

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BOBBIE D. DALY and DEPARTMENT OF VETERANS AFFAIRS,
ALVIN C. YORK MEDICAL CENTER, Murfreesboro, TN

*Docket No. 03-162; Submitted on the Record;
Issued June 10, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained a recurrence of disability from October 1 to December 8, 1997 causally related to accepted bilateral carpal tunnel syndrome.

This is the second appeal before the Board in this case. By decision issued May 22, 2002,¹ the Board set aside May 23 and October 2, 2000 decisions of the Office of Workers' Compensation Programs. The May 23, 2000 decision found that the position of modified, part-time audiologist, which she performed beginning on September 9, 1997, fairly and reasonably represented her wage-earning capacity. The Board found that appellant submitted sufficient medical evidence to establish that the modified, part-time audiologist position was not suitable work. The Board directed the Office to pay appellant the difference between total disability compensation and compensation paid for loss of wage-earning capacity beginning September 23, 1999. The record indicates that the Office complied with this element of the Board's decision.²

The Office's October 2, 2000 decision denied appellant's August 30, 2000 request for reconsideration of the May 23, 2000 decision. The Board found that accompanying her request, appellant submitted new, relevant evidence regarding her medical inability to perform the modified audiologist position, in particular for the period October 1, 1997 and continuing. This evidence included the February 2, 2000 deposition of Dr. Rex E.H. Arendall, an attending Board-certified neurologist, finding that appellant's assigned duties as a modified audiologist

¹ Docket No. 01-647 (issued May 22, 2002).

² In a June 21, 2002 worksheet, the Office found that appellant was "entitled to [the] difference between LWEC [loss of wage-earning capacity] and TTD [total temporary disability] for previously paid dates of September 23, 1999 through August 30, 2001." The Office noted that appellant entered a leave without pay status as of September 23, 1999 and elected to receive retirement benefits through the Office of Personnel Management (OPM) effective August 31, 2001. Appellant was notified of this correction in a June 21, 2002 letter.

beginning September 9, 1997, requiring fine manipulation of hearing aids and “jeweler type tools” could “cause and reactive carpal tunnel problems.” The Board instructed the Office to conduct a thorough merit review of Dr. Arendall’s deposition and the other evidence submitted accompanying the August 30, 2000 request for reconsideration. The Board further instructed the Office to then issue an appropriate decision in the case on the issue of whether appellant sustained a recurrence of disability beginning October 1, 1997 which rendered her unable to perform the modified audiologist position.

The law and facts as set forth in the May 22, 2002 decision are incorporated by reference. However, the evidence relevant to appellant’s claim for an October 1 to December 7, 1997 recurrence of disability is also summarized below.

On September 9, 1997 Dr. Arendall approved a limited-duty assignment as a modified audiologist. Appellant was assigned to see three patients in the morning, perform no more than two hearing aid evaluations and two hearing aid checks, perform one evaluation in the afternoon, then perform two hours of clerical duties. She was scheduled to work eight hours per day, Monday through Friday. Appellant returned to work that day.

During October 1997, appellant worked eight hours per day in the modified audiologist position. As she experienced increased pain and paresthesias in both hands and wrists, she sent a series of electronic mail messages to her supervisor, Russell Mills, regarding her difficulties in performing her assigned duties. Mr. Mills responded to these messages, encouraging appellant to keep trying but not to injure herself.

In a November 7, 1997 report, Dr. Richard T. Hoos, an attending Board-certified neurologist, related appellant’s account of increased paresthesias in both hands following her September 8, 1997 return to work. Dr. Hoos performed an electromyogram (EMG) and nerve conduction velocity (NCV) studies showing improvement in the left and right median nerves, with some slowing that could be related either to carpal tunnel syndrome or diabetic neuropathy.

In a December 8, 1997 note, Dr. Arendall restricted appellant to working only two days per week for two months.

Based on Dr. Arendall’s opinion, the Office accepted that appellant sustained a recurrence of disability from December 8 1997 through January 1998. The Office noted in particular that Dr. Arendall had reduced appellant’s work schedule to two days per week as of December 8, 1997.

In a March 6, 1998 report, Dr. Robert E. Clendenin, a Board-certified orthopedic surgeon and second opinion physician, noted that appellant experienced increased paresthesias and weakness in both hands, even after being restricted to seeing only three patients per day since December 8, 1997. Dr. Clendenin found appellant medically able to work for eight hours per day as an audiologist, but noted that she “should not place undue stress on her hands.”

