

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CATHERINE B. GOODEN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Birmingham, AL

*Docket No. 01-1877; Submitted on the Record;
Issued July 15, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has established that she had any disability or need for medical treatment on or after November 14, 1995, causally related to her February 28, 1991 bilateral carpal tunnel syndrome.

The Office of Workers' Compensation Programs accepted that on February 28, 1991 appellant, then a 47-year-old radiology technician, developed bilateral carpal tunnel syndrome in the performance of duty.¹ She stopped work on January 2, 1992 due to another injury and did not return.

On October 26, 1995 appellant filed a claim (Form CA-7) claiming disability commencing November 14, 1995, causally related to her accepted condition of bilateral carpal tunnel syndrome.

By letter dated December 1, 1995, the Office requested further information including medical evidence supporting causal relation.

In response, appellant submitted a November 22, 1995 Form CA-20 attending physician's report from Dr. J. Markus Carter, an osteopathic practitioner, which noted the diagnoses of bilateral carpal tunnel syndrome, fibromyalgia, C5-6 cervical spondylosis, cervical syndrome and lumbar degenerative disc disease. No opinion on causal relation was provided and Dr. Carter checked "yes" to the question of whether appellant had been advised that she could return to work.

¹ In a separate claim No. A6-497029, the Office accepted that on August 2, 1990 appellant sustained a lumbosacral soft tissue muscular strain. She received compensation on the periodic rolls from February 7, 1992 until November 12, 1995 when it was terminated due to lack of evidence of continuing disability.

By decision dated January 3, 1996, the Office rejected appellant's claim finding that the evidence of record failed to support that she had any disability for work or medical condition requiring further medical treatment, causally related to her bilateral carpal tunnel syndrome.

By letter dated January 7, 1996, appellant requested an oral hearing before an Office hearing representative.

A hearing was held on November 21, 1996 at which appellant testified. She claimed that she was totally disabled due to her bilateral carpal tunnel syndrome as well as her spinal condition from November 14, 1995 and continuing.

In support of her claim, appellant submitted an October 5, 1995 report from Dr. Richard A. Sanders, a Board-certified orthopedic surgeon specializing in hand surgery, which noted that appellant had been having bilateral hand discomfort for five years and that an examination revealed bilateral positive Tinel's testing and Faywood spinning wheel testing. Dr. Sanders diagnosed bilateral carpal tunnel syndrome.

In a November 1, 1995 report, Dr. Carter noted appellant's complaints of diffuse neck, back and buttock pain, reviewed her history and provided examination results.² Dr. Carter diagnosed carpal tunnel syndrome, fibromyalgia, C5-6 cervical spondylosis and cervical and lumbar degenerative disc disease, but did not discuss causal relation or identify any disability. In a follow-up January 12, 1996 report, Dr. Carter noted that appellant reported increasing tingling, bilateral paresthesias, noted a questionable Tinel's sign bilaterally at her wrists and repeated his earlier diagnoses. He did not discuss causal relation or identify any disability.

A January 16, 1996 report from Dr. Sanders, indicated that appellant was experiencing some nocturnal dysesthesias in her hands and had a positive Tinel's test, Phalen's test and pinwheel test.

Appellant submitted a January 23, 1996 electrodiagnostic consultation report from Dr. Carter which noted her complaints of bilateral hand paresthesias. He noted that appellant had positive Tinel's and Phalen's tests bilaterally and some mild weakness on thenar compartment muscle testing, but no true thenar atrophy and noted that electromyographic (EMG) testing and nerve conduction velocity (NCV) studies demonstrated prolonged terminal latencies for the bilateral median motor and sensory nerves. Dr. Carter diagnosed moderate bilateral carpal tunnel syndrome and he referred appellant to Dr. Sanders for a surgical consultation. No opinion on disability or causal relation was provided.

Also submitted was a March 14, 1996 report from Dr. Carter which diagnosed appellant as having "[m]oderate bilateral carpal tunnel syndrome, fibromyalgia, C5-6 cervical spondylosis, and cervical lumbar degenerative disc disease." He noted that appellant had some Tinel's signs over her wrist bilaterally and that she had mildly reduced light-touch sensation over her left

² He noted that appellant's sensory examination was somewhat difficult to interpret as she had a diffuse patchy inconsistent pattern of light touch and dysesthesias throughout her upper extremities and in her left lower extremity in a seeming nondermatomal pattern.

thumb and volar aspects of the second and third digits, but that no thenar atrophy was appreciated.

