

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER M. DROSSOS and U.S. POSTAL SERVICE,
EDGEMOOR BRANCH, Wilmington, DE

*Docket No. 02-37; Submitted on the Record;
Issued July 29, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation; and (2) whether appellant established that his carpal tunnel and right shoulder conditions were causally related to his federal employment.

Appellant's claim, filed on March 10, 1998, was accepted for bilateral carpal tunnel syndrome and appellant underwent release surgery on April 30 and June 4, 1998. Dr. Peter F. Townsend, a Board-certified orthopedic surgeon, released appellant to full duty without restrictions on October 16, 1998. However, he noted that appellant had a "new problem" with his right shoulder, diagnosed "possible thoracic outlet syndrome and referred him to Dr. Victor R. Kalman, an osteopathic practitioner.

On October 27, 1998 appellant, who had been terminated by the employing establishment on May 3, 1998, filed a recurrence of disability claim alleging that a sternoclavicular mass from carrying mailbags had caused pain and tingling from September 1997 onwards.

On December 9, 1998 the Office proposed to terminate appellant's compensation based on the August 14, 1998 report of Dr. Townsend that appellant was "doing very well" and had no residuals of his employment injury. The Office also sent appellant a letter stating that the recurrence claim had been accepted but that no period of disability had been claimed. Subsequently, appellant claimed wage-loss compensation starting on April 30, 1998 and continuing.

On January 21, 1999 the Office terminated wage-loss and medical benefits, effective January 21, 1999, on the grounds that appellant had no residuals of the accepted bilateral carpal tunnel syndrome. By decision also dated January 21, 1999, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence was insufficient to establish a causal relationship between appellant's current condition of thoracic outlet syndrome and the accepted carpal tunnel syndrome.

On January 26, 1999 appellant requested a hearing, which was held on July 27, 1999. By decision dated October 18, 1999, the hearing representative found that appellant had no residuals of the accepted carpal tunnel syndrome, based on Dr. Townsend's opinion and, therefore, the Office met its burden of proof in terminating appellant's compensation. The hearing representative also concluded that the recurrence of disability claim should be treated as a new claim and developed accordingly.

On March 22, 2000 appellant requested a schedule award based on his accepted condition of carpal tunnel syndrome and submitted a December 6, 1999 report from Dr. Ronald J. Potash, a Board-certified surgeon. By letter dated April 13, 2000, appellant requested reconsideration of the Office's termination decision based on Dr. Potash's report.

The Office referred Dr. Potash's report and the medical record to an Office medical adviser for his opinion on whether appellant was entitled to a schedule award. The Office medical adviser stated that appellant developed carpal tunnel syndrome due to his federal employment, but the condition resolved without residuals and appellant's federal service was terminated. He concluded:

“[Appellant] has since acquired other work involving repetitive use of the hands and has a new [carpal tunnel syndrome]. Symptoms and impairment are due to this new CTS and not a recurrence of the previously corrected CTS. Same symptoms, same diagnosis, same wrists but *new* injury. (Not federal).”

By decision dated April 28, 2000, the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior termination decision. The Office noted that appellant left federal employment to work as a bartender in May 1998 and that Dr. Townsend released him as completely healed on October 16, 1998. Therefore, his present condition was not causally related to the 1997 work injury but was rather due to the new carpal tunnel syndrome stemming from his new employment.

Appellant again requested reconsideration of the termination decision and submitted a February 6, 2001 report from Dr. Townsend, which found “mild residual axonal changes” from appellant's previous carpal tunnel syndrome and significant ulnar nerve entrapment not noted on earlier electromyography (EMG) testing. The Office conducted a merit review on June 19, 2001 and found that Dr. Townsend's report was insufficient to warrant modification of its prior decisions.

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective January 21, 1999.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation

¹ *Betty Regan*, 49 ECAB 496, 501 (1998).

without establishing either that the disability has ceased or that it is no longer related to the employment.²

In this case, Dr. Townsend completed a medical form stating that from April 30 through August 14, 1998 appellant was totally or partially disabled due to bilateral carpal tunnel syndrome. He released appellant to return to work as of August 14, 1998. In a report of the same date, Dr. Townsend stated that appellant had no further significant complaints with his hands. He had minimal tenderness around the incisions and a mild feeling of weakness. Dr. Townsend found a full range of motion and completely healed wounds and noted: “[d]oing very well.” The Office medical adviser agreed with Dr. Townsend that appellant had no residuals of the 1998 carpal tunnel syndrome. The Board finds that these medical opinions are sufficient to meet the Office’s burden of proof in terminating appellant’s compensation effective January 21, 1999.³

The Board also finds that this case is not in posture for decision on whether appellant’s carpal tunnel and right shoulder conditions were causally related to his federal employment.

Appellant contends on appeal that the February 6, 2001 report of Dr. Townsend and the December 6, 1999 report by Dr. Potash establish that appellant continued to suffer from residuals of his accepted carpal tunnel syndrome. In evaluating appellant for a schedule award, Dr. Potash stated that the “work-related injury of December 10, 1997 was the competent producing factor for [appellant’s] subjective and objective findings.”

Dr. Townsend stated that his February 6, 2001 letter was “an addendum” to his March 10, 2000 report.⁴ He stated that appellant had returned to his office on May 2, 2000 after a two-year absence and “questioned extensively” the physician’s earlier report finding no carpal tunnel residuals but rather a new problem. While Dr. Townsend stated that a physical examination at that time “revealed no objective evidence of ongoing carpal tunnel syndrome” a more recent EMG and nerve conduction studies showed mild residual axonal changes from appellant’s previous carpal tunnel and significant ulnar nerve entrapment, not previously noted on any prior EMGs. Dr. Townsend found a one percent impairment of appellant’s right upper extremity.

In this case, the February 2, 2001 report from Dr. Townsend indicated that he had changed his opinion regarding any residuals of appellant’s accepted carpal tunnel syndrome. Indeed, Dr. Townsend reported a one percent permanent impairment and attributed this to appellant’s “initial” carpal tunnel. Thus, Dr. Townsend, upon whom the Office relied to terminate compensation in January 1999, indicated two years later that more recent testing showed residuals of the work-related condition. Therefore, the Board finds that this case must be remanded for the Office to develop the evidence further to determine whether appellant has

² *Raymond C. Beyer*, 50 ECAB 164, 168 (1998).

³ See *Wanda E. Maisonet*, 48 ECAB 212, 214 (1996) (medical reports established that appellant had no residuals or remaining disability due to the accepted work condition).

⁴ This report is not in the record.

any residual disability causally related to the accepted 1997 condition and whether he is entitled to a schedule award.⁵

The June 19, 2001 decision of the Office of Workers' Compensation Programs is affirmed in regard to the termination of compensation effective January 21, 1999. The decision is set aside in regard to whether appellant's carpal tunnel and right shoulder conditions were causally related to his federal employment and whether he is entitled to a schedule award. The case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
July 29, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁵ *John J. Carlone*, 41 ECAB 354, 358 (1989).