

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORETTA M. DIMOND and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION REGIONAL OFFICE, Seattle, WA

*Docket No. 00-2585; Submitted on the Record;
Issued March 6, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective June 2, 1998.

On November 1, 1991 appellant, then a 38-year-old claims clerk, filed a claim alleging that she developed carpal tunnel syndrome as a result of her work duties. She did not stop work.¹ The Office accepted the claim for bilateral carpal tunnel syndrome and authorized bilateral surgical release. Appellant was paid appropriate compensation.

Appellant submitted various medical records from Dr. Stephen J. Walker, a Board-certified orthopedic surgeon, dated October 14, 1991 to February 26, 1993; and Dr. J.E. Nimlos, a Board-certified family practitioner, dated January 27, 1993. Dr. Walker's reports note a history of appellant's carpal tunnel syndrome, which resulted from her keyboard entry duties at work. He performed a carpal tunnel release on the right side on October 6, 1992 and on the left side on December 4, 1992. Dr. Nimlos' report dated January 27, 1993 noted that appellant was post-bilateral carpal tunnel release and was improving.

On March 19, 1993 the Office referred appellant for a second opinion to Dr. Phillip C. Haeck, a Board-certified plastic surgeon.

In a medical report dated April 23, 1993, Dr. Haeck indicated that he reviewed the records provided to him and performed a physical examination of appellant. He diagnosed appellant with bilateral carpal tunnel syndrome, industrially related, fixed and stable. Dr. Haeck indicated that appellant did not suffer residuals from the accepted bilateral carpal tunnel syndrome. He noted that appellant was capable of returning to the position of claims clerk without restrictions.

¹ The record indicates that appellant was terminated from employment on July 9, 1992.

By decision dated June 1, 1993, the Office terminated appellant's compensation benefits effective April 23, 1993 on the grounds that the weight of the medical evidence established that she had no continuing disability resulting from her employment-related carpal tunnel syndrome.

Appellant submitted treatment notes from Dr. Nimlos indicating that she remained disabled and under treatment for bilateral carpal tunnel syndrome. He recommended further follow-up and treatment.

On July 9, 1996 appellant filed a Form CA-2, notice of recurrence of disability. She indicated a recurrence of neck and arm pain on May 28, 1996, which occurred since the employment-related injury of October 1991.

In a decision dated September 20, 1996, the Office denied appellant's claim for recurrence of disability on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or about May 28, 1996, causally related to the accepted employment injury of October 1991.

Appellant requested an oral hearing before an Office hearing representative, which was held May 19, 1997. She submitted several reports from Dr. Nimlos.

In a decision dated August 27, 1997, the hearing representative remanded the case for further development. The hearing representative found that in terminating appellant's compensation in the decision dated June 1, 1993 the Office failed to provide appellant with a pretermination notice and deprived her of the opportunity to respond to the Office's findings. The hearing representative determined that because the Office prematurely terminated appellant's compensation benefits the issue of whether appellant sustained a recurrence was rendered moot.

On remand the Office determined that a conflict of medical opinion was created between Dr. Nimlos, appellant's treating physician, who indicated that she was permanently disabled and Dr. Haeck, an Office referral physician, who determined that appellant did not have residuals from her accepted bilateral carpal tunnel syndrome.²

To resolve the conflict appellant was referred to a referee physician, Dr. Richard G. McCollum, a Board-certified orthopedic surgeon.

In a medical report dated April 14, 1998, Dr. McCollum reviewed the records provided and performed a physical examination of appellant. He noted a history of appellant's work-related injury. Upon physical examination Dr. McCollum noted negative Tinel's sign on both sides; the Phalen's sign caused some tingling in the second and third digits on both sides; full range of motion of the forearm and wrist; pronation was 60 degrees; volar flexion was 70 degrees; dorsiflexion was 65 degrees; ulnar deviation was 40 degrees; radial deviation was 20

² The Office initially referred appellant to Dr. Donald Hubbard, a Board-certified orthopedic surgeon, to resolve the conflict of opinion in this case. He submitted a report dated February 26, 1998. The Office determined that Dr. Hubbard's report would be excluded from the file because appellant's authorized representative did not receive copies of the Office referral letters and did not have the opportunity to participate in the selection of Dr. Hubbard as the impartial medical examiner.

degrees; motor strength was normal; and there was no sign of atrophy. He indicated that there were findings inconsistent with any disease process including a negative Tinel's sign; pain with resistance against adduction of the fingers; and sensory deficit in appellant's forearm. Dr. McCollum noted that these symptoms were of unknown etiology. He noted abnormal electrodiagnostic studies prior to appellant's surgeries in 1992; however, there was no indication that these findings correlated to her current clinical condition, which was not entirely consistent with carpal tunnel syndrome. Dr. McCollum noted that there were no findings to suggest any need for further diagnostic or therapeutic measures. He indicated that appellant could perform her duties as a claims clerk as she did prior to December 1991.

In a letter dated May 7, 1998, the Office requested clarification from Dr. McCollum regarding the source of appellant's ongoing complaints and whether they were causally related to her work-related injury.

In a report dated May 19, 1998, Dr. McCollum noted that appellant's clinical condition did not match an anatomical diagnosis of carpal tunnel. He noted that appellant went through a period from 1991 to 1996 where her condition improved. Dr. McCollum noted that in 1996 appellant was typing 60,000 to 80,000 keystrokes a day while assisting her husband with his graduate thesis, which ultimately aggravated her carpal tunnel condition. He opined that appellant's current symptoms originated from the work she was performing in 1996 for her husband. Dr. McCollum indicated that appellant's symptoms from 1996 forward represented a newly developed condition due to the work she performed outside the workplace and not from the accepted work-related injury of 1991.