A March 19, 1996 report from Dr. Sanders which indicated that appellant was experiencing some nocturnal dysesthesias in her hands and a positive Phalen's test, but that Tinel's sign was negative.

A May 10, 1996 report from Dr. Raymond J. Brown, a Board-certified internist, noted that he had been treating appellant for about 10 months, that in October 1995 he felt that she had bilateral carpal tunnel syndrome and that she was referred to Dr. Carter for her thoracolumbar muscle spasms.

Additionally submitted was an October 7, 1996 Form CA-20 attending physician's report from Dr. Gene J. Watterson, Jr., a Board-certified rheumatologist, which diagnosed appellant as having polymyositis and carpal tunnel syndrome, indicated that her conditions were "possibly aggravated by physical exertion" and which concluded: "[Appellant] is considered unable to work at present due to her diagnosis of polymyositis which has rendered her significantly impaired from the standpoint of muscular strength...."

November 1995 medical treatment reports were also submitted.

A December 9, 1996 report from Dr. Carter reviewed appellant's complaints, noted electrodiagnostic findings and opined: "I cannot relate her carpal tunnel syndrome as being directly caused by her [employing establishment] injury occurring seven years ago while she was helping to transfer a patient. I suppose it is possible that the [employing establishment] injury occurring seven years ago certainly might have aggravated a [sic] existing condition."

Appellant submitted a December 11, 1996 Form CA-20 attending physician's report from Dr. Watterson which repeated his previous diagnosis and which indicated that her condition was "possibly aggravated by physical exertion" and indicated that appellant was considered unable to work at present due to her polymyositis which had rendered her significantly impaired.

Further submitted was a December 17, 1996 Form CA-20 attending physician's report from Dr. Sanders which noted a diagnosis of carpal tunnel syndrome and indicated that a carpal tunnel release was scheduled for January 10, 1996. No opinion on disability or causal relation was included.

By letter dated December 23, 1996, the Office declined to authorize appellant's proposed carpal tunnel surgery claiming that the medical evidence of record was insufficient to establish that surgery was appropriate.

Appellant further submitted a letter dated November 13, 1995 in which the employing establishment advised appellant that in order for her to be rehired she had to submit a physician's release for her to return to duty and a statement of her physical work restrictions.

By decision dated March 17, 1997, the hearing representative affirmed the January 3, 1996 decision.

On April 26, 2000 appellant filed a Form CA-2a claiming that she sustained a recurrence of disability commencing October 5, 1995, causally related to her February 28, 1991 carpal tunnel syndrome. At the time of alleged recurrence, appellant had been out of work for three years and nine months.

By letter dated May 9, 2000, the employing establishment noted receipt from the Office of two incomplete Forms CA-7 and it advised that appellant had not worked at the employing establishment since September 3, 1993.

By letter from the Office dated May 15, 2000, the Office acknowledged receipt of appellant's Form CA-2a claiming a recurrence of disability commencing on or about October 5, 1995, causally related to her bilateral carpal tunnel syndrome. It requested further factual and medical information including a physician's rationalized opinion supporting causal relation.

In response, on May 31, 2000 appellant replied that she had never returned to work following her February 22, 1991 injury and claimed that she continued to experience symptoms because she was denied surgery for a carpal tunnel release. She claimed that she had cramping of her fingers with numbness and discoloration, which radiated from her fingers up her arm to her neck. Appellant claimed that her carpal tunnel syndrome caused wrist pain and swelling, that she was constantly dropping things, that she was limited in her lifting, that she could not drive due to cramping and numbness and that her ability to sleep was limited by the pain. She also claimed that she had limited mobile skills due to her January 1990 lumbar strain injury which she alleged developed into stiffness of her joints, fibromyalgia, arthritis of the lumbar spine and cervical spondylosis.

By decision dated September 6, 2000, the Office denied modification of its March 17, 1997 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that appellant had not submitted any medical evidence supportive of her claim.

The Board finds that appellant has failed to establish that she had any disability or need for medical treatment on or after November 14, 1995, causally related to her February 28, 1991 bilateral carpal tunnel syndrome.

As used in the Federal Employees' Compensation Act,³ the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ An individual who claims a recurrence of disability due to an accepted

³ 5 U.S.C. §§ 8101-8193.

