

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE L. DORSEY and U.S. POSTAL SERVICE,
POST OFFICE, Rochester, NY

*Docket No. 02-2386; Submitted on the Record;
Issued February 28, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly reduced appellant's compensation based on her capacity to earn wages as a receptionist; and (2) whether the Office properly found that appellant did not sustain an injury to her right hand or wrist as a consequence of her January 25, 1994 employment injury to her left arm.

On January 27, 1994 appellant, then a 32-year-old letter carrier, filed a claim for a traumatic injury: a strain to her neck and a contusion to her back, hip and left arm sustained in three separate falls on January 25, 1994. Appellant received continuation of pay from January 27, 1994 until she returned to limited duty, avoiding use of her left arm and hand, on March 16, 1994.

The Office accepted that appellant's January 25, 1994 employment injury resulted in a back contusion, neck strain and left arm sprain.

The employing establishment terminated appellant's employment on May 7, 1995, the date her transitional career appointment expired.

The Office accepted that appellant sustained a recurrence of disability when the employing establishment withdrew her limited-duty work on May 7, 1995, and began payment of compensation for temporary total disability that date.

By decision dated March 18, 1997, the Office found that appellant's right carpal tunnel syndrome was not causally related to her January 25, 1994 employment injury. In May 1997 appellant underwent a right carpal tunnel release.

On November 22, 1999 appellant underwent an acromioplasty and a repair of a partial thickness rotator cuff tear of the left shoulder. The Office authorized this surgery.

On March 22, 2001 the Office issued a notice of proposed reduction of compensation on the basis of her capacity to earn wages as a receptionist. In response, appellant submitted new medical evidence.

By decision dated July 12, 2001, the Office reduced appellant's compensation effective July 15, 2001 based on her capacity to earn wages as a receptionist. The Office found that the newly submitted medical evidence did not preclude her from returning to work in a limited-duty capacity within the restrictions delineated by one of her attending physicians in a May 30, 2000 medical report.

By letter dated February 26, 2002, appellant requested reconsideration, and stated that she was sending more information regarding the disability of her right hand.

By decision dated August 7, 2002, the Office found: "The documentation provided is sufficient to warrant a review of the case file to determine if the condition you sustained to your right arm is consequential to the left arm injury you sustained on January 25, 1994." After discussing the medical evidence regarding appellant's right arm condition, the Office found:

"Our Office addressed the condition of your right hand previously, and determined there was no causal relationship between the conditions of your upper extremities. The new evidence submitted fails to support your claim that your right carpal injury is consequential to the injury you sustained on January 25, 1994. Therefore, you failed to provide evidence that you are not capable of performing the duties of a receptionist based on your claim that you sustained a consequential injury to your right hand. As a result, you have failed to provide any evidence to modify the decision issued by our Office on July 12, 2001."

The Board finds that the Office improperly reduced appellant's compensation based on her capacity to earn wages as a receptionist.

Under section 8115 of the Federal Employees' Compensation Act,¹ wage-earning capacity is determined by the actual wages received if the earnings fairly and reasonably represent his or her wage-earning capacity. If the actual earnings do not fairly and reasonably represent his or her wage-earning capacity or if the employee has no actual earnings, wage-earning capacity is determined with due regard to the nature of the injury, the degree of physical impairment, his or her usual employment, his or her age, his or her qualifications for other employment, the availability of suitable employment, and other factors or circumstances which may affect the employee's wage-earning capacity in his or her disabled condition.² When the Office has made a determination that an employee is totally disabled as a result of an

¹ 5 U.S.C. § 8115.

² *Pope D. Cox*, 39 ECAB 143 (1988).

employment injury, it has the burden of justifying a subsequent reduction in compensation benefits.³

The Office did not meet its burden of justifying the reduction in appellant's compensation that it effectuated July 15, 2001.

The Office determined that appellant was totally disabled beginning May 7, 1995 and appellant has had no actual earnings since that date. In its July 12, 2001 decision, the Office determined that appellant had the capacity to earn wages as a receptionist. This position, as described in the Department of Labor, *Dictionary of Occupational Titles*, is sedentary, with occasional lifting up to 10 pounds.

The medical evidence, however, does not show that appellant can lift up to 10 pounds. The May 30, 2000 report of Dr. Michael A. Niles, a Board-certified orthopedic surgeon, was cited in the Office's July 12, 2001 decision, but this report states: "I do think that she will end up with permanent restrictions of not being able to lift [greater than] 5 pounds or do any push, pull activities with her left hand." Another of appellant's attending physicians, Dr. Christine Borghi-Cavallaro, a Board-certified family practitioner, stated in an August 28, 2000 report that appellant had a "Five-pound weight maximum on the right hand and no lifting at all on the left." As there is no medical evidence that appellant was capable of lifting the 10 pounds required by the position of receptionist, the Office has not established that she had the capacity to perform this position.

The Board further finds that appellant has not established that she sustained an injury to her right hand or wrist as a consequence of her January 25, 1994 employment injury to her left arm.

With regard to consequential injuries, the Board has stated that where an injury is sustained as a consequence of an impairment residual to an employment injury, the new or second injury is deemed, because of the chain of causation, to arise out of and be in the course of employment.⁴ An employee who asserts that a nonemployment-related injury was a consequence of a previous employment-related injury has the burden of proof to establish that such was the fact.⁵ This burden includes the submission of rationalized medical opinion evidence on the causal relationship between the two injuries.⁶

The earliest mention of a right hand condition in the medical evidence is in a September 18, 1996 report from Dr. Michael G. Dunn, a Board-certified neurologist. In this report, Dr. Dunn noted that appellant began to have numbness in all the digits of her right hand several months ago, diagnosed moderate right carpal tunnel syndrome based on nerve conduction velocity testing he performed that day, and stated, "Some of this probably stems from overuse

³ *Anthony Pestana*, 39 ECAB 980 (1988).

⁴ *Merlind K. Cannon*, 46 ECAB 581 (1995).

⁵ *Theron J. Barham*, 34 ECAB 1070 (1983).

⁶ *See Sandra Dixon-Mills*, 44 ECAB 882 (1993).

due to the left arm chronic pain.” In a report dated December 12, 1996, Dr. Borghi-Cavallaro stated that appellant’s right hand carpal tunnel syndrome was “referable to her left upper extremity problems as a means of overcompensating for disuse of her left upper extremity.” Dr. Borghi-Cavallaro reiterated this opinion, in an August 2, 2001 report, stating: “She’s had a compensatory right upper extremity carpal tunnel syndrome as she was overusing her right upper extremity to compensate for her injured left upper extremity.”

While these reports lend some support to appellant’s claim for a consequential injury to her right hand or wrist, they are not sufficient to meet her burden of proof. The reports do not contain any history of what activities appellant performed with her right hand that would cause a carpal tunnel syndrome, and also contain no rationale explaining how the right carpal tunnel syndrome was a consequence of the left arm injury sustained on January 25, 1994. The statements of Drs. Dunn and Borghi-Cavallaro that the right carpal tunnel syndrome was due to compensating for her injured left arm is merely a conclusion, without any explanatory rationale. 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.⁷

The August 7, 2002 decision of the Office of Workers’ Compensation Programs is affirmed insofar as it determined that appellant had not established a right hand or wrist condition as a consequence of her January 25, 1994 employment injury to her left arm. Insofar as it found that appellant had the capacity to earn wages as a receptionist effective July 15, 2001, the Office’s August 7, 2002 decision is reversed.

Dated, Washington, DC
February 28, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).