

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MUMTAZ M. KHAN and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Loma Linda, CA

*Docket No. 03-160; Submitted on the Record;
Issued April 22, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained a left arm injury as a consequence of her accepted conditions of the right arm or due to the limited duty she performed at the employing establishment from May 3, 1995 to April 7, 1997.

This case has previously been before the Board. The Board's decision on the prior appeal, dated March 3, 2000, sets forth the history of the case and is incorporated by reference.¹ The Board found that the evidence did not establish that appellant sustained a recurrence of disability on April 8 or beginning April 11, 1997 related to her accepted conditions of the right arm. The Board further found that the case was not in posture for a decision on the issue of whether appellant sustained a left arm injury as a consequence of her accepted conditions of the right arm. The Board found that the reports of two Board-certified orthopedic surgeons, appellant's attending physician, Dr. V. Prabhu Dhalla and Dr. Russell Compton, one of the Office of Workers' Compensation Programs referral physicians provided sufficient support for appellant's claim of a left arm injury to require further development of the evidence. The Board remanded the case to the Office for preparation of "a statement of accepted facts describing in detail the duties appellant performed from May 3 to July 21, 1995, from May 14 to September 2, 1996 and from September 3, 1996 until April 9, 1997. Appellant and the statement of accepted facts should be referred to an appropriate medical specialist for a reasoned medical opinion of whether appellant's left arm conditions are causally related to appellant's employment duties during these periods and, if so, the specialist should provide an opinion of whether these left arm conditions disabled him from work beginning April 8, 1997."

On April 13, 2000 the Office prepared a supplement to its April 16, 1997 statement of accepted facts, in which it described appellant's limited duty at the employing establishment for the relevant periods with details on how often and how long appellant performed each work duty.

¹ Docket No. 98-1521.

These descriptions were based on comments from employing establishment supervisors on appellant's description of the limited duties she performed.

On April 14, 2000 the Office referred appellant, her medical records and the April 16, 1997 statement of accepted facts and April 13, 2000 supplement to Dr. J. Pierce Conaty, a Board-certified orthopedic surgeon, for an opinion whether her left arm condition was related to her limited duty at the employing establishment.

In a report dated May 9, 2000, Dr. Conaty reviewed the statement of accepted facts and the prior medical reports and set forth appellant's history as provided by her, her complaints and her findings on physical examination. With regard to appellant's left arm, Dr. Conaty diagnosed "subjective carpal tunnel complaints referable to the left wrist, with questionable objective findings and negative electro diagnostic study." Dr. Conaty concluded:

"[Appellant] has indicated that the left upper extremity problem is the result of the previous right upper extremity resulting in repetitive overuse to the left upper extremity. The statement of accepted facts, documents that [she] did not possess computer skills and did not have computer access other than as a staff nurse, therefore, the use of the computer was intermittent, due to the low level of activity and her lack of computer skills. On this basis, it is difficult to accept that she was pressed into an overuse syndrome referable to the left upper extremity.

"Additionally, I also question the validity of the Tinel's, Phalen's and Finkelstein's testing on the left. I think the claimant is knowledgeable and well aware of the appropriateness of these positive findings. The EMG tests regarding the left upper extremity are negative and I feel that she has symptomatic magnification of her subjective complaints."

On May 30, 2000 the Office issued appellant a schedule award for a 28 percent permanent loss of use of her right arm.

In response to an Office request for clarification, primarily about appellant's right arm residuals, of his May 9, 2000 report, Dr. Conaty stated in a June 20, 2000 report, that he considered a 28 percent loss of use of appellant's right arm appropriate, but that he "did not believe that the left upper extremity resulted from her work or as an aggravation of the problems referable to the right upper extremity."

By decision dated July 11, 2000, the Office found that the medical evidence failed to establish that appellant sustained an injury to her left arm either by direct cause or by aggravation due to her accepted right arm condition.

By letter dated June 20, 2001, appellant requested reconsideration and submitted additional medical evidence. A March 29, 2001 nerve conduction study was reported to be normal for all the right arm nerves and muscles tested. In a report dated June 12, 2001, Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, stated that he had reviewed the Office's April 16, 1997 statement of accepted facts and the April 13, 2000 supplement, Dr. Conaty's reports, the Office's July 11, 2000 decision and the report of Dr. Compton. After describing appellant's findings on examination, Dr. Tauber diagnosed, with regard to appellant's

left arm, carpal tunnel syndrome, de Quervain's disease and lateral epicondylitis. He stated that appellant "continues to have pain, numbness and tingling in both hands. She has undergone electrical studies confirming the presence of bilateral carpal tunnel syndrome. Clinically, appellant does have residual bilateral carpal tunnel syndrome and bilateral de Quervain's disease." Dr. Tauber stated that appellant had "left upper extremity findings which are, in fact, a result of the impaired usage of her right upper extremity requiring her to use her left upper extremity in a greater fashion. In addition, appellant carried out extensive activities with her left upper extremity in the course of her employment at the employing establishment." Dr. Tauber then accused Dr. Conaty of contradicting himself on a number of occasions and of being biased against appellant "given that he wishes to ignore her findings on examination by multiple examiners."

