

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TERESA DAVIS and U.S. POSTAL SERVICE,
POST OFFICE, Camden, NJ

*Docket No. 00-1644; Submitted on the Record;
Issued March 18, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained a recurrence of disability beginning July 28, 1998.

The Office of Workers' Compensation Programs accepted that appellant sustained tenosynovitis of both wrists in the performance of her duties as a window clerk. On June 3, 1997 appellant, then 48 years old, underwent a decompression of the median nerve of her right hand and wrist and a flexor tenosynovectomy performed by Dr. Scott Fried, an osteopath. The Office authorized this surgery and accepted that appellant sustained a recurrence of total disability beginning May 22, 1997.

Appellant returned to limited-duty work on March 28, 1998, answering telephones using a headset. She began working four hours per day, increasing this amount to eight hours per day by May 9, 1998.

On July 28, 1998 appellant decreased her hours of work to six per day, as recommended by Dr. Fried. On September 28, 1998 she decreased her hours of work to four per day, as recommended by Dr. Fried.

On January 27, 1999 appellant filed a claim for a recurrence of disability beginning July 28, 1998. She stated that when answering telephones she had to reach for the keypad to page or transfer calls, and that this reaching and the writing of messages caused increased pain in her fingers, hands, wrists and elbows.

On April 30, 1999 the Office issued two decisions: in one, the Office found that appellant had not established a recurrence of disability beginning July 28, 1998; in the other, the Office found that appellant had no further disability or need for medical treatment causally related to her accepted condition.

Appellant requested a hearing, which was held on October 26, 1999. By decision dated January 13, 2000, an Office hearing representative found that appellant had failed to establish continuing disability causally related to her accepted condition, based on the medical opinion of an impartial medical specialist resolving a conflict of medical opinion. The Office hearing representative further found that a final decision regarding appellant's continuing entitlement to medical care needed to be issued by the Office.

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

There is an unresolved conflict of medical opinion on the issue of whether appellant was unable to continue to work limited duty for eight hours per day beginning July 28, 1998. Appellant's attending physician, Dr. Fried, examined appellant on July 27, 1998 and concluded in a report of that date that she was not tolerating eight hours per day and could work only six hours per day. Dr. Marc Kahn, a Board-certified orthopedic surgeon to whom the Office referred appellant for a second opinion evaluation, concluded in a July 30, 1998 report that appellant could not perform her regular job because of bilateral carpal tunnel syndrome with symptomatic residuals after a right carpal tunnel release, but that she could work limited duty eight hours per day. In a September 8, 1998 report, Dr. Fried indicated that appellant could work only four hours per day. Dr. Kahn indicated, in an October 21, 1998 report, that appellant could answer telephones eight hours per day.

The Office recognized that there was a conflict of medical opinion between Drs. Fried and Kahn, and referred appellant to Dr. Gary N. Goldstein, a Board-certified orthopedic surgeon, to resolve the conflict. In a report dated March 17, 1999, Dr. Goldstein diagnosed "overt symptom magnification syndrome," and concluded not only that appellant was "easily capable of working in her light-duty capacity for a full eight-hour day," but that "realistically, the patient should be able to work in a full-duty status, full-time, at this point, if she wishes."

In her January 13, 2000 decision, an Office hearing representative found that the report of Dr. Goldstein constituted the weight of the medical evidence, and that appellant had failed to establish continuing employment-related disability. Dr. Goldstein, however, did not address whether appellant was able to perform limited duty beginning July 28, 1998, the date she claimed a recurrence of disability. The issue in this case, and the issue to be resolved by the impartial medical specialist, is not whether appellant's employment-related disability ceased, as Dr. Goldstein indicated in his March 17, 1999 report, but whether appellant was able to perform limited duty for eight hours per day beginning July 28, 1998. As the Office was not paying compensation for disability, it did not have the burden of proving appellant's disability ceased.¹

¹ 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. *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

Appellant, who was working limited duty eight hours per day, had the burden of proving that she could no longer do so and that she therefore sustained a recurrence of disability.²

The case will be remanded to the Office for resolution of the conflict of medical opinion regarding appellant's ability to work beginning July 28, 1998. The Office should refer appellant back to Dr. Goldstein for a rationalized medical opinion on this issue.

The decision of the Office of Workers' Compensation Programs dated January 13, 2000 is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
March 18, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

² When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements. *Terry R. Hedman*, 38 ECAB 222 (1986).