

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE S. JONES and U.S. POSTAL SERVICE,
POST OFFICE, Akron, OH

*Docket No. 01-2267; Submitted on the Record;
Issued September 24, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained recurrences of disability on November 2, 1999 and January 10, 2000 due to her May 3, 1995 employment injury.

On May 23, 1995 appellant, then a 48-year-old rural carrier, filed a claim alleging that she developed bilateral carpal tunnel syndrome as a result of her employment duties. The Office of Workers' Compensation Programs accepted that she sustained bilateral carpal tunnel syndrome and authorized two left carpal tunnel releases and two right carpal tunnel releases. Appellant became aware of her condition on May 3, 1995. She did not stop work but returned to a limited-duty position and was released to a full-time modified position on September 27, 1999. On November 3, 1999 appellant stopped work and did not return.

Accompanying appellant's claim were medical records from Dr. Devi P. Tantri, a Board-certified plastic surgeon, dated May 23 to July 6, 1995. Dr. Tantri noted a history of appellant's injury and diagnosed her with bilateral carpal tunnel syndrome. In an operative report dated May 30, 1995, he noted performing a decompression of the left median nerve. On June 21, 1995 Dr. Tantri performed a decompression of the right median nerve.

Thereafter, appellant submitted operative reports dated December 11, 1995 and January 15, 1996; and several treatment notes from Dr. James P. Klejka, Board-certified in physical medicine and rehabilitation, dated July 15, 1996 to January 5, 1998. On December 11, 1995 Dr. Tantri performed a left carpal tunnel release with vascularized fat flap. He diagnosed appellant with recurrent left carpal tunnel syndrome. In an operative report dated December 11, 1995, Dr. Tantri noted performing a right carpal tunnel release with reconstruction transverse carpal ligament and hypothenar fat flap. He diagnosed appellant with recurrent right carpal tunnel syndrome. Dr. Klejka noted that appellant underwent an electromyogram (EMG) which revealed a mild slow and neurapraxic block around the left elbow. He diagnosed appellant with mild left ulnar neuropathy at the elbow with neurapraxia and demyelination of the motor fascicles to the first dorsal interosseous; and no evidence of neuropathy at the wrist bilaterally;

no evidence of ulnar neuropathy at the elbow on the right; with median nerve function improving.

By letter dated September 24, 1997, the employing establishment offered appellant a limited-duty position as a filing clerk which complied with the medical restrictions set forth by her treating physicians. She returned to work on limited duty, eight hours per day.

In a decision dated April 6, 1998, the Office determined that appellant's position as filing clerk fairly and reasonably represented her wage-earning capacity. The Office noted that appellant had been employed in this position since September 24, 1997. The Office further noted that appellant did not experience loss of wage-earning capacity as a result of returning to duty on September 24, 1997.

Appellant submitted a work restriction form prepared by Dr. Klejka dated April 6, 1998 indicating a lifting restriction of 20 to 50 pounds for four hours per day; no continuous grasping; no pushing/pulling; no fine manipulation; and no casing mail. He noted that none of these activities should be performed for more than 10 minutes continuously.

By letter dated April 27, 1998, the employing establishment offered appellant a limited-duty position which complied with the medical restrictions set forth by her treating physician, Dr. Klejka in his report dated April 6, 1998. Appellant returned to work on limited duty, eight hours per day.

On September 14, 1998 appellant filed a claim for a schedule award. In a decision dated December 17, 1998, the Office determined that appellant sustained a 27 percent permanent impairment of the right arm and a 25 percent permanent impairment of the left arm.

On April 13, 1999 appellant filed a Form CA-2a, notice of recurrence of disability. She indicated a recurrence on April 13, 1999, noting that she experienced persistent pain in her hands and arms since the employment-related injury of May 23, 1995. Appellant stopped work on May 14, 1999.

In a decision dated June 1, 1999, the Office accepted appellant's claim for a recurrence of disability on April 13, 1999 and paid compensation.

Appellant continued to submit medical records from Dr. Klejka dated August 2 to September 29, 1999; and a medical report from Dr. Jerome B. Yokiell dated October 11, 1999. Dr. Klejka's August 2, 1999 note indicated that appellant was working full time but was experiencing excruciating pain. He diagnosed appellant with carpal tunnel syndrome bilaterally with continued neuropathic pain and noted that there was nothing more that he could do to help her. Dr. Klejka referred appellant to another pain clinic on August 23, 1999 indicating that he was unable to bring appellant's pain under adequate control. His note of September 2, 1999 indicated that appellant continued to suffer pain in both arms due to carpal tunnel syndrome. Dr. Klejka noted that appellant continued to work light duty 40 hours per week since 1997. His note of September 29, 1999 indicated appellant's continued complaints of pain in both arms which was made worse by working. Dr. Klejka diagnosed appellant with neuropathic pain secondary to bilateral carpal tunnel syndrome with cognitive side effects due to her medication. He advised appellant not to drive because of the cognitive side effects of her medication made

her a danger to herself and others. Dr. Yokiell's report of October 11, 1999 noted a history of appellant's carpal tunnel syndrome diagnosing her with neuropathic pain with a sympathetic component. He recommended a therapeutic left bretylium IV perfusion block for relief of the sympathetic and neuropathic pain.

