

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEANETTE BARTELS and DEPARTMENT OF LABOR, EMPLOYMENT
STANDARDS ADMINISTRATION, San Francisco, CA

*Docket No. 03-240; Submitted on the Record;
Issued April 11, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's entitlement to compensation on the grounds that she had no further disability due to her accepted employment injury; and (2) whether appellant has established that she had any continuing disability after September 2, 2002.

On August 8, 2001 appellant, then a 48-year-old secretary, filed an occupational disease claim alleging that she sustained an aggravation of preexisting carpal tunnel syndrome due to factors of her federal employment.

In a decision dated December 12, 2001, the Office denied appellant's claim on the grounds that she did not established an injury as alleged.

On January 26, 2002 appellant requested reconsideration of her claim.

By decision dated February 25, 2002, the Office vacated its December 12, 2001 decision and accepted appellant's claim for an aggravation of bilateral carpal tunnel syndrome. The Office further authorized bilateral carpal tunnel releases. Appellant underwent a right carpal tunnel release on April 30, 2002 and a left carpal tunnel release on July 12, 2002. The Office paid appellant compensation for temporary total disability beginning April 30, 2002.

The record indicates that appellant resigned from employment effective May 17, 2002.

In a decision dated September 3, 2002, the Office terminated appellant's entitlement to compensation on the grounds that she had no further disability due to her accepted employment injury. The Office authorized continuing medical treatment for appellant's employment injury.

By letter dated September 9, 2002, appellant requested reconsideration of her claim. In a decision dated October 8, 2002, the Office denied modification of its prior decision.

The Board finds that the Office met its burden of proof to terminate appellant's entitlement to compensation effective September 2, 2002 on the grounds that she had no further disability due to her accepted employment injury.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. The Office may not terminate or modify compensation without establishing that the disabling condition ceased or that it was no longer related to the employment.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²

The Office relied upon on an August 6, 2002 office visit note and accompanying progress report from Dr. Kanwaljit S. Gill, a Board-certified orthopedic surgeon and appellant's attending physician, in finding that she had no further disability causally related to her accepted employment injury. In the office visit note dated August 6, 2002, Dr. Gill found that appellant was "doing reasonably well" following her surgeries. On examination, he noted findings of tenderness of the left wrist. Dr. Gill related:

"Her range of motion is almost full and she has decreased sensation in the radial three-digits. In the right hand she still has some pillar tenderness. The wound is well healed and she still has some decreased sensation in the fingertips."

Dr. Gill noted that he had "kept [appellant] on limited duty until September 2, 2002."

In a progress report of the same date, Dr. Gill listed his findings on examination and found that appellant could return to modified employment on August 6, 2002 with restrictions on lifting over 10 pounds, climbing, reaching above the shoulders or performing repetitive hand movements. He opined that appellant could resume her regular employment on September 2, 2002 with no restrictions.³

As appellant's attending physician, Dr. Gill had a thorough knowledge of appellant's condition. He performed appellant's bilateral carpal tunnel releases and examined her numerous times. Dr. Gill's opinion is, therefore, probative on the issue of whether appellant could perform her usual employment beginning September 2, 2002 and is sufficient to justify the Office's termination of benefits.⁴

¹ *David W. Green*, 43 ECAB 883 (1992).

² *See Del K. Rykert*, 40 ECAB 284 (1988).

³ In a work restriction evaluation dated August 13, 2002, a physician found that appellant could work for 8 hours per day sitting but could not reach above her shoulder, climb, perform repetitive wrist or elbow movements, or push, pull or lift over 10 pounds. It appears that these are the restrictions provided by Dr. Gill regarding appellant's work restrictions prior to September 2, 2002.

⁴ The Board notes that, as appellant received compensation for her employment injury for less than one year, the Office was not obligated to provide pretermination notice. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.6(a) (March 1997).

The Board further finds that appellant has failed to establish that she had any continuing disability after September 2, 2002.

Given that the Board has found that the Office properly relied upon the opinion of Dr. Gill, appellant's attending physician, in terminating compensation, the burden of proof shifts to appellant to establish that she remains entitled to compensation after that date.⁵ To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁶

In support of her request for reconsideration, appellant argued that Dr. Gill instructed her on September 3, 2002 to remain on limited duty until October 2, 2002 because of increased pain in her left hand. She attributed her increase in pain to "a little accident where I tripped and [] used my left hand to support my weight. I felt much pain putting pressure on my palm and reinjured it."

In a treatment note dated September 3, 2002, Dr. Gill found that appellant's right hand was gradually improving. He stated:

"As far as her left hand is concerned, she still has numbness in the radial digits and states she was making some progress. However, a few days ago she apparently fell and used her left hand to steady herself and aggravated the left hand with more pain in the wrist and hand."

Dr. Gill concluded:

"[Appellant] is doing reasonably well. However, she appears to have aggravated and slow[ed] down her progress on the left hand after this fall. I have recommended the use of splint as necessary and kept her on modified duty until October 1, 2002."

In an accompanying visit verification dated September 3, 2002, Dr. Gill found that appellant could work with restrictions from September to October 1, 2002 and work without restrictions October 1, 2002. In his reports, he did not specifically attribute appellant's work restrictions to her accepted employment injury, and thus his opinion is insufficient to meet her burden of proof. Instead, Dr. Gill appears to attribute appellant's continuing work restrictions to an intervening injury sustained when she used her left hand to prevent a fall. Appellant's injury when she tripped and injured her left hand constitutes an intervening nonindustrial cause of her

⁵ *George Servetas*, 43 ECAB 424 (1992).

⁶ *John M. Tornello*, 35 ECAB 234 (1983).

claimed disability beginning September 3, 2002.⁷ She, consequently, has not met her burden of proof to establish any continuing employment-related disability.

The decisions of the Office of Workers' Compensation Programs dated October 8 and September 3, 2002 are affirmed.

Dated, Washington, DC
April 11, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁷ It is a well-accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause. *Carlos A. Marrero*, 50 ECAB 117 (1998). In this case, appellant has not alleged that her employment injury caused or contributed to her fall and resulting reinjury of her left hand.