On June 2, 1998 the Office issued a notice of proposed termination of compensation on the grounds that Dr. McCollum's report dated May 19, 1998 established no continuing disability as a result of appellant's work-related condition of 1991.³

Appellant submitted two attending physicians' reports from Dr. Nimlos dated June 1 and June 2, 1998. He diagnosed appellant with carpal tunnel syndrome and indicated with a check mark "yes" that the condition is a result of the October 14, 1991 work-related injury. Dr. Nimlos noted appellant was unable to perform keyboard work or other sustained hand use. He noted permanent effects of weak grip, diminished sensation in the hands and inability to perform sustained hand tasks. Dr. Nimlos recommended permanent work restrictions and continued treatment for this condition.

By decision dated July 7, 1998, the Office terminated appellant's compensation benefits effective June 2, 1998 on the grounds the weight of the medical evidence established that she had no continuing disability resulting from her accepted employment-related injury.

³ Appellant was reemployed with the U.S. Department of Commerce from December 14, 1998 to January 21, 1999. On January 28, 1999 she filed a claim for compensation indicating that she was experiencing upper extremity problems causally related to her employment duties, Office file No. A14-342291. The Office accepted appellant's claim for temporary aggravation of bilateral carpal tunnel syndrome and mild bilateral forearm tendinitis, both conditions resolved. This claim is not before the Board at this time.

In a letter dated July 30, 1998, appellant requested a hearing before an Office hearing representative. The hearing was held on April 27, 1999. Appellant testified that she was first diagnosed with carpal tunnel syndrome while working as a clerk with the employing establishment. She stated that in 1996 she assisted her husband with the preparation of his Masters' thesis, which involved a considerable amount of keyboarding. Appellant indicated that this was the adverse activity, which led to the recurrence of the carpal tunnel syndrome in May 1996. She indicated that during this period of time she experienced an increase in her symptoms and she sought medical treatment. Appellant indicated that she never regained full use of her hands since the original work injury.

The Board finds that the Office met its burden of proof to terminate benefits effective June 2, 1998.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.⁴ After it has determined that an employee has a 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.⁵

In this case, the Office accepted appellant's claim for a bilateral carpal tunnel syndrome and authorized bilateral surgical releases. The Office reviewed the medical evidence and determined that a conflict existed in the medical evidence between appellant's attending physician, Dr. Nimlos, who disagreed with Dr. Haeck concerning whether appellant had any continuing work-related conditions. Consequently, the Office referred appellant to Dr. McCollum to resolve the conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁶

The Board finds that the opinion of Dr. McCollum is sufficiently well rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related condition has ceased.

Dr. McCollum reviewed appellant's history, reported findings and noted that appellant sustained a bilateral carpal tunnel syndrome in 1991. Upon physical examination he noted negative Tinel's sign on both sides; the Phalen's sign caused some tingling in the second and third digits on both sides; full range of motion of the forearm and wrist; motor strength was normal and there was no sign of atrophy. Dr. McCollum noted that appellant's clinical condition did not match an anatomical diagnosis of carpal tunnel at the time he examined her in 1998. He noted that appellant went through a period from 1991 to 1996 where her condition improved.

⁴ *Harold S. McGough*, 36 ECAB 332 (1984).

⁵ *Vivian L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁶ *Aubrey Belnavis*, 37 ECAB 206 (1985).

Dr. McCollum noted that in 1996 appellant was typing 60,000 to 80,000 keystrokes a day while assisting her husband with his thesis, which he determined aggravated her carpal tunnel condition. Dr. McCollum determined that appellant's symptoms from 1996 forward represented a newly developed condition due to the work she performed outside the workplace and not from the accepted work-related injury of 1991 and found no basis on which to attribute any continuing disability to appellant's employment injury. He concluded that appellant had no ongoing disability or condition due to her work-related condition. Dr. McCollum indicated that appellant could return to her preinjury position of 1991 as a claims clerk with no need for further diagnostic or therapeutic measures.

After issuance of the pretermination notice, appellant submitted two attending physicians reports from Dr. Nimlos dated June 1 and June 2, 1998, which indicated that appellant remained disabled from her work-related injury of 1991. However, his reports are similar to his prior reports and provide no new medical evidence or rationale in support of appellant's continued disability. These reports are, therefore, insufficient to overcome that of Dr. McCollum or to create a new medical conflict, as Dr. Nimlos was on one side of the conflict.⁷ Additionally, Dr. Nimlos indicated on the attending physicians report with a checkmark "yes" that appellant's condition was a result of the October 14, 1991 work-related injury. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁸ The Board finds that the Office properly terminated benefits based on Dr. McCollum's report.

After the Office properly terminated appellant's benefits the burden of proof shifted to appellant.⁹ While she offered testimony at trial, the issue was medical in nature and appellant did not submit relevant or probative medical evidence in support of her claim.

The Board finds that there is insufficient medical evidence to support continuing disability in this case. Dr. McCollum had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time wage-loss benefits were terminated he clearly opined that appellant had absolutely no reason for disability. His opinion is found to be probative evidence and reliable. The Board finds that Dr. McCollum's opinion is probative on the issue of appellant's ability to work.¹⁰ As the record contains no medical evidence to the contrary, the Board further finds that Dr. McCollum's

⁷ See *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Nimlos's report does not contain new findings or rationale upon which a new conflict might be based.

⁸ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁹ After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to the claimant. In order to prevail, the claimant must establish by the weight of reliable, probative and substantial evidence that he or she had an employment-related disability that continued after termination of compensation benefits; see *Howard Y. Miyashiro*, *supra* note 7.

¹⁰ See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (discussing the factors that bear on the probative value of medical opinions).

opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.

The decision of the Office of Workers' Compensation Programs dated August 12, 1999 is hereby affirmed.

Dated, Washington, DC
March 6, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member