U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD McKEE and DEPARTMENT OF THE AIR FORCE,
OKLAHOMA CITY AIR LOGISTICS CENTER,
TINKER AIR FORCE BASE, Okla.

Docket No. 95-2444; Submitted on the Record;
Issued January 26, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation for the period commencing December 13, 1992.

The Board has duly reviewed the case record and concludes that the Office properly denied appellant's claim for compensation for the period commencing December 13, 1992.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[1] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[2] As part of this burden the claimant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.[3]

The Office accepted appellant's claim for tenosynovitis of the right fingers. On November 24, 1994 the Office terminated appellant's benefits effective December 13, 1992, stating that the evidence of record, particularly the August 28, 1992 opinion of appellant's treating physician, Dr. Houshang Seradge, a Board-certified orthopedic surgeon, established that

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[1] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[2] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[3] *Joseph T. Gulla*, 36 ECAB 516 (1985).

appellant no longer suffered from flexor tenosynovitis of the right fingers. Pursuant to the Office's recommendation appellant subsequently filed a claim for an occupational disease, alleging that he sustained carpal tunnel syndrome during his employment. The Office accepted appellant's claim for right carpal tunnel syndrome, bilateral hand overuse syndrome and adhesive neuritis right secondary to failed right carpal tunnel release.

At the time of his May 21, 1990 employment injury, appellant was an aircraft painter which required, in part, cleaning and sanding aircraft surfaces, painting by spraying, brushing and hand wiping surfaces and removing metal surface corrosion with a wire brush or chemicals. Subsequent to his May 21, 1990 employment injury, appellant worked intermittently performing light-duty work which allowed him to use only his left hand doing paperwork, cleanup, stencil cutting and answering phones. The light-duty job was no longer available on November 1, 1991 but another light-duty job became available which required that appellant perform administrative duties with his left hand and he performed that work from February 9 through February 20, 1992. Appellant has not worked since February 20, 1992.

In reports dated June 22 and October 26, 1992, Dr. Seradge diagnosed, *inter alia,* failed carpal tunnel surgery and carpal tunnel syndrome and stated that appellant's work capacity was severely restricted and appellant could not use his right hand for vibrating tools or heavy or repetitious manipulation as of June 22, 1992.

In a report dated November 29, 1992, Dr. Donald Landstrom, a second-opinion physician and a Board-certified psychiatrist and neurologist, stated that he could find no evidence of carpal tunnel syndrome based on his physical examination of appellant and electromyograms (EMG) dated August 6, 1990 and October 27, 1992. He stated that appellant might have reflex sympathetic dystrophy, either related to his original right hand injury or his carpal tunnel release surgery and if he did, he would be unable to return to his usual work of painter, at least until he was successfully treated. In an accompanying work restriction evaluation form dated November 29, 1992, Dr. Landstrom opined that appellant could work eight hours a day but could not perform any lifting, grasping, pushing or pulling or fine manipulation with his right hand.

In his report dated April 7, 1993, Dr. Michael L. Merkey, a second-opinion physician and a Board-certified psychiatrist and neurologist, reviewed appellant's history of injury, performed a physical examination, and reviewed an EMG and nerve conduction study dated July 1990 which were consistent with carpal tunnel syndrome. He noted, however, that Dr. Landstrom's tests as reported were normal. Dr. Merkey opined that appellant's right hand causalgia-type pain might be due to residual mild right medial and ulnar nerve injuries in his wrist, related to his previous right hand injury in May 1990. He further stated a component of appellant's right hand pain, and recurrent left hand and wrist pain was likely due to local soft tissue inflammatory changes, related to overuse versus arthritis.

On June 16, 1993 appellant submitted a claim, Form CA-7, for compensation from December 13, 1992 through June 16, 1993.

In his October 4, 1993 report, Dr. Kim King, appellant's treating physician and an osteopath, stated that appellant's medical problems in his cervical region existed during appellant's initial problem, apparently referring to appellant's carpal tunnel syndrome. In a

report dated January 21, 1994, Dr. King stated that he had been treating appellant for three years for carpal tunnel syndrome to the right upper extremity as well as cervical disc disease at C4-5, C5-6 and C6-7. He stated that he believed appellant's tingling and numbness in the upper extremity was due to the disc disease. Dr. King stated that appellant was unable to perform his work of an aircraft painter, that he was temporarily totally disabled indefinitely.

