



In a report dated March 20, 2007, Dr. Mark A. Filippone, a Board-certified physiatrist, examined appellant for work injuries sustained on March 10, 2007. He noted that she last worked on March 15, 2007. On physical examination, Dr. Filippone found a positive Tinel's sign over the right ulnar nerve and left median nerve. He diagnosed a generalized anxiety disorder, generalized post-traumatic stress disorder (PTSD), a repetitive stress disorder of the upper extremities and to rule out carpal tunnel syndrome, ulnar neuropathy, brachial plexopathy and cervical radiculopathy. Dr. Filippone opined that appellant was disabled from employment.

On April 9, 2007 Dr. Filippone related that he initially treated appellant on March 20, 2007 for symptoms of high blood pressure after a disagreement with her supervisor on March 10, 2007. When she returned to work on March 15, 2007 she again had chest pain, numbness and tingling in her left hand. Appellant received treatment at the hospital. Dr. Filippone discussed her current complaints of numbness and tingling in her hands, anxiety and depression. On examination, he found a positive Tinel's sign and positive left Phalen's test. Dr. Filippone diagnosed generalized anxiety disorder, PTSD and a repetitive stress disorder of the upper extremities. He asserted that appellant was totally disabled and that "all of the above abnormalities are directly and solely the result of the injuries sustained while at work for the [employing establishment] on March 10, 2007."

On May 31, 2007 Dr. Filippone noted that electrodiagnostic studies performed April 23, 2007 revealed severe bilateral carpal tunnel syndrome. He found that appellant had a bilateral positive Tinel's sign and Phalen's test and "partial atrophy in the thenar eminences bilaterally." Dr. Filippone discussed her history of repetitive use of the hands for 22 years casing mail and asserted that he was "totally unable to allow [her] to return to work casing mail...."

By decision dated March 12, 2008, the Office denied appellant's claim on the grounds that the factual and medical evidence was insufficient to establish that she sustained an injury as alleged.

On March 18, 2008 appellant, through her attorney, requested an oral hearing. At the hearing, held on July 15, 2008, she described her work duties for the past 20 years. Counsel argued that the medical evidence was sufficient to establish carpal tunnel syndrome.

In a form report dated August 23, 2007, received by the Office on July 30, 2008, Dr. Filippone diagnosed bilateral carpal tunnel syndrome and repetitive stress disorder of the upper extremities. He checked "yes" that the condition was caused or aggravated by employment and found that appellant was totally disabled beginning March 16, 2007.

By decision dated September 5, 2008, the hearing representative affirmed in part and reversed in part the March 12, 2008 decision. She found that the medical evidence from Dr. Filippone was sufficient to establish that appellant sustained bilateral carpal tunnel syndrome due to her employment duties. The hearing representative concluded, however, that the evidence was insufficient to show that she sustained any disability due to the accepted work injury.

On September 16, 2008 the Office advised appellant that it had accepted her claim for bilateral carpal tunnel syndrome.

On October 21, 2008 Dr. Filippone noted that appellant continued to work limited-duty employment. He related that he had previously found her disabled from work when he evaluated her on March 20, 2007 following a March 10, 2007 work injury. Dr. Filippone stated:

“Please note that my initial consultation of March 20, 2007 indicates an impression of general anxiety disorder, generalized [PTSD], repetitive stress disorder of both upper extremities including to rule out carpal tunnel syndrome, rule out ulnar neuropathy, rule out brachial plexopathy and rule out cervical radiculopathy, and, thus, I have been excusing her from work for a diagnosis that includes carpal tunnel syndrome since my initial examination of that date. Please see my [April 23, 2007] note, specifically paragraph four wherein it is stated that [appellant] continues with the same symptoms referable to the injury of March 10, 2007; except for the increasing pain at the base of the left thumb.”

On November 4, 2008 Dr. Filippone reviewed his treatment of appellant and the September 28, 2007 EMG findings of bilateral carpal tunnel syndrome. He related that appellant was disabled due to her employment injuries from March 15 to September 28, 2007. Dr. Filippone asserted that the “diagnosis of carpal tunnel syndrome was clearly the reason” for her disability from April 23 to September 28, 2007.

On November 13, 2008 appellant, through her attorney, requested reconsideration.<sup>2</sup> By decision dated January 21, 2009, the Office denied modification of its September 5, 2008 decision.<sup>3</sup>

On appeal, appellant’s attorney asserts that Dr. Filippone’s reports are sufficient to either establish that appellant was disabled due to her carpal tunnel syndrome from March 15 through September 28, 2007 or to warrant further development of the medical evidence.