On November 5, 1999 appellant filed a Form CA-2a, notice of recurrence of disability. She indicated a recurrence on November 2, 1999, noting that she experienced persistent pain in her hands and arms since the employment-related injury of May 23, 1995. Appellant stopped work on November 3, 1999 and did not return.

Appellant submitted various medical records from Dr. Klejka dated November 29 to December 30, 1999. Dr. Klejka's November 29, 1999 report noted appellant's continued complaints of pain in her arms. He indicated that appellant had not worked since early November and the inactivity decreased her pain symptoms. Dr. Klejka noted that appellant still experienced side effects from her medication including falling asleep when inactive. He diagnosed appellant with neuropathic pain secondary to bilateral carpal tunnel syndrome. Dr. Klejka's December 20, 1999 treatment note indicated appellant's complaints of pain in her wrists and forearms which was diminished with inactivity. He noted that appellant continued to experience side effects of her medication and was currently not working. Dr. Klejka's December 30, 1999 attending physicians report diagnosed appellant with neuropathic pain from carpal tunnel syndrome. He indicated with a checkmark "yes" that this condition was caused or aggravated by an employment activity. Dr. Klejka indicated that appellant was totally disabled from October 29, 1999 forward. He noted that appellant was unable to drive.

In a decision dated December 15, 1999, the Office accepted appellant's claim for a recurrence of disability on November 2, 1999 and paid appropriate compensation.

In a decision dated January 6, 2000, the Office rescinded the decision dated December 15, 1999 on the grounds that the evidence of file failed to establish that the claimed recurrent condition was causally related to the accepted work-related condition.

Appellant submitted various records from Dr. Yokiell dated January 6 to February 17, 2000 and a report from Dr. Klejka dated January 10, 2000. Dr. Yokiell's report of January 6, 2000 diagnosed appellant with advanced carpal tunnel syndrome. His notes of January 13 and February 17, 2000 indicated that appellant was being weaned off her medications because she was experiencing disabling side effects. Dr. Yokiell noted that appellant had been unable to drive because of the medication and, therefore, was unable to work. He indicated that appellant remained unable to work and would require one month to wean her off the medications, with the hope that her cognition would improve and she would be able to return to work. Dr. Yokiell noted that he would like to keep appellant off work for one month. Dr. Klejka's note of January 10, 2000 noted appellant's continued pain in her arms. He indicated that appellant was not working and continued to have decreased alertness and concentration making it unsafe for her to drive. Dr. Klejka noted that appellant was unable to work because of the cognitive side effects as a result of her pain killers she was taking for her carpal tunnel syndrome. He noted appellant's work restrictions were no driving due to cognitive changes from her opiates; lifting of no more than 20 pounds maximally and 10 pounds occasionally; no continuous grasping; no pushing, pulling or fine manipulation; no casing; and no repetitive continuous use of her hands.

Dr. Klejka noted that due to appellant's side effects from the opiates and lack of improvement in her pain he recommended weaning her off the medication.

On January 19, 2000 appellant filed a Form CA-2a, notice of recurrence of disability. She indicated a recurrence on January 10, 2000, noting that she experienced persistent pain in her hands and arms since the employment-related injury of May 3, 1995.

By letter dated March 3, 2000, the Office requested that Dr. Yokiell comment on appellant's disability at this time and indicate whether appellant would be able to work under restrictions.

In a decision dated May 4, 2000, the Office denied appellant's claim for a 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 January 10, 2000 which was causally related to the accepted employment injury sustained May 3, 1995.¹

