

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PETER CLIFFORD *and* SOCIAL SECURITY ADMINISTRATION,
Augusta, ME

Docket No. 01-2228; Oral Argument Held July 10, 2003;
Issued August 25, 2003

Appearances: *Peter Clifford, pro se; Silvia J. Dominguez, Esq.,*
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant had any continuing disability after December 9, 1995, causally related to the accepted temporary aggravation of his underlying motor neuron disease.

On June 27, 1995 appellant, then a 45-year-old social security representative, filed a notice of occupational disease alleging that beginning January 1, 1995, his job duties as a computer terminal operator caused him periodic numbness in his right and left hands. Appellant stated that he started experiencing loss of use of his left hand in the mid 1980's and that in 1989 he underwent surgery to regain partial use of his left thumb, but that his left hand essentially became a "claw." In 1994 appellant's duties changed to a full-time desk position, which involved frequent keying and data entry on a computer with his right hand. He claimed that beginning January 1995 he began to have pain and numbness in the right hand due to constant overuse.¹ Appellant worked until August 1995 and in December 1995 was separated from the federal government.

In a report dated September 3, 1997, Dr. Bruce Trembly a Board-certified neurological surgeon, indicated that for the past 12 years appellant had increasing disability involving his left hand and more recently his right hand. Dr. Trembly stated that nerve conduction studies showed that appellant had essentially no median nerve function in the left hand and that median and ulnar nerve motor studies of the right hand showed a 30 to 50 percent decrease in amplitude compared to a study from 1995. He indicated that appellant was unable to use a keyboard with his right hand or write more than one-half page by hand due to fatigue, weakness and pain. He opined

¹ Appellant also noted that he had lower back pain, depression, headaches, peripheral neuropathy and carpal tunnel syndrome due to his federal employment, but indicated later that he wished to narrow his claim to include only the hand and arm conditions.

that the prolonged use of a keyboard all day at work for several years most likely resulted in overuse of the right hand and increased the rate of deterioration in right hand function.

In a report dated February 3, 1998, Dr. John Boothby, a second opinion physician and Board-certified neurologist, discussed his findings upon examination. He stated:

“[Appellant] has a well-documented history of anterior horn cell, or motor neuron, disease with his symptoms first beginning in the early 1980’s. He has been seen by one of the world’s experts on this type of degenerative neurological disorder, Dr. Walter Bradley. The electrical studies have shown denervation changes in both hands, more on the left, consistent with anterior horn cell disease. He has marked weakness with very little use for his left hand and is developing early symptoms in his right hand at this time. The right hand fatigues quite easily; for instance, such as after writing a single sheet of paper. I feel that he is not able to work in the capacity that he did before, as a computer data entry person.

“Motor neuron disease of this type is a degenerative neurological disorder affecting the spinal cord (and perhaps the brain), causing a drop-out of anterior horn cells in the spinal cord and perhaps motor neurons in the brain. [Appellant] has no symptoms related to the latter. Although I do not think that his work was the primary cause of his symptoms, I do think that fatigue at the keyboard could aggravate his symptoms and make them temporarily worse. It is conceivable that over fatiguing of his arm and hand muscles for a long period of time might have had some lasting deleterious effect, but I think that this is speculative. His prognosis for his motor neuron disease is not good, in that he will most likely continue to gradually progress. However, the progression of this type of motor neuron disease is much slower than that of the classic ALS [amyotrophis lateral sclerosis] patient. We think that he could work with his right hand in a limited fashion, but again, he should not have to do repetitive movements or work with the hand for a lengthy period of time (no more than perhaps 5 to 10 minutes at a time). There is no further treatment that can be recommended, unfortunately.”

Based on Dr. Boothby’s February 1998 report, the Office of Workers’ Compensation Programs accepted appellant’s claim for a temporary aggravation of preexisting motor neuron disease on February 14, 1998 and paid appropriate compensation benefits.

In a March 26, 1998 report, Dr. Boothby stated:

“I feel that over[-]fatiguing the muscles of [appellant’s] left hand in particular could cause him to have some increase in weakness and difficulty in muscle control for perhaps a limited period of time (this could be minutes to hours depending on the amount of over fatigue). I think it is less likely that this type of over fatigue could cause any lasting deleterious affect.”²

² In his June 25, 1998 report, Dr. Boothby stated: “In other words it is my opinion that if he over fatigues [sic] his weakened left hand by repetitive use of that hand that he might have an increase in his weakness for a short period of time perhaps lasting minutes to a period of several hours.”