### **LEGAL PRECEDENT**

The term disability as used in the Federal Employees’ Compensation Act<sup>4</sup> means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>5</sup> For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>6</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>7</sup> The fact that a condition manifests

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<sup>2</sup> On November 25, 2008 Dr. Filippone released appellant to return to full-time limited-duty employment.

<sup>3</sup> In its discussion of the evidence, the Office cited the “clear evidence of error” standard applicable to untimely requests for reconsideration. However, as the Office reviewed the evidence on its merits, any error is harmless.

<sup>4</sup> 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

<sup>5</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>6</sup> *Sandra D. Pruitt*, 57 ECAB 126 92005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>7</sup> *G.T.*, 59 ECAB \_\_\_\_ (Docket No. 07-1345, issued April 11, 2008); *Gary J. Watling*, 52 ECAB 278 (2001).

itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>8</sup>

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>9</sup>

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.<sup>10</sup>

### ANALYSIS

The Office accepted appellant's claim for bilateral carpal tunnel syndrome based on the reports of Dr. Filippone, her attending physician. In a report dated March 20, 2007, Dr. Filippone diagnosed an anxiety disorder, PTSD, a repetitive stress disorder of the upper extremities and noted the need to rule out other conditions including carpal tunnel syndrome. On examination, he found a positive Tinel's sign on the right and a positive Phalen's test on the left. Dr. Filippone asserted that appellant was unable to work. On April 9, 2007 Dr. Filippone diagnosed an anxiety disorder, PTSD and a repetitive stress disorder of the upper extremities. He found that she was totally disabled and attributed her conditions to injuries sustained at work on March 10, 2007. On May 9, 2007 Dr. Filippone discussed appellant's history of repetitive use of her hands for 22 years casing mail and opined that she was unable to continue to case mail. In an August 23, 2007 form report, he diagnosed bilateral carpal tunnel syndrome and a repetitive stress disorder of the upper extremities. Dr. Filippone checked "yes" that the condition was caused or aggravated by employment and found that appellant was disabled from work as of March 16, 2007. On October 21, 2008 he asserted that he found appellant disabled from work in his March 20, 2007 report due in part to her diagnosis of carpal tunnel syndrome. On November 4, 2008 Dr. Filippone related that she was disabled from March 15 through September 28, 2007 due to her employment injuries. He asserted that the diagnosed condition of carpal tunnel syndrome was "clearly the reason" for finding her disabled from April 23 to September 28, 2007.

On appeal, appellant's attorney argues that Dr. Filippone's reports are sufficient to establish her claim or to warrant further development of the evidence. Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>11</sup> The Board has reviewed

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<sup>8</sup> *D.I.*, 59 ECAB \_\_\_\_ (Docket No. 07-1534, issued November 6, 2007).

<sup>9</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>10</sup> *J.B.*, 60 ECAB \_\_\_\_ (Docket No. 08-1735, issued January 27, 2009); *Jimmy A. Hammons*, 51 ECAB 219 (1999).

<sup>11</sup> *A.A.*, 59 ECAB \_\_\_\_ (Docket No. 08-951, issued September 22, 2008); *Phillip L. Barnes*, 55 ECAB 426 (2004).

Dr. Filippone's reports and notes that he provided an unequivocal opinion that appellant's work duties caused the diagnosed condition of bilateral carpal tunnel syndrome and resulted in disability from employment during the time in question. He based his diagnosis of disabling carpal tunnel syndrome on objective findings of a positive Phalen's test on the left and a positive Tinel's sign on the right side. Dr. Filippone evidenced a thorough knowledge of appellant's work duties before finding that she was unable to perform her usual work duties of casing mail due to her bilateral carpal tunnel syndrome. His opinion is supportive, unambiguous, bolstered by objective findings and based on a firm diagnosis and an accurate work history. Dr. Filippone's opinion lacks only an explanation of why appellant's diagnosed condition prevented her from performing her specific work duties. Consequently, while the medical evidence from Dr. Filippone is not sufficiently rationalized to meet her burden of proof to establish that she was disabled from March 15 to September 28, 2007 due to her carpal tunnel syndrome, it raises an undisputed inference of causal relationship sufficient to require further development by the Office.<sup>12</sup> Accordingly, the Board will remand the case to the Office. On remand, the Office should further develop the medical record to determine whether appellant was disabled from employment during this period due to her accepted work injury. Following this and such further development as the Office deems necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

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

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<sup>12</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 21, 2009 and September 5, 2008 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: April 15, 2010  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board