

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARRELL SMITH and U.S. POSTAL SERVICE,
RALEIGH STATION POST OFFICE, Memphis, TN

*Docket No. 01-1949; Submitted on the Record;
Issued May 1, 2002*

DECISION and ORDER

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

The issue is whether appellant established that he suffers from bilateral carpal tunnel syndrome as a result of his federal employment.

On June 23, 1997 appellant, then a 39-year-old temporary postal employee, filed a notice of occupational disease alleging that his carpal tunnel syndrome was caused by factors of his federal employment.¹ In a May 7, 1997 report, Dr. John P. Howser, a Board-certified neurological surgeon, diagnosed appellant with bilateral carpal tunnel syndrome and opined that it was due to the repetitive use of his hands in the workplace over the last five years. In a report dated July 18, 1997, Dr. Lloyd E. Robinson, a Board-certified family practitioner, opined that appellant did not suffer from carpal tunnel syndrome.

In a report dated September 12, 1997, Dr. Robinson indicated that electromyogram (EMG) nerve conduction studies performed were normal. However, Dr. Howser indicated in an October 14, 1997 letter that appellant's neurometer findings were abnormal, in his opinion, confirming the presence of carpal tunnel syndrome. Dr. Howser also noted that appellant still had numbness in both palms and decreased sensation in the fingers.

By decision dated November 4, 1997, the Office of Workers' Compensation Programs denied appellant's claim for carpal tunnel syndrome. Appellant requested an oral hearing, which was held on July 14, 1998.

¹ Appellant's supervisor indicated on the CA-1 form that appellant had been working in a limited-duty status since he was in a work-related motor vehicle accident on October 19, 1996. His claim was accepted for cervical strain.

In a report dated November 18, 1997, Dr. Howser indicated that appellant's neurometer had almost returned to normal on the left and was much improved on the right. He also acknowledged that the EMG performed on August 28, 1997 was normal. However, Dr. Howser stated:

"The patient has a carpal tunnel problem which will probably not require surgery because the EMG is normal. The neurometer, however, is definitely abnormal and his exam[ination] is abnormal including decreased sensation over both palms and fingers and has been consistent with carpal tunnel problems all along. He does not have a positive Phalen's or Tinel's sign but these are late signs and are not always present in carpal tunnel syndrome."

In a letter dated August 11, 1998, Dr. Howser stated:

"[Appellant's] job duties consisted of casing mail and delivering mail. He also did a lot of fingering of mail. He may have handled as many as one thousand pieces of letters per day. When his hands begin to cause trouble, he thought that it was due to arthritis. Finally, I made the diagnosis of carpal tunnel syndrome with my examination and tests. In my opinion, these carpal tunnel problems are definitely due to repetitive use of his hands in the workplace."

By decision dated September 24, 1998, the hearing representative remanded the case to the Office for further development of the medical evidence. The Office referred appellant to Dr. James Galyon, a Board-certified orthopedic surgeon, for a second opinion examination.

Dr. Galyon examined appellant on November 13, 1998 and the medical evidence of record and opined on November 25, 1998 that appellant did not suffer from carpal tunnel syndrome. He stated:

"In summary this man was at work in a [p]ostal vehicle when he was struck from the rear on October 19, 1996. He has had multiple complaints with back, legs, arms, hands and neck. His tests are all essentially normal at this time. I believe he had a cervical strain and a lumbar strain. He may or may not have at one time felt symptoms of median nerve irritation in his wrists. At the present time I find no physical evidence of carpal tunnel syndrome and he has a normal EMG/NCS, which is recorded in Dr. Robinson's notes of September 12, 1997, as having been read as normal nerve conduction studies."

By decision dated January 27, 1999, the Office denied appellant's claim. Appellant requested reconsideration on April 8, 1999 and submitted an April 5, 1999 report from Dr. Howser. By decision dated May 21, 1999, the Office denied appellant's request for modification of the previous decision.

Appellant requested reconsideration on January 11, 2000 and submitted copies of documents from the Social Security Administration documenting the acceptance of his claim for disability benefits. Appellant noted that Dr. Howard Marker, a physician for the Social Security Administration, examined appellant on August 13, 1998 and diagnosed bilateral carpal tunnel syndrome.

By decision dated June 7, 2000, the Office denied appellant's request for modification of the previous decision. By letter dated March 27, 2001, appellant requested reconsideration. In support of his request, he submitted an August 13, 1998 report from Dr. Marker, a neurometer report dated November 10, 1998 and copies of Dr. Howser's August 11, 1998 and Dr. Galyon's November 25, 1998 letters. The only new medical evidence submitted was the report from Dr. Marker.

By decision dated May 10, 2001, the Office denied modification of the previous decision.

The Board finds that this case is not in posture for decision because of a conflict in the medical evidence on whether appellant suffers from bilateral carpal tunnel syndrome.

Section 8123 of the Federal Employees' Compensation Act² provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician to resolve the conflict.³ The Board has interpreted the statute to require more than a simple disagreement between two physicians. To constitute a true conflict of medical opinion, the opposing physicians' reports must be of virtually equal weight and rationale.⁴

In this case, the Board finds a conflict created by the opinion of appellant's attending physician, Dr. Howser, who opined that appellant suffers from carpal tunnel syndrome as evidenced by the findings of the neurometer test and the decreased sensation in appellant's palms and fingers and the second opinion physician, Dr. Galyon, who found that there was no physical evidence of carpal tunnel syndrome.

On remand the Office should refer appellant, the case record and the statement of accepted facts to an appropriate medical specialist for an impartial medical evaluation pursuant to section 8123(a).⁵ After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

² 5 U.S.C. §§ 8101-8193 (1974); 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321.

³ *Shirley L. Steib*, 46 ECAB 309, 316 (1994).

⁴ *Adrienne L. Wintrip*, 38 ECAB 373, 379 (1987).

⁵ 20 C.F.R. § 10.321; *Debra S. Judkins*, 41 ECAB 616, 620 (1990).

The May 10, 2001 decision of the Office of Workers' Compensation Programs is hereby reversed and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, DC
May 1, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member