

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LISA E. BAKER and U.S. POSTAL SERVICE,
POST OFFICE, Portland, Ore.

*Docket No. 96-821; Submitted on the Record;
Issued June 9, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant had any disability after April 30, 1995, the date the Office of Workers' Compensation Programs terminated her compensation, causally related to her accepted bilateral carpal tunnel syndrome.

On January 3, 1991 the Office of Workers' Compensation Programs accepted that appellant developed bilateral carpal tunnel syndrome for which she underwent a right sided carpal tunnel release on November 6, 1990 and a left sided release on February 5, 1991. Appellant returned to light duty from May 11 to September 6, 1991 and again from December 27, 1991 to February 27, 1991 and thereafter stopped work completely.

By report dated July 20, 1992 Dr. Timothy J. Gray, appellant's treating osteopath, noted that appellant objectively had a positive Phalen's test and a positive Tinel's maneuver of both her medial and ulnar nerves. He diagnosed bilateral carpal tunnel syndrome.

By report dated September 28, 1991 Dr. Catherine M. Ellison, a Board-certified neurologist, evaluated appellant, conducted nerve conduction studies, and noted that appellant objectively still had mild right sided carpal tunnel syndrome. Dr. Ellison also noted that appellant had a positive Phalen's sign with numbness at the finger tips of both hands, and had pain in both wrists with Tinel's maneuver. She additionally noted that pin pick testing revealed decreased sensation in appellant's fingertips.

On October 10, 1992 Dr. Gray diagnosed "carpal tunnel syndrome with permanent nerve damage [and] secondary tendinitis" and opined that appellant remained totally disabled. On November 16, 1992 Dr. Gray noted the effects from appellant's accepted condition as "permanent nerve damage and pain with activity." In a report dated March 4, 1993 Dr. Gray noted that appellant continued to have residual problems with her hands, and he indicated that a trial with an interferential stimulator did not significantly decrease her pain. On May 6, 1993 Dr. Gray indicated that appellant remained totally disabled for her usual work.

The Office referred appellant for a second opinion evaluation to a panel consisting of Board-certified specialists in neurology, orthopedics, and psychiatry. By report dated June 18, 1993 the panel reviewed appellant's history, discussed her current symptomatology including numbness, tingling and hot pins and needles in her hands, conducted a physical examination, which did not include any electrodiagnostic studies, and indicated that Phalen's test caused numbness of all fingers of both hands. The panel also noted that appellant had decreased pinprick sensation in the palmar surface of the small fingers bilaterally to the interphalangeal joint. No other objective testing was indicated. The panel concluded that appellant was medically fixed and stable at that time and that there was no reason that she could not return to gainful employment. The panel opined that appellant's present pain and numbness were on a nonorganic basis and not related to her carpal tunnel syndrome or to the surgical releases. They did not explain the basis for this conclusion by addressing any objective electrodiagnostic studies, or consider or address the presence of abnormal electrodiagnostic testing results of record. The panel opined that appellant had no evidence of permanent disability, other than her complaints of chronic pain, for which the panel stated it could find no organic basis. The psychiatrist concluded that appellant had no psychiatric problems as a result of her employment condition.

By report dated July 15, 1993 Dr. Eric W. Long, a Board-certified physical medicine and rehabilitation specialist, performed nerve conduction studies and concluded appellant did have residual sensory conduction defects in both palms. He explained, "This does not mean that any of her symptoms reflect continuing median nerve entrapment or irritation, but simply reflects that postoperative recovery of the median lesions often does not result in complete reversal of the conduction defects." He noted that electrodiagnosis demonstrated residual impairment of median sensory conduction at the distal edges of the carpal ligaments, right greater than left, with mildly prolonged median sensory latencies, clearly abnormal palm to wrist sensory latencies, and with bilateral mildly abnormal motor latencies and motor residual latencies.

In an October 19, 1993 report Dr. Long noted that appellant had marked myofascial sensitivity in the forearm flexors greater than the extensors, obvious limitation of grip strength, right more than left, and marked tightness of the forearm flexors and extensors, right more than left. He also noted that there was still evidence of left median motor axon loss but no such evidence on the right motor axon loss or either sensory axon loss.

Dr. Charles D. Layman, a Board-certified hand surgeon, provided November 9, 1993 progress notes in which he indicated that appellant's finger adduction test was positive on the right and that the cross finger test was positive bilaterally. He noted a positive Tinel's sign on the right, a positive Phalen's test which produced paresthesias in the ring and small fingers bilaterally, a pinwheel examination that was 1+ consistent with ulnar nerve compression, 1+ consistent with median nerve compression on the right, and 1+ consistent with ulnar nerve compression on the left.

In a November 26, 1993 report Dr. Gray indicated that there was no evidence of any kind that indicated that appellant would be able to return to work without learning how to live with her pain.

On December 7, 1993 the Office terminated appellant's compensation finding that she failed to provide "medical opinion evidence of objective findings" and that the weight of medical opinion rested with the second opinion panel which negated causal relationship.

Appellant subsequently filed an appeal with the Board which was docketed as No. 94-1528. However, following a motion to remand, the Board entered an order on December 8, 1994 returning the case to the Office.

On December 8, 1993 Dr. Gray opined that appellant remained totally disabled and needed an ulnar nerve release. On January 17, 1994 Dr. Gray reiterated Dr. Long's abnormal objective findings.

On March 9, 1995 the Office issued a notice of proposed termination of compensation indicating that there were no clinical or laboratory findings to support her ongoing pain complaints, that Dr. Gray failed to provide clinical or laboratory findings to support continued disability, and that the medical panel's opinion constituted the weight of the medical evidence. The Office also found that Dr. Layman, who provided objective evidence of abnormal neurologic findings, did not provide an opinion on whether appellant continues to suffer residuals of her accepted condition.

On April 14, 1995 the Office terminated appellant's compensation finding that the weight of the medical evidence established that all residuals and disability related to the accepted condition had ceased.

Appellant requested a review of the written record, which was performed and finalized on November 3, 1995. The hearing representative affirmed the April 14, 1995 decision, finding that the medical panel carried the weight of the medical opinion evidence.

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² The Office has not met its burden in this case due to a conflict in medical opinion evidence.

The Office has accepted appellant's condition for bilateral carpal tunnel syndrome for which she underwent surgery on both wrists. Following surgery, Dr. Gray noted that appellant remained totally disabled due to residuals of her accepted condition. Dr. Long conducted nerve conduction studies, noting that surgery did not result in a complete reversal of her conduction

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² See *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

defect. Dr. Layman also noted positive tests bilaterally. The medical referral panel examined appellant and concluded that appellant's condition was medically stable and that she could return to work. They attributed appellant's pain and numbness to a nonorganic basis, not related to her accepted condition or surgeries.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." As there is a conflict of medical opinion in the instant case, the Office has failed to meet its burden of proof to terminate appellant's compensation benefits.

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 3, 1995 is hereby reversed.

Dated, Washington, D.C.
June 9, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member