By decision dated September 21, 2001, the Office found that the additional evidence was insufficient to warrant modification of its prior decision. The Office reissued this decision on August 9, 2002 under a different file number.

The Board finds that the evidence does not establish that appellant sustained an injury to her left arm as a consequence of her accepted right arm conditions or due to the limited duty she performed at the employing establishment from May 3, 1995 to April 7, 1997.

As ordered by the Board on the prior appeal, the Office prepared a statement of accepted facts describing in detail the duties appellant performed from May 3 to July 21, 1995, from May 14 to September 2, 1996 and from September 3, 1996 until April 9, 1997. This statement of accepted facts, including the April 13, 2000 supplement, was sent to appellant's attorney on April 30, 2001 and no objections to its accuracy was raised by the attorney in his June 20, 2001 request for reconsideration. The statement of accepted facts was consistent with the detailed descriptions of appellant's limited duties provided by her supervisors and also with the less detailed description provided by appellant.

Dr. Conaty, the Board-certified orthopedic surgeon to whom the Office referred the updated statement of accepted facts and appellant's medical records, concluded that appellant's left arm condition was in no way related to her right arm condition or to her limited duties at the employing establishment. He based this conclusion on her low level of activity at work and also opined that appellant had "symptomatic magnification of her subjective complaints."

On reconsideration, appellant submitted a report from Dr. Tauber, a Board-certified orthopedic surgeon, concluding that appellant's left-arm findings were "a result of the impaired usage of her right upper extremity requiring her to use her left upper extremity in a greater fashion." Dr. Tauber, however, did not describe the use of appellant's left arm; specifically what she did with that arm that may have caused the left arm conditions he diagnosed. Dr. Tauber also stated that appellant "carried out extensive activities with her left upper extremity in the course of her employment," which is contrary to the April 13, 2000 supplement to the statement of accepted facts, which indicated appellant's employment activities after May 3, 1995 were not extensive.

Dr. Tauber repeatedly stated that appellant had "positive electrical studies," but did not reconcile this statement with the December 16, 1996 nerve conduction study, which he

acknowledged reviewing, that was reported to be normal “with no evidence to suggest compression at the elbow or wrist” and which, according to the doctor who performed it, “rules out any entrapment as the cause of [appellant’s] symptoms.” This testing was done 12 days after and 14 days before examinations by appellant’s attending physician, both of which reported a complaint of tingling of all the fingers of the left hand and positive Tinel’s, Phalen’s and carpal compression tests.

The only nerve conduction study that indicated any left arm condition -- mild carpal tunnel syndrome -- was done on October 7, 1997, 10 months after the negative study and 6 months after appellant stopped work. Although Dr. Conaty did not address this study, this does not detract from his conclusion that appellant’s employment activities on limited duty were not sufficient to cause a left arm condition. Moreover, the fact that the Office shares in responsibility of development of the evidence, as it did by referring the case to Dr. Conaty, does not shift the burden of proof to the Office to disprove a causal relationship between appellant’s condition for which compensation is claimed and her employment.² Appellant continued to bear the burden of proof and did not meet her burden because there is no supporting rationalized medical evidence of causal relation of her left arm condition based on a complete and accurate history.³ Appellant’s attending physician, Dr. Dhalla attributed her condition to cumulative trauma to both her upper extremities in a June 18, 1997 report and to this factor and to overuse secondary to her right arm problems in a June 24, 1998 report. None of Dr. Dhalla’s reports contain a description of appellant’s limited duties that is consistent with the Office’s statement of accepted facts, nor do they provide any rationale. Similarly, the May 14, 1997 report of Dr. Compton does not provide any rationale for the conclusion that appellant’s diagnosed conditions, which included lateral epicondylitis of both elbows but did not include left carpal tunnel syndrome, were “medically connected to the work injury by direct cause.” Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee’s burden of proof.⁴

² *Charles J. Jenkins*, 40 ECAB 362 (1988).

³ *See Froilan Negron Marrero*, 33 ECAB 796 (1982) for a discussion of appellant’s burden of proof.

⁴ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

The August 9, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 22, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member