

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGINIA RICHARD, claiming as executrix of the estate of
LIONEL F. RICHARD and U.S. POSTAL SERVICE,
POST OFFICE, Edison, NJ

*Docket No. 01-107; Submitted on the Record;
Issued March 8, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the employee sustained an upper extremity condition in the performance of duty; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

On April 10, 1986 the employee, then a 52-year-old distribution clerk, filed an occupational disease claim alleging that he sustained bilateral carpal tunnel syndrome due to sorting mail and performing other job tasks which required repetitive hand and wrist motion. The employee indicated that he first became aware of his condition in February 1986. By decision dated September 8, 1986, the Office denied the employee's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained employment-related carpal tunnel syndrome. In December 1988, the employee underwent a total resection of the left parietal parasagittal falx meningioma which was performed due to a nonwork-related condition.

In 1994 the employee retired from the employing establishment and on August 23, 1995 he filed another occupational disease claim alleging that he sustained bilateral carpal tunnel syndrome due to performing repetitive motion tasks at work.¹ By decision dated December 8, 1995, the Office denied the employee's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an employment-related upper extremity condition. By decision dated July 17, 1996, an Office hearing representative set aside the Office's December 8, 1995 decision. The Office hearing representative determined that the

¹ The employee described how he sorted mail for 8 to 10 hours per day. He indicated that he sorted mail into cases, placed mail into boxes and trays, loaded mail into cancellation machines, inserted trays into pouches; and carried mail trays weighing more than 15 pounds for distances of 25 to 100 feet. The employee indicated that he carried the trays 10 percent of his workday and that the other duties occupied the remainder of his day. He noted that he sustained a fractured wrist in 1992. The employee stated that he first became aware of his condition in March 1986.

submission of medical evidence from Dr. Alan F. Pertchik, an attending Board-certified neurologist, required further development of the medical evidence.

By letter dated November 1, 1996, the Office requested that the employee submit additional factual evidence and arrange for the submission of additional medical evidence, including copies of diagnostic testing and a clarification by Dr. Pertchik of his earlier reports.² In July 1997, the employee underwent a reoperative craniotomy with complete surgical excision of his recurrent falx meningioma. By decision dated June 1, 1998, the Office denied the employee's claim on the grounds that he did not meet his burden of proof to establish that he sustained an employment-related upper extremity condition.³ By decision dated and finalized March 5, 1999, an Office hearing representative set aside the Office's June 1, 1998 decision and remanded the case to the Office for further development of the medical evidence to include referral of the employee to an appropriate specialist for a second opinion examination.

On March 25, 1999 the employee passed away due to carcinoma of the brain. The employee's widow, appellant, continued to pursue the employee's claim that he had sustained an employment-related upper extremity condition. By decision dated July 16, 1999, the Office denied appellant's claim on the grounds that she did not meet her burden of proof to show that the employee sustained an employment-related upper extremity condition.⁴ Appellant submitted additional documents regarding the employee's brain condition. By decision dated March 15, 2000, an Office hearing representative affirmed the Office's July 16, 1999 decision. Appellant again submitted additional documents regarding the employee's brain condition. By decision dated July 5, 2000, the Office denied appellant's request for merit review.

The Board finds that the case is not in posture for decision regarding whether the employee sustained an upper extremity condition in the performance of duty.

An employee who claims benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of his or her claim.⁶ The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present

² The Office requested more information regarding the employee's brain condition and fractured wrist.

³ In response to the Office's November 1, 1996 letter, the employee submitted a statement in which he further described his work duties. He indicated that he fractured his wrist when he fell down stairs and that it was placed in a cast by Dr. Gregg Berkowitz, an attending Board-certified orthopedic surgeon. The employee also submitted a February 26, 1996 report regarding his brain condition and other documents concerning his upper extremity condition.

⁴ The Office indicated that the record did not contain sufficient evidence regarding the employee's nonwork-related conditions, including his brain condition and broken wrist, to determine whether his upper extremity condition was employment related.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ The Board notes that the record reflects that appellant is a duly authorized representative of the employee's estate for the purpose of filing an appeal with the Board on behalf of the deceased employee for review of the relevant Office decisions.

rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁷ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁸

In a report dated May 2, 1996, Dr. Pertchik, an attending Board-certified neurologist, noted that the employee had reported experiencing pain, numbness and weakness in his upper extremities.⁹ He diagnosed “right greater than left carpal tunnel syndrome with median neuropathies, secondary to work-related injuries.”¹⁰ In a report dated June 10, 1996, Dr. Pertchik stated, “[t]he very significant bilateral carpal tunnel syndrome of [the employee] is secondary to his job within a reasonable degree of medical certainty.” In a report dated January 28, 1999, Dr. Pertchik noted that the employee’s bilateral carpal tunnel syndrome was secondary to his work and stated that he was totally disabled due to this condition.

The Board notes that while none of the reports of the employee’s attending physicians are completely rationalized, they are consistent in indicating that the employee sustained an employment-related upper extremity condition and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant’s burden of proof to establish the claim on behalf of the employee, they raise an uncontroverted inference between the employee’s claimed condition and the accepted employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.¹¹

On remand, the Office should prepare a new statement of accepted facts to include a description of the employee’s work duties and his overall medical condition.¹² The Office should refer the case record, including the new statement of accepted facts, to an appropriate specialist for review and an opinion regarding whether the employee sustained an employment-related upper extremity condition.

⁷ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁸ *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

⁹ Dr. Pertchik stated that the employee reported that his upper extremity symptoms had begun approximately ten years prior due to “chronic sorting of mail at work.” Dr. Pertchik noted “[t]he nature of his work was that he continuously used his right wrist in sorting mail.”

¹⁰ Dr. Pertchik also detailed the employee’s cerebral condition and noted that he was status post total resection of the left parietal parasagittal falx meningioma which was performed in December 1988. He indicated that it was probable that the employee’s motor seizure disorder was secondary to this condition.

¹¹ *See Robert A. Redmond*, 40 ECAB 796, 801 (1989).

¹² This description should include information regarding the employee’s brain condition and his fractured wrist.

The March 15, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.¹³

Dated, Washington, DC
March 8, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

¹³ Given the Board's handling of the merit issue of the present case, it is not necessary for it to consider the nonmerit issue.