In a June 5, 1998 report, Dr. James P. Anderson, a Board-certified neurologist and impartial medical examiner, noted appellant’s job duties, including using jewelers tools to repair and fit hearing aids, threading fine tubes and devices used in audiologic testing and extruding

hearing aid molds. Dr. Anderson conducted EMG testing showing “carpal tunnel syndromes on both sides, rated as moderate to severe on the right and moderate on the left,” with “active denervation of the median nerve innervated thenar eminence muscles in both hands.” Dr. Anderson concluded that it would be advisable for appellant “to find employment that would not require the fine motor movements of her fingers as does her current position. However, if she is to continue in this line of work, then her condition will probably continue to progress.” Dr. Anderson opined that appellant would “develop severe thenar eminence wasting if she continues as she is currently since she clearly has active denervation in the thenar eminence muscles on my needle EMG, whereas no such active denervation was documented on prior EMG studies.”

In a March 29, 1999 deposition and an undated statement, Mr. Mills noted that appellant was required to write, keyboard, perform computer data entry, operate audiometers and other electronic equipment, manipulate hearing aids and prepare hearing aid moulds by “extruding a soft impression material through a 60 cc syringe and into the ear canal,” a process that could require “significant effort.” Mr. Mills noted that at the time of her September 1996 claim, appellant performed the above activities for 6 to 10 hours per day, 4 days per week.³

In a February 2, 2000 deposition, Dr. Arendall testified that “[f]ine manipulation with dials and manipulation of mall objects with her fingers and working with hearing aids, opening boxes, modifying the things using little jeweler type tools ... can cause and activate and reactivate carpal tunnel problems.”

During the pendency of appellant’s appeal, on October 15, 2001 the Office awarded appellant a schedule award for a 22 percent permanent impairment of the right upper extremity and 13 percent permanent impairment of the left upper extremity, attributable to the accepted bilateral carpal tunnel syndrome. The period of the award, 109.20 weeks, runs from September 9, 2001 to October 13, 2003. This decision is not before the Board on the present appeal.⁴

In a July 25, 2002 letter, the employing establishment commented on the Board’s May 22, 2002 decision. The employing establishment noted that Dr. Arendall approved the eight-hour per day limited-duty assignment on September 8, 1997 and did not reduce appellant’s schedule to four hours per day until December 8, 1997. Although Dr. Arendall released appellant to return to an eight-hour per day schedule as of May 20, 1998, appellant’s “assignment was not changed and she remained on the four-hour day assignment.” Dr. Arendall recommended in an August 11, 1998 letter that appellant continue to protect her hands, but provided no specific restrictions. Also, a secretary and technician performed “many of the tasks”

³ Mr. Mills listed appellant’s job activities in a June 9, 1999 letter.

⁴ The Board’s jurisdiction to review decisions of the Office extends only to those decisions issued within one year of an appellant filing an appeal. In this case, appellant filed her appeal with the Board on October 21, 2002. Therefore, the Board does not have jurisdiction to review the October 15, 2001 schedule award, as it was issued more than one year prior to October 21, 2002. The only decision properly before the Board on the present appeal is the August 28, 2002 decision. 20 C.F.R. §§ 501.2(c), 501.3(d)(2)

required of appellant “in performing her modified duties as an audiologist (with reduced patient cases).”⁵

By decision dated August 28, 2002, the Office denied modification of the May 23, 2000 decision on the grounds that the evidence appellant submitted in support of her request was insufficient to warrant such modification. The Office found that, while the Office accepted a recurrence of disability from December 9, 1997 to January 1998, she submitted insufficient evidence to establish that she was disabled from performing the modified audiologist position beginning on October 1, 1997. The Office noted that reviewing appellant’s correspondence, her supervisor’s response to her claim, statements from Dr. Arendall, statements from Dr. David J. Kapley, an attending Board-certified psychiatrist, and various medical records.⁶ The Office found that the evidence did not support any causal relationship between work factors and the alleged October 1, 1997 recurrence of disability. The Office explained that the record did not support a worsening of the accepted bilateral carpal tunnel syndrome as of October 1, 1997, noting that her physicians did not alter appellant’s work schedule or restrictions until December 8, 1997. The Office also noted that the employing establishment did not change the requirements of appellant’s light-duty assignment as of October 1, 1997.

Appellant filed her appeal with the Board on October 21, 2002.

The Board finds that appellant has not established that she sustained a recurrence of disability from October 1 to December 8, 1997.

