

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH A. BROOKS-HARBER and U.S. POSTAL SERVICE,
POST OFFICE, Dayton, Ohio

*Docket No. 96-1660; Submitted on the Record;
Issued June 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant's disability in August 1994 is causally related to her accepted employment injury.

On February 14, 1991 appellant, a letter carrier, filed a claim for a repetitive motion injury. Early medical evidence supported a repetitive strain disorder, possibly carpal tunnel syndrome, directly related to the repetitive nature of her job. The Office of Workers' Compensation Programs accepted her claim for left wrist strain. Appellant did not miss work.

On September 13, 1994 appellant submitted a claim for compensation for days of disability in August 1994. After the Office advised that there was no medical evidence to support total disability for this period, appellant submitted a September 12, 1994 form report from Dr. H. Brent Bamberger, an osteopath specializing in orthopedic surgery, who diagnosed tardy ulnar nerve palsy and indicated that appellant was totally disabled for the period claimed in August 1994.

In a decision dated January 20, 1995, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate any remaining residuals of appellant's accepted employment injury.

Appellant requested a review of the written record and submitted a March 2, 1995 report from Dr. Bamberger, who stated as follows:

“[Appellant] had an original injury dated back in 1990, where she had repetitive activities injuring the ulnar side of her wrist. She started out originally with some carpal tunnel syndrome, however, she did have some symptoms on the ulnar aspect of her hand.

“She was followed by Dr. Ceccarelli in 1991, has followed up with Dr. Peter Stern, who concurred with a tardy ulnar nerve palsy, which was related to her original problem.

“She continued to have off and on symptoms of her wrist and also related to the ulnar side of her wrist with a probable ulnar nerve palsy. Back prior to her visit with Dr. Peter Stern, she had an EMG [electromyogram] and nerve conduction that was suggestive of a tardy ulnar nerve palsy. However, not necessitating anything but conservative therapy.

“With her wrist strain and sprain and her continual ability to continue in the work force, she will have occasional tenosynovitis and occasional neuritis. As can be seen in [appellant’s] medical record, she has continued to stay in the work force and her tardy ulnar palsy and tenosynovitis have all improved with conservative methods.

“At this time, she presently still has strain or sprain injury to the ulnar aspect of her wrist, which is constant, however, it does easily get exacerbated by repetitive activities at work. Because of her continue[d] symptoms, at this time I would recommend a[n] MRI [magnetic resonance imaging] of her wrist to further delineate some more of her pathology.”

In a decision dated May 9, 1995, the Office affirmed its January 20, 1995 decision denying appellant’s claim for compensation. The Office found that Dr. Bamberger’s March 2, 1995 report supported that appellant’s ongoing left wrist problem was periodically exacerbated by her work activities, which precluded a finding that appellant suffered a recurrence of disability. Finding that she was no longer suffering the effects of her original accepted condition, the Office advised that if appellant wished to pursue the matter of the time she missed in August 1994, she would need to file a new claim for an occupational injury, document the work factors that she felt caused the disability for that period and support her claim with medical documentation.

On October 30, 1995 appellant requested reconsideration and submitted in support thereof an October 26, 1995 report from Dr. Bamberger:

“[Appellant] was first seen in our office in 1991 for her left hand and wrist [complaint]. At that time she had findings of numbness and tingling in the hands in the thumb, index, and long fingers. She had a positive Tinel and Phalen sign. [Appellant] does repetitive work duties and holds her wrist in a volar flexed position. We at first felt she had a carpal tunnel syndrome. However, an EMG study revealed a tardy ulnar nerve palsy. This was done in April 1991. She continued to treat with our office for her tardy ulnar palsy and was seen in consultation by several different hand specialists.

“I am not sure why this has never been accepted as a tardy ulnar nerve palsy as this has been diagnosed as such since 1991. I have stated repetitive activities at work caused this problem and repetitive work activities would definitely

exacerbate this problem. [Appellant] did miss work in August 1994 for this condition. She was unable to perform her regular work duties due to the pain in the left upper extremity. She required time off work to try to quiet down this area.

“In my opinion this is not a new problem, but a continued residual problem dating back to 1991.”

In a decision dated March 7, 1996, the Office denied a merit review of appellant’s claim. The Office found that Dr. Bamberger’s October 26, 1995 report was basically a reiteration of his March 2, 1995 report, which the Office had previously reviewed.

The Board finds that this case is not in posture for a determination of whether appellant’s disability in August 1994 is causally related to her accepted employment injury.

A claimant seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,² including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her claimed condition or disability and the accepted employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant’s employment injury, and must explain from a medical perspective how the claimed condition or disability is related to the injury.⁴

In its May 9, 1995 decision, the Office found that appellant was no longer suffering from the effects of her original accepted condition and that if she wished to pursue the matter of the time she missed in August 1994, she would have to file a new claim for an occupational injury together with supporting evidence. The Board finds, however, that Dr. Bamberger’s March 2 and October 26, 1995 reports are sufficiently supportive of continuing residuals of the employment injury of 1991 (although exacerbated by subsequent repetitive activities at work) that further development of the medical evidence is warranted to determine whether appellant is entitled to compensation for her lost time in August 1994.⁵ In this regard the Board notes that

¹ 5 U.S.C. §§ 8101-8193.

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁵ See *John J. Carlone*, 41 ECAB 345, 358 (1989) (finding that the medical evidence was not sufficient to discharge appellant’s burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

appellant may be entitled to such compensation whether her disability for that period was causally related to her accepted injury of 1991 or to any aggravation caused by subsequent repetitive activities at work. The Board will set aside the Office's January 20, 1995 decision and remand the case for further development of the medical opinion evidence and an appropriate final decision.

The January 20, 1995 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.⁶

Dated, Washington, D.C.
June 23, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁶ The Board disposition of this appeal renders the Office's March 7, 1996 decision moot.