U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARMEN ATTRIDGE and U.S. POSTAL SERVICE,
SEATTLE BULK MAIL CENTER, Federal Way, WA

Docket No. 97-2636; Submitted on the Record;
Issued August 23, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant could perform the duties of a hotel/motel clerk and therefore had a 12 percent loss of wage-earning capacity.

On December 29, 1992 appellant, then a 45-year-old part-time postal clerk, was throwing magazines with her left hand when she was struck on the middle finger of the left hand. She filed a claim for a hyperextension injury to the left middle finger. Appellant stopped working on December 31, 1992 and did not return thereafter. On September 27, 1993 she underwent surgery on her left middle finger consisting of synovectomy of the left middle finger metacarpophalangeal joint with biopsy of the metacarpal head and repair of a partially torn radial collateral ligament. Biopsy results suggested a small area of fibrous dysplasia. In a December 17, 1993 report, Dr. John E. Meisburger, a Board-certified anesthesiologist, indicated that appellant appeared to be developing reflex sympathetic dystrophy in the left hand. The Office accepted appellant's claim for sprain of the left middle finger and torn radial collateral ligament of the left middle finger and began payment of temporary total disability compensation effective December 31, 1992.

In a February 14, 1997 decision, the Office found appellant could perform the duties of a hotel clerk and therefore had a 12 percent loss of wage-earning capacity. The Office reduced appellant's compensation effective February 22, 1997. In a July 8, 1997 decision, an Office hearing representative, after a review of the written record, affirmed the Office's February 14, 1997 decision.

The Board finds that the Office properly determined that appellant could perform the duties of a hotel clerk and therefore had a 12 percent loss of wage-earning capacity.

Once the Office has made a determination that a claimant is totally disabled as a result of an employment injury and pays compensation benefits, it has the burden of justifying a

subsequent reduction of compensation benefits. Once the medical evidence suggests that a claimant is no longer totally disabled but rather is partially disabled, the issue of wage-earning capacity arises.[1] Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions given the nature of the employee's injuries and the degree of physical impairment, his or her usual employment, the employee's age and vocational qualifications and the availability of suitable employment.[2] Accordingly, the evidence must establish that appellant can perform the duties of the job selected by the Office and that jobs in the position selected for determining wage-earning capacity are reasonably available in the general labor market in the commuting area in which the employee lives. In determining an employee's wage-earning capacity, the Office may not select a makeshift or odd lot position or one not reasonably available on the open labor market.[3]

In a May 15, 1996 report, Dr. Douglas Seip, a Board-certified orthopedic surgeon, indicated that appellant was undergoing physical therapy and was making good progress. He related that appellant reported she was ready to go back to work but had been turned down for some jobs because she informed prospective employers of her condition and indicated she could not do heavy lifting. Dr. Seip commented that appellant was ready to return to gainful employment and could perform light to moderate work. In a June 28, 1996 report, Dr. Brian Burgoyne, a Board-certified radiologist, indicated that a magnetic resonance imaging (MRI) scan of the left hand showed a five to six millimeter erosion of the metacarpal head of the left middle finger.

In a July 2, 1996 report, Dr. Richard M. Hodnett, a Board-certified plastic surgeon, indicated that appellant had a fairly typical injury to the collateral ligaments around the third metacarpal head which was not necessarily an injury that would end someone's career. Dr. Hodnett commented that the surgery appeared to have been well done as the middle finger of the left hand appeared to be stable with just some mild limited motion and flexion which would not cause any significant impairment in appellant's job function. He stated that appellant's symptom magnification was markedly out of proportion to her symptomatology. Dr. Hodnett commented that the lack of significant atrophy in the upper arm by measurement, by examination in the shoulder area and by measurement in the lower arm led him to conclude that appellant's objective findings did not correlate to her complaints in any significant fashion. He stated that appellant had reached maximum improvement, should be evaluated for an impairment and her case closed. In a July 23, 1996 note, Dr. Hodnett commented that appellant should be back at work and did not have any organic basis for many of her complaints.

In an August 28, 1996 report, Dr. Seip reviewed appellant's medical history, including her surgery and the apparent development of reflex sympathetic dystrophy, and noted that she had had a slow recovery. He stated that appellant was reaching a stationary improvement and could be released from his care. Dr. Seip indicated that appellant could work in a light- or medium-duty job that did not involve repetitive motion involving the left middle finger. He

[1] *Garry Don Young*, 45 ECAB 621 (1994).

[2] *See generally*, 5 U.S.C. § 8115(a); A. Larson *The Law of Workers' Compensation* § 57.22 (1989).

[3] *Steven M. Gourley*, 39 ECAB 413 (1988); *William H. Goff*, 35 ECAB 581 (1984).

concluded that she could lift up to the limits of tolerance in her left hand which would be 10 to 15 or perhaps 20 pounds. Dr. Seip commented that the original injury had resolved. He indicated that appellant should continue to force herself to use the finger so that she would not develop continued stiffness.

The Office referred appellant to Dr. Reynold L. Rimoldi, an orthopedic surgeon, for an examination and second opinion on appellant's ability to work. In an October 17, 1996 report, Dr. Rimoldi indicated that appellant had diffuse swelling of the middle finger of her left hand. He commented that appellant's active range of motion is limited by pain at the metacarpal phalangeal joints and interphalangeal joints of the left hand but he was able to move the joints through the full range of motion passively although appellant complained of pain when he performed this motion in the left middle and ring fingers. Dr. Rimoldi reported that appellant's sensation to the digits was intact. He recommended further testing to determine whether appellant had reflex sympathetic dystrophy. Dr. Rimoldi stated that if appellant had reflex sympathetic dystrophy, she could have persistent symptoms which could be related to the employment injury but, if she did not have reflex sympathetic dystrophy, the swelling would still be attributable to the employment injury. He concluded that appellant could work eight hours a day but until reflex sympathetic dystrophy was ruled out she was restricted to no frequent or constant gripping or grasping with her left hand. Dr. Rimoldi indicated that appellant should not lift more than 25 pounds with her left arm. He commented that appellant was partly disabled, pending further testing on whether she had reflex sympathetic dystrophy. Dr. Rimoldi noted the reported erosion of the metacarpal head and related it to appellant's surgery. He stated that appellant would have been temporarily totally disabled after the surgery on her finger but that such disability should not have lasted longer than three months.

The Office indicated that the position of hotel clerk was a light-duty position, requiring the ability to lift up to 10 pounds frequently and 20 pounds occasionally. The job required reaching, handling and frequent fingering. The Office noted that the position required three to six months of vocational preparation. A rehabilitation counselor performed a market survey within appellant's commuting area[4] and concluded, based on his survey and the state projections, that the position was reasonably available within appellant's commuting area.

The job selected by the Office was within appellant's work limitations as set by Drs. Seip and Rimoldi, even taking into account the possibility that she had reflex sympathetic dystrophy. The evidence showed that the job of hotel clerk was reasonably available within her commuting area. The Office has therefore established that appellant could perform the duties of a hotel clerk and, as a result has a 12 percent loss of wage-earning capacity.

The decisions of the Office of Workers' Compensation Programs dated July 8 and February 14, 1997 are hereby affirmed.

Dated, Washington, D.C.
August 23, 1999

[4] In the course of treatment of her condition, appellant had moved from the Seattle, Washington to Las Vegas, Nevada.

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member