

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS H. MILNER and DEPARTMENT OF LABOR, OFFICE OF  
WORKERS' COMPENSATION PROGRAMS, San Francisco, CA

*Docket No. 02-356; Submitted on the Record;  
Issued July 5, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
DAVID S. GERSON

The issue is whether appellant has established that he sustained a recurrence of disability on February 1, 2001 causally related to his accepted employment injury.

This case is before the Board for the second time. In the first appeal, the Board affirmed the Office of Workers' Compensation Programs' October 3, 1996 and April 24, 1997 decisions finding that appellant had no more than a 10 percent permanent impairment of the left arm and a 20 percent permanent impairment of the right arm.<sup>1</sup> The findings of fact and conclusions of law are hereby incorporated by reference.

On April 6, 2001 appellant filed a notice of recurrence of disability on February 1, 2001 causally related to his July 1991 employment injury of bilateral carpal tunnel syndrome.<sup>2</sup> He indicated that on April 1, 1996 he had retired on disability unrelated to his federal employment.

By decision dated August 14, 2001, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained a recurrence of disability causally related to his accepted employment injury.

The Board finds that the case is not in posture for decision.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which he claims compensation is causally related to the accepted injury.<sup>3</sup> This burden includes the necessity of furnishing evidenced from a qualified

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<sup>1</sup> *Thomas H. Milner*, Docket No. 97-2532 (issued July 2, 1999).

<sup>2</sup> In letters dated February 16 and 20, 2001, appellant indicated that his carpal tunnel syndrome had gotten worse and requested a change in treating physicians.

<sup>3</sup> *Robert H. St. Onge*, 43 ECAB 1169 (1992).

physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>4</sup>

In this case, appellant has submitted evidence which suggests that the claimed recurrence of disability was causally related to his accepted employment injury. In a report dated June 14, 2001, Dr. Donald Cortum, who is Board-certified in family practice, reviewed appellant's medical reports and listed objective findings of a positive Tinel's sign and positive Phalen's test bilaterally.<sup>5</sup> Dr. Cortum noted that appellant related that he experienced an onset of pain and numbness in his hands, right greater than left, without any precipitating event. He stated:

“[Appellant] describes this as [a] spontaneous return of the symptoms of an occupational disease without any intervening cause. I agree that these symptoms can recur spontaneously even years later, as appears to be the case here. He is retired and engages [in] no work activities of which I am aware.”

Dr. Cortum diagnosed bilateral carpal tunnel syndrome and concluded:

“[Appellant's] original injury was caused and aggravated by repetitive motion at his workplace and thus, is an occupational disease. It apparently remained dormant since 1996, suddenly flaring up again in December 2000, with no intervening event to my knowledge. Thus, he has had a spontaneous return of the symptoms and the causative factor lies in his original workers' compensation injury of July 19, 1991. He denies engaging in work or hobbies that would have precipitated this return.”

While the report of Dr. Cortum is not sufficiently rationalized to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that he sustained a recurrence of disability causally related to his accepted employment injury, the Board finds that his report raises an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.<sup>6</sup>

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on the issue of whether appellant sustained a recurrence of disability causally related to his accepted employment injury. After such development of the case record as the Office deems necessary, it shall issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated August 14, 2001 is set aside and the case is remanded for further proceedings consistent with this opinion.

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<sup>4</sup> *Id.*

<sup>5</sup> Dr. Cortum referenced his earlier report dated May 4, 2001; however, this report does not appear to be in the record.

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

Dated, Washington, DC  
July 5, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member