By decision dated January 12, 1994, the Office rejected appellant's claim, stating that the medical evidence of record failed to establish that appellant was disabled from performing the duties of an aircraft painter.

Appellant requested written review of the record by an Office hearing representative.

By decision dated July 12, 1994, the hearing representative remanded the case, stating that while the opinions of appellant's treating physicians, Dr. Seradge and Dr. King, stated that appellant was unable to perform the work of an aircraft painter, they did not provide a rationalized opinion for their conclusion and the second opinion physician, Dr. Merkey did not address appellant's ability to work. The hearing representative therefore instructed the Office on remand to obtain a supplemental report from Dr. Merkey addressing the duration, extent and degree of appellant's injury-related conditions with an assessment of his restrictions, if any, and if Dr. Merkey was unable to submit the necessary information, to obtain a new second-opinion physician.

The Office subsequently referred appellant to Dr. Richard M. Stamile, a second-opinion physician and a Board-certified orthopedic surgeon. In a report dated September 29, 1994, Dr. Stamile considered appellant's history of injury, performed a physical examination, and reviewed x-rays of his right and left wrist which were normal and a magnetic resonance imaging (MRI) scan showing mild spondylosis. He noted numbness in appellant's right hand and a positive Tinel's sign which could be secondary to a small sensory neuritis or neuroma occurring in the sensory branch of the median nerve which might have been damaged during surgery. Dr. Stamile also found minimal Dupuytren's contracture nodules in appellant's palm with some nodular deformities. Dr. Stamile stated that he did not think that appellant was capable of returning to his usual work at that particular time although he stated that he was "quite concerned" as to what components of appellant's symptoms were work related. Dr. Stamile stated that he had "no doubts whatsoever" that appellant's carpal tunnel syndrome and resultant surgery was work related. He stated:

> "If, by surgical decompression and all other symptoms similarly abate, then all of his symptoms and his lost employment during the last four years is work related. If, however, it was necessary for appellant to have surgery involving his neck or if symptoms are related to compression of nerve roots in the cervical spine[,] then the aforementioned symptoms are not work related and would have to come under his regular disability."

In his November 18, 1994 report, Dr. Brent N. Hisey, a Board-certified neurosurgeon, considered appellant's history of injury and performed a physical examination which revealed no atrophy in appellant's hands and normal motor function of his left hand. He stated he sent

appellant for a repeat EMG and nerve conduction study of the right hand but these tests, if obtained, are not in the record.

By decision dated November 30, 1994, the Office denied appellant's claim stating that the medical evidence of record did not establish that appellant has temporarily totally disabled due to a work-related condition.

Appellant requested reconsideration of the Office's decision which was denied on December 29, 1994. Appellant's subsequent requests for reconsideration were also denied on April 24 and June 5, 1995.

Appellant submitted additional evidence with his reconsideration requests. In a report dated December 7, 1994, Dr. Charles H. Morgan, a Board-certified psychiatrist and neurologist, considered appellant's history of injury, performed a physical examination, and reviewed the results of an EMG and nerve conduction study dated December 7, 1994. He concluded that there was a mild residual slowing of the motor nerve conduction velocity across the carpal tunnel but otherwise the EMG and nerve conduction study of the right upper extremity were unrevealing.

A physical therapist's report dated January 6, 1995 stated that appellant's clinical signs and symptoms were consistent with carpal tunnel syndrome.

In a report dated January 10, 1995, Dr. King noted that appellant continued to have tingling and numbness in the right hand and arm and stated that appellant remained temporarily totally disabled indefinitely.

In a report dated March 21, 1995, Dr. Ghazi M. Rayan, a Board-certified orthopedic surgeon, considered appellant's history of injury, performed a physical examination, reviewed x-rays which were normal and concluded that appellant had residual pain following decompression of the ulnar nerve at the wrist, possibly from perineural scarring. He recommended that appellant seek another employment with minimal use of the right upper extremity. On May 2, 1995 Dr. Rayan indicated in a work restriction form that appellant could lift 1 to 10 pounds, perform frequent grasping, gripping and fine manipulation but could not twist or tighten and could occasionally push, pull, type or write.

