

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARCIA M. GAYLE and DEPARTMENT OF DEFENSE,
DEFENSE COMMISSARY, Governor's Island, NY

*Docket No. 97-2645; Submitted on the Record;
Issued July 22, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that her right wrist, right shoulder and back conditions and periods of disability after July 11, 1995 are causally related to her accepted May 1, 1995 employment injury.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, then a warehouse worker, sustained contusions to her right thumb and right knee when she slipped on some oil and fell on her right side on May 1, 1995. Appellant did not stop work following the accident but was assigned light work for five days before returning to her regular duties. She thereafter filed Forms CA-8, and subsequently filed Form CA-2a, claiming disability commencing July 11, 1995. Appellant returned to work on December 4, 1995, working four hours a day light duty. By decision dated December 28, 1995, the Office denied appellant's claim for recurrence of disability commencing July 11, 1995, on the grounds that the evidence of record failed to demonstrate a causal relationship between the injury and the claimed condition or disability. The denial of the claim was affirmed by a decision of an Office hearing representative dated November 6, 1996. On June 27, 1997 the Office denied appellant's request for reconsideration of the prior decision, on the grounds that the evidence submitted was immaterial to the issues outlined in the case.

The Board has duly reviewed the case record and finds that this case is not in posture for decision.

On May 1, 1995 appellant slipped on some oil and fell on her right side. Immediately following the incident, appellant was treated by Dr. J.H. Rodriguez for injuries to her right leg, knee and thumb. Appellant testified at the hearing that while she returned to her regular duties following the accident, she only worked four hours a day instead of her usual eight. In July 1995 appellant sought treatment from Dr. Jean Claude Compas, a family practitioner, complaining of pain in her right arm and knee and in her back. In a form report dated July 13, 1995, Dr. Compas diagnosed derangement of the right thumb, knee and shoulder, as well as a lumbar sprain and

indicated by check mark that the diagnosed conditions were causally related to appellant's May 1, 1995 accident. In later reports dated August 28, September 26 and October 10, 1995, Dr. Compas further indicated that he was treating appellant with analgesics and a wrist support and had referred her to a hand specialist. In each report he indicated that appellant was totally disabled.

In his initial report dated September 18, 1995, Dr. Seymour L. Edelstein, a Board-certified orthopedic surgeon specializing in hand surgery, recorded the history of appellant's injury, noting that appellant complained of pain in her right wrist area and right thumb since the date of the injury. Dr. Edelstein noted that physical examination revealed swelling of the metacarpo-phalangeal joint of the right thumb with tenderness on the dorso-radial aspect, no instability and good motion. He also noted some tenderness at the proximal junction of the tendons of the first and second compartment. Motion of the right wrist was noted to be excellent, but with a slightly positive Watson's test and lower grip strength than the left wrist. Dr. Edelstein further noted that x-rays of the right hand revealed no evidence of fracture or arthritic changes but that x-rays of the right wrist revealed a dynamic intercarpal instability at the scapholunate ligament. In conclusion, Dr. Edelstein stated: "It appears that as a result of a job[-]related injury [appellant] has sustained a tear of the right scapholunate ligament resulting in a dynamic intercarpal instability. She also has sustained an injury to the metacarpo-phalangeal joint of the right thumb." Dr. Edelstein continued to treat appellant and submitted regular reports through February 1996, documenting appellant's treatment and progress. He requested authorization for a right carpal tunnel release.

In a narrative report dated January 11, 1996, Dr. Compas, who continued to treat appellant, recounted the history of appellant's May 1, 1995 injury and noted that appellant first contacted him on July 11, 1995 because of pain in her right arm, right leg and back. On examination he found that appellant had pain on palpation of the base of her right thumb on motion, and that her grip was weak and she complained of difficulty lifting. There was discomfort at the end of right shoulder motion and her right knee was painful on flexion and extension with limping and crepitus noted. He concluded that he felt that appellant's injuries were causally related to her fall in May 1995. Dr. Compas referred appellant to Dr. Howard Levy, a Board-certified orthopedic surgeon, who diagnosed probable carpal tunnel syndrome, right hand and wrist, based on positive Tinel's and Phalen's tests and ordered additional diagnostic testing to be performed.

Finally, the record contains a report from Dr. Leonard A. Langman, a neurologist, who noted the history of appellant's May 1, 1995 injury to her right hand and listed his findings on physical examination. Dr. Langman diagnosed lumbar radiculopathy and trauma to right hand/wrist with resulting carpal tunnel syndrome, and opined that these diagnoses are directly related to injuries sustained while working on May 1, 1995. He concluded that appellant is totally disabled as a result of her diagnosed conditions.

The history of injury contained in the medical record reveals that appellant, while in the performance of her federal duties, was in a slip and fall accident on May 1, 1995. Appellant returned to her regular duties after a short period of light duty, but testified at the hearing that the performance of her regular duties caused her condition to worsen until she sought medical

treatment in July 1995. The Office initially accepted appellant's claim for contusion of her right thumb and right knee, however, over time, the diagnoses appear to have evolved to include right wrist involvement, and possible right shoulder and back involvement, which appellant's physicians relate to the accepted employment injury.

Although none of the medical reports contain sufficient rationale to discharge appellant's burden of proving by the weight of reliable, substantial and probative evidence that her right wrist, shoulder and back conditions are causally related to her May 1, 1995 employment injury,¹ the reports of record, especially the September 15, 1995 report of Dr. Edelstein, do raise an uncontroverted inference of causal relationship, sufficient to require further development of the case record by the Office.² Moreover, neither an Office medical adviser nor an Office medical consultant has reviewed appellant's medical record; thus there is no opposing medical evidence in the record regarding this issue.

Proceedings under the Act³ 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. The Office has an obligation to see that justice is done.⁴

On remand the Office should refer appellant, together with a statement of accepted facts, which describes the May 1, 1995 employment injury, and the medical evidence of record to an appropriate Board-certified specialist or specialists for an examination, diagnosis and a rationalized opinion as to the relationship between appellant's diagnosed condition or conditions and the May 1, 1995 employment incident and injury. After such further development as is deemed necessary, the Office shall issue a *de novo* decision.

¹ The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. *Ruby I. Fish*, 46 ECAB 276 (1994).

² See *Horace Langhorne*, 29 ECAB 820 (1978); *Gary L. Fowler* 45 ECAB 365 (1994).

³ 5 U.S.C. §§ 8101-8193.

⁴ *William J. Cantrell*, 34 ECAB 1233 (1983).

The decisions of the Office of Workers' Compensation Programs dated June 27, 1997 and November 6, 1996 are hereby set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
July 22, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member