When a claimant who is on light duty alleges a recurrence of disability, he must show either a change in the nature and extent of the light-duty job requirements or in the extent of the work-related injury or condition.⁷ To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change, and explaining how and why the accepted injury or condition disabled him for work on and after the date of the alleged recurrence of disability.⁸

In this case, the Office accepted that appellant sustained bilateral carpal tunnel syndrome on or before September 16, 1996. She was placed in a light-duty position beginning September 9, 1997 as a modified audiologist for eight hours a day. Due to a combination of worsening carpal tunnel syndrome and job duties requiring fine manipulation, the Office accepted that appellant sustained a recurrence of disability from December 8, 1997 through January 1998.

⁵ The employing establishment also asserted that appellant’s request for leave without pay effective September 20, 1999 was not based solely on her alleged inability to perform her limited-duty assignment due to carpal tunnel syndrome, including arthritis and a neck condition not related to her federal employment and a “separate stress claim (pending appeal).”

⁶ Appellant originally submitted these documents in support of her August 30, 2000 request for reconsideration, which was denied by the October 2, 2000 decision, which was set aside by the Board’s May 22, 2002 decision.

⁷ *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁸ *James H. Botts*, 50 ECAB 265 (1999).

Appellant submitted reports from several physicians indicating that beginning on December 8, 1997, she was no longer capable of performing the fine manipulation required by the modified audiologist position due to the accepted bilateral carpal tunnel syndrome. The record also supports that, prior to the period of the accepted recurrence of disability, appellant experienced a return of her bilateral hand and wrist symptomatology from October 1 to December 8, 1997. However, there is insufficient evidence to establish that appellant's duties caused an organic worsening of the accepted bilateral carpal tunnel syndrome or that she was medically unable to perform her assigned modified duties during this period.

Appellant submitted several medical reports addressing an increase in bilateral hand and wrist symptoms, including pain, weakness and paresthesias, beginning in October 1997. In a November 7, 1997 report, Dr. Hoos, an attending Board-certified neurologist, noted appellant's complaints of increased paresthesias in both hands following her September 8, 1997 return to work. However, EMG and NCV studies did not demonstrate a worsening of her condition, but showed improvement in the median nerves bilaterally. Thus, Dr. Hoos' report indicates that appellant's condition improved from October 1 until November 7, 1997, which tends to negate appellant's assertion that she experienced a worsening of her condition during this time. The Board notes that statements about an appellant's pain, not corroborated by objective findings of disability, do not constitute a basis for payment of compensation.⁹

Dr. Clendenin, a Board-certified orthopedic surgeon and second opinion physician, confirmed in his March 6, 1998 report that appellant experienced increased weakness and paresthesias in both hands beginning September 8, 1997. However, he did not find objective evidence demonstrating a worsening of her condition. Thus, Dr. Clendenin found only an increase in appellant's subjective symptoms, but not an objective worsening of the accepted condition or that appellant was disabled for work.

Appellant also submitted a June 5, 1998 report from Dr. Anderson, a Board-certified neurologist and impartial medical examiner, who opined that the job requirements of the modified audiologist position, including using jeweler's tools to repair and fit hearing aids, threading tubes and devices used in audiologic testing and extruding hearing aid moulds, aggravated her bilateral carpal tunnel syndrome and contributed to thenar eminence wasting. However, Dr. Anderson did not opine that appellant was totally disabled for work from October 1 to December 8, 1997 or that she experienced a worsening of her condition such that she was unable to perform the modified audiologist position during that time.

Similarly, Dr. Arendall, an attending Board-certified neurologist, stated on February 2, 2000 that fine manipulation, working with hearing aids and "using little jeweler type tools ... can cause ... activate and reactivate carpal tunnel problems." However, Dr. Arendall did not specify the nature of the "carpal tunnel problems" affected by appellant's assigned duties, or opine that appellant was unable to perform these duties from October 1 to December 8, 1997. Thus, as Drs. Anderson, Arendall, Clendenin and Hoos did not opine that appellant was disabled for her assigned light-duty position from October 1 to December 8, 1997, these reports do not support appellant's assertion that she sustained a recurrence of total disability during that period.

⁹ *Paul D. Weiss*, 36 ECAB 720 (1985); *John L. Clark*, 32 ECAB 1618 (1981).

Therefore, the Board finds that appellant has submitted insufficient medical evidence to establish that she sustained a recurrence of disability from October 1 to December 8, 1997.

The decision of the Office of Workers' Compensation Programs dated August 28, 2002 is hereby affirmed.

Dated, Washington, DC
June 10, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member