By decision dated October 27, 1998, the Office terminated appellant's compensation benefits effective December 9, 1995 on the grounds that the medical evidence of record demonstrated that the aggravation of his preexisting motor neuron disease was only temporary in nature and had ceased on or about December 9, 1995.³

Appellant disagreed with the Office's decision and requested an oral hearing. At a hearing held on May 25, 1999 appellant submitted a November 16, 1998 report from Dr. Robert W. Stein, a Board-certified neurologist, who discussed appellant's factual and medical history and performed a medical examination. He stated, in pertinent part:

"The left hand and arm are essentially useless. [Appellant] is developing increasing symptoms in the right upper extremity, particularly about the hand. Work that he had previously done could certainly exacerbate his symptomology. Repetitive work with the left upper extremity would not be possible, as essentially the left hand is useless. Repetitive work with the right upper extremity has the potential for increasing difficulty and further neuropathic dysfunction in the right hand."

By decision dated September 13, 1999, the Office hearing representative affirmed the October 27, 1998 decision, finding that the weight of the medical evidence of record demonstrated that the aggravation of appellant's preexisting condition was only temporary and had ceased when he stopped work.

Appellant requested reconsideration and submitted additional medical evidence from Dr. Stein and Dr. Rup Tandan, a Board-certified neurologist. In a February 29, report, Dr. Stein stated:

"[Appellant] has a slowly progressive neurological disorder felt most likely to represent spinal muscular atrophy. An alternative diagnosis, which has been entertained but not proven, is multifocal motor neuropathy with conduction block. With either of these diagnoses, repetitive activities of his right hand cause symptoms in the right upper extremity and a permanent worsening of his condition. I do not think that the repetitive work resulted only in a temporary aggravation of an underlying condition but rather additional dysfunction."

On December 29, 1999 Dr. Tandan diagnosed appellant with spinal muscular atrophy of the upper extremities and stated, in pertinent part:

"In any muscle wasting disorder, repetitive motion can make the symptoms worse or actually make a patient symptomatic where there was subclinical involvement before. I have no doubt that the repetitive use of the muscles of his right hand probably accounted for the emergence of clinical symptoms and involvement in his right hand and arm. This involvement was not only demonstrable by clinical examination during his above stated visits, but also on the [electromyogram] done on November 23, 1999 that showed evidence of reinnervation [and thus prior

³ Appellant was separated from federal employment on December 9, 1995.

denervation] in the right hand muscles. In summary, I feel that the repetitive motion and use of his right hand that was required as part of his work, because he could not use his left hand adequately since it was quite weak and atrophic, led to the emergence of symptoms in his right upper extremity.”

In a March 8, 2000 report, Dr. Tandan noted:

“The repetitive motion activity at work ... was certainly responsible for exacerbating the patient’s symptoms in the previously affected extremity [the left upper extremity] and also more recently his right upper extremity. From his history documented in the last clinic visit with me, it seems that this exacerbation has not been transient but rather progressive. I would, therefore, have to say that the repetitive motion has significantly contributed to the progression of this disease.”

By decision dated June 28, 2000, the Office denied modification of the September 13, 1999 decision.

Appellant requested reconsideration and evidence from Drs. Stein and Tandan. In a November 24, 2000 report Dr. Stein stated: “[Appellant] has an underlying neurological disorder felt either to be spinal muscular atrophy or multifocal motor neuropathy with conduction block. It is my feeling that repetitive motion at the keyboard has led to a permanent aggravation of his neurological symptoms as previously described.” Dr. Tandan described appellant’s significant keyboarding activity at work, requiring regular use of his hand muscles for several hours a day and opined that this was directly involved in the progression of his neurological condition. In a January 30, 2001 report, Dr. Tandan stated: “In [appellant’s] right hand he has early involvement from the spinal muscular atrophy, in addition to irreversible damage from his old repetitive activity. The conditions in his hands from the nerve cell death are irreversible and permanent.”

By decision dated June 5, 2001, the Office denied modification of its prior decisions.

The Board finds that the weight of the medical opinion evidence establishes that the aggravation of appellant’s preexisting motor neuron disease caused by his employment as a computer terminal operator, was temporary in nature and ceased by December 9, 1995.

When employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation. However, when the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation has ceased. This is true even though the employee is found medically disqualified to continue in such employment because of the effect, which the employment factors might have on the underlying condition. Under such circumstances, his disqualification for continued employment is due to the underlying condition, without any

contribution by the employment.⁴ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁵

In this case, the medical evidence of record establishes that appellant had preexisting motor neuron disease in both upper extremities, which began in the early 1980's in his left upper extremity and subsequently resulted in a 50 percent loss of use of the left hand. Appellant claimed that overuse of his right hand at work also resulted in a permanent aggravation of his preexisting condition.