In a letter dated May 13, 2000, appellant requested a hearing before an Office hearing representative. The hearing was held on February 1, 2001. Appellant testified that she stopped work in early November 1999 due to the lapse of memory she sustained while taking her medications. She noted her pain had gotten worse. Appellant stated that in September 1999 her physician recommended that she not drive, however, she continued to work until November 1999 and would either drive her self or have a friend drive her. She submitted several reports from Dr. Yokiell dated September 8, 2000 to February 23, 2001. Dr. Yokiell's report of September 8, 2000 noted that appellant appeared to be doing well with minimal bilateral hand and wrist pain. He diagnosed her with bilateral carpal tunnel syndrome. Dr. Yokiell's November 3, 2000 report noted appellant's complaints of left upper extremity pain. He diagnosed her with bilateral carpal tunnel syndrome with symptoms mostly on the left side. Dr. Yokiell's note of December 29, 2000 indicated that appellant underwent a lumbar epidural steroid injection with minimal results. He diagnosed her with a lumbar strain. Dr. Yokiell's note of January 22, 2001 indicated appellant presented with bilateral hand pain. His February 23, 2001 report noted appellant's continued bilateral upper extremity pain. Dr. Yokiell indicated that appellant had been unable to work, secondary to pain and inability to drive due to her medications.

By decision dated July 23, 2001, the hearing representative affirmed the decision of the Office dated January 6, 2000.

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

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she 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 show that she cannot perform such light duty. As part of this burden, the employee must

¹ The record reflects that appellant was offered a disability retirement effective February 6, 2000.

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 requirements.²

Appellant has submitted several reports from Drs. Klejka and Yokiell which indicated that the prescribed medications for appellant's accepted work-related injuries caused disabling cognitive side effects of decreased alertness and concentration making her unable to drive to work in November 1999 and January 2000 which support her contention that she experienced recurrences on these dates. Specifically, appellant submitted a report dated September 29, 1999 from Dr. Klejka which diagnosed her with neuropathic pain secondary to bilateral carpal tunnel syndrome with cognitive side effects due to her medication. He advised appellant not to drive because of the cognitive side effects of her medication made her a danger to herself and others. Dr. Klejka's November 29, 1999 report noted that appellant had not worked since early November as a result of the side effects from her medication. His December 20, 1999 treatment note indicated appellant complaints of pain in her wrists and forearms which was diminished with inactivity. Dr. Klejka noted that appellant continued to experience the side effects of her medication and was currently not working. His report of January 10, 2000 indicated appellant's continued pain in her arms. Dr. Klejka indicated that appellant was not working and continued to have decreased alertness and concentration making it unsafe for her to drive. He noted that appellant was unable to work because of the cognitive side effects of the pain killers she was taking for her work-related condition of carpal tunnel syndrome. Dr. Klejka indicated that appellant was not working and continued to have decreased alertness and concentration making it unsafe for her to drive. The most contemporaneous evidence supports appellant's claim that she sustained recurrences of disability in November 1999 and January 2000. The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence.³

Other reports from Dr. Yokiell dated January 6, 2000 indicated that appellant experienced no relief from pain in her hands and diagnosed her with advanced carpal tunnel syndrome. His notes of January 13 and February 17, 2000 indicated that appellant was being weaned off an opiate called duragesic because she was experiencing disabling side effects of the medication. Dr. Yokiell noted that appellant had been unable to drive because of the medication and therefore, unable to work. He indicated that appellant remained unable to work and would require one month to wean her off the medications, with the hope that her cognition would improve and she would be able to return to work. Dr. Yokiell noted that he would like to keep appellant off work for one month. His February 23, 2001 report noted that appellant had been unable to work secondary to pain and inability to drive due to pain. These reports are also supportive of appellant's recurrence claims.⁴

The record reflects that both Drs. Klejka and Yokiell prescribed opiates to appellant for the treatment of her May 3, 1995 work-related injury. Moreover, the reports from Dr. Klejka dated September 9, 1999 to January 10, 2000 and Dr. Yokiell dated October 11, 1999 to

² *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *See Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

⁴ *Id.*

February 17, 2000 explain that the medications caused disabling cognitive side effects of decreased alertness and concentration making her unable to drive to work.

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁵ This holds true in recurrence claims as well as in initial traumatic and occupational claims. In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to completely discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that she sustained a recurrence of total disability on November 2, 1999 and January 10, 2000 or experienced residuals which required her to leave his federal employment, causally related to her May 3, 1995 accepted condition of bilateral carpal tunnel syndrome, they constitute substantial evidence in support of appellant's claim and raise a substantive inference of causal relationship between her allegedly disabling complaints and periods of disability and her original traumatic injuries, that is sufficient to require further development of the case record by the Office.⁶ Additionally, there is no probative opposing medical evidence in the record.

⁵ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *see also Cheryl A. Monnell*, 40 ECAB 545 (1989); *Bobby W. Hornbuckle*, 38 ECAB 626 (1987) (if medical evidence establishes that residuals of an employment-related impairment are such that they prevent an employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity).

Consequently, the decision of the Office of Workers' Compensation Programs dated July 23, 2001 is hereby set aside and is remanded for further development on the recurrence aspect of appellant's claim.

Dated, Washington, DC
September 24, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member