In his report dated April 21, 1995, representing his last day of treatment of appellant, Dr. Hisey stated that he agreed with Dr. Rayan that appellant should seek a job with minimal use of the right upper extremity and that further treatment would not significantly improve him.

Since the Office was paying appellant compensation based upon the ongoing submission of documentation that he was disabled following his May 21, 1990 employment injury, appellant maintained the burden of establishing entitlement to continuing disability which was related to the employment injury.[4] The evidence of record does not establish that appellant was disabled due to carpal tunnel syndrome commencing December 13, 1992. While Dr. Seradge diagnosed carpal tunnel syndrome and opined that appellant was disabled due to that condition in his

[4] *Donald Leroy Ballard*, 43 ECAB 876, 882 (1992).

June 22 and October 26, 1992 report, he provided no rationalized medical opinion establishing that appellant's carpal tunnel syndrome was related to his employment. In his November 29, 1992 report, Dr. Landstrom found no evidence of carpal tunnel syndrome based on his physical examination and the EMGs dated August 6, 1990 and October 27, 1992. He suggested that appellant might have reflex sympathetic dystrophy due to his employment or his surgery but that condition was not an accepted injury and Dr. Landstrom was uncertain whether appellant had that condition.

In his April 7, 1993 report, Dr. Merkey, a second-opinion physician, opined that the October 27, 1992 EMG and nerve conduction study were normal and opined that appellant's right hand causalgia-type pain might be due to residual mild right medial and ulnar nerve injuries related to the May 21, 1990 employment injury. He, however, did not address whether appellant was disabled from his condition and therefore his opinion is not relevant.

Although Dr. King stated that appellant was totally disabled from performing his usual work of a painter, he stated in his October 4, 1993 opinion that he believed appellant's tingling and numbness in the upper extremity was due to cervical disc disease. His opinion supports that appellant was disabled from his cervical disc disease and does not address whether appellant's carpal tunnel syndrome was disabling him. The September 29, 1994 report of Dr. Stamile, the second-opinion physician, is inconsistent and inconclusive as Dr. Stamile stated he had "no doubts whatsoever" that appellant's carpal tunnel syndrome and resultant surgery were work related but also stated that a determination of the cause of appellant's condition depended on the results of surgical decompression. He stated that if surgical decompression removed appellant's symptoms, then appellant's condition of the past four years would be work related but if it did not remove appellant's symptoms, appellant's condition would be related to nerve roots in his cervical spine. Dr. Stamile's opinion is equivocal and therefore is not probative.[5]

Dr. Morgan's December 7, 1994 report establishes that appellant does not have carpal tunnel syndrome because, based on an EMG and nerve conduction study dated December 7, 1994, he found a mild slowing of the motor nerve conduction velocity across the carpal tunnel but otherwise found the test results unrevealing. The report of the physical therapist dated January 6, 1995 is not probative because a physical therapist is not considered a doctor under the Act.[6] In his March 21, 1995 report, Dr. Rayan diagnosed residual pain following decompression of the ulnar nerve at the wrist, possibly from perineural scarring. While disability resulting from work-related surgery is compensable,[7] Dr. Rayan did not provide a rationalized opinion as to how the residual pain resulted from the scarring and how it disabled appellant. In his April 21, 1995 report, as well as in his earlier reports, Dr. Hisey did not address the cause of appellant's disability and therefore his opinion is not probative. In sum, Dr. King's January 24, 1994 opinion that appellant's tingling and numbness is due to cervical disc disease and Dr. Rayan's, Dr. Landstrom's and Dr. Morgan's opinions that appellant does not have carpal tunnel syndrome based on EMGs and nerve conduction studies dated either October 27, 1992 or December 7,

[5] *See William S. Wright*, 45 ECAB 498, 504 (1994).

[6] *See Barbara J. Williams*, 40 ECAB 649, 657 (1988).

[7] *Harry D. Nelson*, 33 ECAB 1122, 1131-32 (1982).

1994 support the Office's decision that appellant is no longer disabled due to carpal tunnel syndrome.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated June 5 and April 24, 1995, December 29 and November 30, 1994 are hereby affirmed.

Dated, Washington, D.C.
January 26, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member