

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY E. ABATE and DEPARTMENT OF DEFENSE,
FINANCE & ACCOUNTING SERVICE, Columbus, OH

*Docket No. 03-1132; Submitted on the Record;
Issued September 9, 2003*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of total disability on September 8, 2001 causally related to her June 1, 1996 employment injury.

On August 13, 1996 appellant, then a 49-year-old financial clerk, filed an occupational disease claim alleging that she injured her hands and arms in June 1996 due to the repetitive motions required in her job. She was off work intermittently in July 1996.¹ She returned to work on July 31, 1996, but was off work again from August 1, 1996 until February 3, 1997 when she returned to work in a light-duty capacity. She stopped work again on September 8, 2001 and took disability retirement effective February 15, 2002.

After initially denying appellant's claim, the Office of Workers' Compensation Programs accepted her claim for bilateral carpal tunnel syndrome by decision dated January 6, 1998. She underwent a right carpal tunnel release on February 11, 1998 and left carpal tunnel release on March 4, 1998.

On March 2, 2002 appellant filed a claim for a recurrence of total disability on September 8, 2001 causally related to her June 1, 1996 employment injury.

By decisions dated September 25, 2002 and January 14, 2003, the Office denied appellant's claim for a recurrence of total disability on September 8, 2001.²

¹ Appellant also sustained a work-related cervical and lumbosacral strain and a contused coccyx on April 22, 1996 when she fell to the floor while attempting to sit in a chair. She was off work from April 25, 1996 until a return to restricted duties on May 7, 1996. She was off work again from May 13 to July 8, 1996.

² The record contains additional evidence submitted subsequent to the Office decision of January 14, 2003. However, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c).

The Board finds that this case is not in posture for a decision.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish, by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³

In a report dated December 20, 1999, Dr. Mark L. Carroll, appellant's attending family practitioner, stated that her pain and disability caused by her carpal tunnel syndrome were permanent. He stated in a June 9, 2000 report that appellant had increasing pain in her hands despite surgery in 1998. Dr. Carroll noted that an electromyogram (EMG) performed on April 24, 2000 indicated "recurrent" left carpal tunnel syndrome. On August 12, 2000 he stated that, despite the surgery in 1998, appellant had experienced throbbing pain in both hands and wrists, had thenar atrophy in the right hand, decreased strength and a tendency to drop things. In a report dated October 15, 2002, Dr. Carroll diagnosed carpal tunnel syndrome as well as chronic cervical and lumbosacral strain and myositis, degenerative joint disease of the lumbar and cervical spine, mild spinal stenosis of the lumbar spine and radicular pain in the lower extremities. He noted that appellant had been off work for many months and her symptoms had decreased. Dr. Carroll stated his opinion that appellant sustained injuries compatible with her work-related fall in April 1996. He further stated, "I feel that due to the chronicity of [appellant's] complaints and her failure to respond well to ... physical therapy, that she should be considered permanently and totally disabled...."

The Board finds that the reports of Dr. Carroll are sufficient to require further development of the evidence.⁴ His reports, based on physical findings and an EMG, suggest that appellant's work-related bilateral carpal tunnel syndrome may have worsened. Additionally, in an August 5, 2002 statement, Janis Oswald, a co-worker of appellant's for four years, indicated that the employing establishment had repeatedly placed appellant in positions that aggravated her carpal tunnel condition and caused her to take disability retirement. She noted that in September 2001 the employing establishment assigned appellant to a job with the repetitive tasks of making folders and lifting that adversely affected her physical condition. This evidence from a co-worker further suggests the possibility of either a change in the nature and extent of appellant's work-related condition or a change in the nature and extent of her light-duty work such that she became totally disabled. On remand the Office should further develop the factual and medical evidence as to whether appellant had a change in the nature and extent of her work-related bilateral carpal tunnel syndrome or a change in the nature and extent of her light-duty job requirements such that she was unable to perform her light-duty position.

³ *Cynthia M. Judd*, 42 ECAB 246 (1990); *Stuart K. Stanton*, 40 ECAB 859 (1989); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ *See John J. Carlone*, 41 ECAB 354 (1989).

The decisions of the Office of Workers' Compensation Programs dated January 14, 2003 and September 25, 2002 are set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
September 9, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member