The Board finds that the weight of the medical opinion is represented by the reports of Dr. Boothby, who examined appellant at the request of the Office and provided an accurate and complete factual and medical background of appellant's motor neuron condition. He discussed the history of appellant's motor neuron disease with symptoms dating back to the 1980s as well as early electrical studies, which showed denervation in both hands. Dr. Boothby opined that the employment-related aggravation of appellant's preexisting motor neuron condition was only temporary. He explained the reasons for his opinion that appellant's employment-related aggravation of his motor neuron disease was of a temporary nature, such that it ceased after a short period of time. He stated that muscle fatigue due to repetitive use of the keyboard could cause appellant an increase in weakness and difficulty in muscle control anywhere from a few minutes to a period of several hours. Dr. Boothby noted that the fatiguing of appellant's arm and hand muscles as having a lasting effect on appellant's condition was speculative. He opined that appellant could do some work with his right hand, but should not do repetitive movements or work with the hand for any lengthy period of time. Dr. Boothby also discussed the causal connection between appellant's upper extremity condition and his employment duties, including repetitive use of the keyboard, that caused fatigue of his muscles. He found that the aggravation of appellant's preexisting condition was temporary in nature and appellant's symptoms were made temporarily worse by work activity. Dr. Boothby noted that appellant's motor disease was progressive and appellant's prognosis was not good, noting no further treatment could be recommended. The Office concluded that the temporary aggravation ceased when appellant stopped work on December 5, 1995.

In assessing medical opinion evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that enter into such evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶ Based on Dr. Boothby's medical reports, the Office properly accepted appellant's claim for a temporary aggravation of his preexisting motor neuron condition, which ceased as of December 9, 1995. Compensation is not payable after that date as the medical evidence of

⁴ See *Larry Warner*, 43 ECAB 1027 (1992); *Leroy R. Rupp*, 34 ECAB 427 (1982); *James L. Hearn*, 29 ECAB 278 (1978).

⁵ See *Henry P. Eanes*, 43 ECAB 510 (1992).

⁶ See *Gary R. Sieber*, 46 ECAB 215 (1994); *Melvina Jackson*, 38 ECAB 443 (1987).

record does not establish that appellant's employment resulted in any permanent aggravation or contributed to his disqualification for continued employment.

On reconsideration appellant submitted medical reports from Drs. Stein and Tandan, attending Board-certified neurologists. However, most of these reports do not address whether appellant had employment-related residuals after December 9, 1995. In a report dated February 29, 2000, Dr. Stein stated: "Repetitive activities of [appellant's] right hand cause symptoms in the right upper extremity and a permanent worsening of his condition. I do not think that the repetitive work resulted only in a temporary aggravation of an underlying condition, but rather additional dysfunction." Dr. Stein does not support his stated conclusion with any medical rationale or explain the mechanism of how appellant's repetitive work activities caused a permanent worsening of his condition. His report dated February 29, 2000, is also incomplete as it does not contain a complete factual and medical history of appellant's neurological condition and does not provide a definitive diagnosis. Dr. Stein only stated that appellant has a slowly progressive neurological disorder felt "most likely" to represent spinal muscular atrophy.

On November 24, 2000 Dr. Stein again did not provide a definitive diagnosis of appellant's condition and only stated that appellant either had spinal muscular atrophy or multifocal motor neuropathy with conduction block. He noted: "It is my feeling that repetitive motion at the keyboard has led to a permanent aggravation of [appellant's] neurological symptoms as previously described." Dr. Stein's statement regarding the permanency of the aggravation of appellant's condition, however, is conclusory and is not supported by medical rationale. The Board has held that a conclusory statement without supporting rationale is of diminished probative value⁷ and is insufficient to discharge a claimant's burden of proof. Dr. Stein did not describe the mechanism of injury, specifically how the repetitive motion at the keyboard produced a permanent aggravation of the hand condition.

Dr. Tandan opined that the repetitive motion and use of appellant's right hand that was required as a part of his work led to the emergence of symptoms in his right upper extremity. The issue in this case, however, is whether the aggravation of appellant's preexisting condition caused disability after December 9, 1995. Dr. Tandan did not address whether appellant had employment-related disability or residuals after December 9, 1995. Dr. Tandan stated: "In [appellant's] right hand he has early involvement from the spinal muscular atrophy, in addition to irreversible damage from his old repetitive activity. The conditions in his hands from the nerve cell death are irreversible and permanent." Dr. Tandan did not provide any medical rationale to support his statement regarding a permanent aggravation. His report is also incomplete in that it does not provide a complete explanation as to how work requirements caused or contributed to the stated nerve cell death. Dr. Tandan only noted that appellant has been followed at a clinic for his problems of distal segmental spinal muscular atrophy, but did not fully address the progression of his condition. For these reasons, the reports of Dr. Tandan are not sufficient to establish that appellant suffered a permanent aggravation of his underlying condition.

⁷ See *Marilyn D. Polk*, 44 ECAB 673 (1993).

Appellant has not submitted a rationalized medical report based on a complete factual and medical background, opining that his work duties caused a permanent aggravation of his underlying motor neuron disease. The Board finds that the Office properly determined that the aggravation was temporary in nature and ceased as of December 9, 1995, the last day appellant worked.

The June 5, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 25, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member