⁴ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to disability compensation. See *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury). Cf. 5 U.S.C. § 8107 (entitlement to schedule compensation for loss or permanent impairment of specified members of the body).

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.⁵ Causal relationship is a medical issue and can be established only by medical evidence.⁶

In this case, appellant has failed to meet her burden of proof to establish her claim. None of the medical evidence submitted by appellant causally relates her symptoms on and after November 1995 to her 1991 bilateral carpal tunnel syndrome, identifies any November 1995 disability due to her accepted carpal tunnel syndrome or establishes that she requires further November 1995 medical treatment for her 1991 carpal tunnel syndrome.

In support of her claim of continuing disability and need for medical treatment, appellant submitted multiple reports from Dr. Carter which diagnosed several nonaccepted conditions, fibromyalgia, C5-6 cervical spondylosis, cervical syndrome and lumbar degenerative disc disease, in addition to carpal tunnel syndrome.⁷ Dr. Carter did not address any causal relation of any of these diagnosed conditions to factors of appellant's federal employment, nor did he identify any carpal tunnel-related November 1995 disability for work and in fact, in his December 9, 1996 report he opined: "I cannot relate her carpal tunnel syndrome as being directly caused by her [employing establishment] injury occurring seven years ago...." As Dr. Carter did not identify any disability for work, nor identify or discuss causal relation of any of appellant's diagnosed conditions to factors of her federal employment, his reports do not support that appellant had any disability for work on or around November 14, 1995 or had any condition causally related to factors of her employment that required further medical treatment.⁸

Appellant also submitted several reports from Dr. Sanders which noted a diagnosis of bilateral carpal tunnel syndrome but which lacked any opinion on causal relation or on whether additional treatment was necessary. He merely reported appellant's current symptoms but he failed to comment on any injury-related disability or recommend further medical treatment for these symptoms. Therefore, Dr. Sanders' reports are also insufficient to establish that appellant

⁵ *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).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁷ Appellant is not entitled under the Act to medical treatment for nonemployment-related injuries/conditions.

⁸ Dr. Carter also speculated that he supposed it was possible that appellant's VA injury occurring seven years ago certainly might have aggravated an existing condition, but he did not identify what condition might have been aggravated and he couched this statement in hypothetical terms only. The Board has held that speculative opinions are of diminished probative value and are insufficient to establish a claim. See *Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

experienced a November 1995 recurrence of disability or had an accepted employment-related medical condition which required further medical treatment on or after November 14, 1995.

Appellant additionally submitted a May 10, 1996 report from Dr. Brown who diagnosed carpal tunnel syndrome but who did not provide any opinion on causal relation with factors of appellant's employment, which ceased in January 1992. He further did not address whether appellant had any November 1995 disability for work, nor did he provide an opinion as to whether appellant required further injury-related medical treatment. Therefore, Dr. Brown's report is insufficient to establish appellant's claims of a November 1995 recurrence of disability or need for further medical treatment.

Appellant further submitted an October 7 and a December 11, 1996 reports from Dr. Watterson which diagnosed appellant as having polymyositis and carpal tunnel syndrome and which indicated that her conditions were possibly aggravated by physical exertion. As these opinions are couched in speculative terms, they are of reduced probative value.⁹ Further, although Dr. Watterson addressed appellant's disability for work, he attributed it to polymyositis which rendered her significantly impaired and he did not opine that appellant had any disability for work due to her carpal tunnel syndrome. He further did not address whether appellant had any need for further medical treatment causally related to her accepted employment-related injuries. Consequently, Dr. Watterson's opinions are of diminished probative value and are insufficient to establish appellant's claim.

As no further probative and rationalized medical evidence was submitted by appellant which identified any November 1995 employment-related disability or which addressed her November 1995 need for any continuing medical treatment for her employment-related injuries or conditions, she has failed to meet her burden of proof to establish her claim.

Moreover, although appellant alleged that her 1990 accepted lumbosacral soft tissue muscular strain injury¹⁰ developed into joint stiffness, fibromyalgia, arthritis of the lumbar spine and cervical spondylosis, none of the medical evidence submitted supported that allegation.¹¹

⁹ See *supra* note 8 and accompanying text.

¹⁰ Claim No. A6-497029.

¹¹ These would be allegations related to a separate claim as consequential injuries.

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 6, 2000 is hereby affirmed.

Dated, Washington, DC
July 15, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member