome (CTS) on the [right]," with the left wrist within normal limits.

[7] In a May 19, 2000 letter, the Office requested that Dr. Nahigian clarify his opinion regarding whether appellant remained disabled from her date-of-injury position due to the accepted bilateral carpal tunnel syndrome.

In an August 16, 2000 report, Dr. Bilfield stated that he concurred with Dr. Nahigian that appellant's cervical degeneration was a complicating factor, as well as the arthritic changes in her thumbs. Dr. Bilfield agreed with Dr. Kaffen that appellant did have some residual wound tenderness and that appellant could perform sedentary, clerical work, but not "repetitive, irritating" work.

In a September 7, 2000 report, Dr. Thomas Craig, III, an attending internist, noted examining appellant and reviewing her medical records. He agreed that appellant's carpal tunnel syndrome had "improved with surgery; however, [appellant] continue[d] to experience bilateral neuropathic pain in both hands and wrists." Dr. Craig opined that appellant had "developed reflex sympathetic dystrophy as a result of the damage caused directly to the nerve secondary to the CTS. This diagnosis can be substantiated with autonomic testing." Dr. Craig stated that appellant could work restricted duty while awaiting further testing.

By decision dated and finalized March 13, 2001, an Office hearing representative affirmed the August 8, 2000 decision, finding that appellant's work-related condition ceased on or before August 8, 2000. The hearing representative found that the weight of the medical evidence was represented by Dr. Nahigian, the impartial specialist, who explained that appellant's symptoms were due to cervical degeneration and bilateral arthritis of the thumbs and not to the accepted carpal tunnel syndrome. The hearing representative further found that Dr. Craig's report was insufficient to create a conflict with Dr. Nahigian's opinion, as he did not specify which clinical findings lead him to the diagnosis of reflex sympathetic dystrophy syndrome or explain how that condition would be caused by the carpal tunnel syndrome.

The Board finds that the Office met its burden of proof to terminate compensation benefits and that appellant has failed to establish that her condition on and after August 8, 2000 is causally related to her accepted bilateral carpal tunnel syndrome.

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination or modification of compensation benefits.[8] The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.[9] The Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[10]

In the instant case, Dr. Kaffen, a Board-certified orthopedic surgeon and second opinion physician, opined that appellant had no objective residuals of the accepted bilateral carpal tunnel syndrome. Dr. Bilfield, an attending Board-certified orthopedic surgeon, stated that appellant had objective, disabling residuals due to the accepted carpal tunnel syndrome. Thus, there was a conflict of medical opinion.

[8] *Raymond W. Behrens*, 50 ECAB 221 (1999).

[9] *Carl D. Johnson*, 46 ECAB 804, 809 (1995).

[10] *Raymond W. Behrens*, *supra* note 8.

Where there exists a conflict of medical opinion, the case is referred to an impartial medical specialist for the purpose of resolving the conflict. If the opinion of the impartial medical specialist is sufficiently well rationalized and based upon a proper factual background, it must be given special weight.[11]

Because of the conflict in medical opinion between Drs. Kaffen and Bilfield pursuant to section 8123(a) of the Federal Employees' Compensation Act, the Office referred appellant to a third physician for an impartial medical examination, Dr. Nahigian, a Board-certified orthopedic surgeon.[12] Dr. Nahigian examined appellant on April 27, 2000. He provided an accurate and comprehensive review of appellant's medical history and performed a thorough orthopedic examination. Based on this review and examination, Dr. Nahigian found no objective evidence of any disability related to the accepted carpal tunnel syndrome. He explained that appellant's symptoms were likely caused by degenerative disc disease in the cervical vertebrae, as demonstrated by the MRI scan and by degenerative arthritic changes of the carpometacarpal joints of both thumbs. Dr. Nahigian concluded that appellant had fully recovered from her carpal tunnel syndrome and was capable of resuming her duties as a letter carrier.

The Board finds that Dr. Nahigian's opinion is well rationalized, based on a thorough clinical examination and relies on a complete medical and factual background. Therefore, Dr. Nahigian's opinion must be accorded special weight on the issue of whether appellant had any residuals or disability resulting from the accepted carpal tunnel syndrome. As the weight of the medical opinion evidence, Dr. Nahigian's reports justify the Office's termination of appellant's compensation benefits effective August 8, 2000. The burden of proof thereafter shifts to appellant.

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability, which continued after termination of compensation benefits.[13]

Subsequent to the Office's August 8, 2000 decision terminating appellant's compensation benefits, appellant submitted an August 9, 2000 nerve conduction study, Dr. Bilfield's August 16, 2000 report and Dr. Craig's September 7, 2000 report.

The August 9, 2000 nerve conduction studies showed a "slight distal median n[erve] dysfunction" attributable to "very mild" carpal tunnel syndrome on the right. However, appellant did not submit rationalized medical evidence explaining how and why this "very mild"

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[11] *Irene M. Williams*, 47 ECAB 619, 622 (1996); *Roger Dingess*, 47 ECAB 123, 126 (1995); *Carl Epstein*, 38 ECAB 539 (1987).

[12] Section 8123(a) of the Act provides that, "[I]f there is disagreement between the physician making the examination for the United States and the physician for employee, the Secretary shall appoint a third physician who shall make an examination." 5 U.S.C. § 8123(a).

[13] *Talmadge Miller*, 47 ECAB 673, 679 (1996).

carpal tunnel syndrome would prevent her from carrying out her date-of-injury position as a letter carrier or necessitate any type of work limitations. Without such interpretation, this report is of very little probative value.[14]

Dr. Bilfield opined in his August 16, 2000 report that appellant was able to perform sedentary, clerical work without repetitive motions. He agreed with Dr. Nahigian that appellant's cervical and carpometacarpal thumb arthritis contributed to her hand and wrist symptoms. Dr. Bilfield stated that appellant could perform sedentary, clerical work without repetitive motions. While Dr. Bilfield's report indicates that he felt appellant was no longer capable of working full duty as a letter carrier, he did not state specifically that the recommended work limitations were due to bilateral carpal tunnel syndrome and not the degenerative arthritis. Also, Dr. Bilfield did not state explicitly that appellant continued to have carpal tunnel syndrome. Therefore, Dr. Bilfield's report is insufficient to establish that appellant was disabled for work on and after August 8, 2000 due to the accepted carpal tunnel syndrome.

In a September 7, 2000 report, Dr. Craig, III, an attending internist, opined that the accepted carpal tunnel syndrome caused median nerve damage, leading to reflex sympathetic dystrophy syndrome. However, Dr. Craig did not provide sufficient objective evidence, such as test results or clinical findings, of either median nerve damage or reflex sympathetic dystrophy syndrome. Thus, his opinion is insufficient to establish the presence of either condition or that appellant was disabled for work on and after August 8, 2000.

Consequently, appellant has not established that her condition on and after August 8, 2000 is causally related to the accepted bilateral carpal tunnel syndrome, as she submitted insufficient rationalized medical evidence to establish a causal relationship between that condition and her continuing signs and symptoms.

[14] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

The decision of the Office of Workers' Compensation Programs dated and finalized March 13, 2001 is hereby affirmed.

Dated, Washington, DC
January 25, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member