

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN DERBY and U.S. POSTAL SERVICE,
POST OFFICE, Lansing, Mich.

*Docket No. 97-1486; Submitted on the Record;
Issued May 21, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that his current medical condition is causally related to his accepted employment-related injury.

On September 21, 1983 appellant, then a 35-year-old letter sorting machine operator, filed a claim for occupational disease alleging that he had developed pain and tingling in his right wrist as a result of his federal employment duties. After a period of factual and medical development, on May 2, 1984 the Office of Workers' Compensation Programs accepted appellant's claim for temporary aggravation of tendinitis of the right hand. On March 3, 1985 following additional factual and medical development, the Office expanded its acceptance of appellant's claim to include carpal tunnel syndrome of the right hand and authorized carpal tunnel release surgery. Appellant elected not to undergo surgery at that time. Appellant did not stop work due to his accepted condition, but instead, on June 6, 1986, accepted the employing establishment's offer of a permanent rehabilitation position modified to his specific medical limitations.

On January 8, 1996 appellant filed a claim for recurrence of disability on which he stated that he continued to experience pain in his right hand since 1983 and was now seeking coverage for medical treatment, physical therapy or surgery for his prior accepted condition.

By letter dated March 22, 1996, the Office explained that it was appellant's burden to prove that he currently suffered from residuals of his 1983 employment injury and requested that he submit additional factual and medical evidence supporting his claim.

In a May 13, 1996 decision, the Office rejected appellant's claim for compensation benefits on the grounds that he had not met his burden of proof to establish that his current medical condition is causally related to his prior accepted work injury. The Office specifically noted that appellant did not submit any of the additional information requested.

By letter dated September 25, 1996, appellant requested reconsideration of the Office's prior decision and submitted additional evidence in support of his request.

In a September 6, 1996 letter, Dr. Kathy Keller, an osteopath and appellant's treating physician, stated that appellant first presented for treatment on May 29, 1996 at which time he gave a history of carpal tunnel syndrome since 1983. She noted that in 1983 appellant had declined the recommended surgery in favor of more conservative treatment, and related that in the intervening years his condition had been bothersome several times a week and often hurt all day long, but had become much more problematic in January 1996. Dr. Keller listed her objective findings and test results and stated that these were consistent with a diagnosis of bilateral carpal tunnel syndrome, right worse than left, with muscle weakness and hypothenar atrophy. The physician further noted that appellant had not responded positively to the physical therapy regime prescribed following his May 1996 initial visit, and reported in follow up examinations dated June 26 and September 3, 1996, that his symptoms were worse, that his splints were not helping and that his condition was now such that he would consider surgery. In an attempt to explain the relationship between appellant's 1983 accepted carpal tunnel syndrome and appellant's current condition, Dr. Keller stated:

“This patient clearly has persistent carpal tunnel syndrome which he has had for many years. It appears to be directly related to his job and repetitive motion injury. Despite current work limitations and a change in job, he is really unable to completely comply with the recommendation that he wear his splints 24 hours a day. The splints interfere too much with the current job duties and his pain and numbness are persistent to the point where I think surgery must be a consideration.”

Dr. Keller concluded by emphasizing that appellant had never recovered from his original 1983 condition but had been on limited duty since that time. She stated that his current diagnosis was the same as the original injury, except that he now also had left-sided carpal tunnel, although much less severe. She stated that carpal tunnel was a condition prone to recurrence, and that she was uncertain as to what factors had precipitated the recurrence.

In a decision dated November 14, 1996, the Office found that the evidence submitted was insufficient to warrant modification of the prior decision. The Office specifically found that in light of the twelve-year gap in the medical evidence of file and the fact that appellant had been in an automobile accident in 1983, Dr. Keller's opinion, that appellant's carpal tunnel “appears” related to his job but that she was uncertain as to what factors precipitated the recurrence, was insufficiently definitive to warrant modification of the prior decision.

By letter received January 27, 1997, appellant requested reconsideration of the Office's May 13, 1996 decision. In support of his request appellant submitted a letter from Dr. Keller in which she reiterated her prior opinion that appellant has had carpal tunnel syndrome since the early 1980's and that it has finally gotten to the point where he is willing to have the surgery that was recommended at the time of his original diagnosis. Dr. Keller further stated that she did not feel that appellant's 1983 automobile accident in any way related to his current problems.

In a decision dated January 29, 1997, the Office found the newly submitted medical evidence insufficient to warrant modification of the May 13, 1996 decision.

The Board finds that the case is not in posture for decision.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

The record shows that there was no change in appellant's light-duty job requirements. However, the medical evidence suggests that there was a change in appellant's injury-related condition. The medical reports from Dr. Keller note that appellant's condition progressed from a state where his condition was bothersome several times a week, to one of persistent pain and numbness requiring 24-hour splitting, a requirement incompatible with his current work duties. Dr. Keller's reports suggest that there was a change in appellant's injury-related condition such that he can no longer perform his light-duty job without considerable pain and now requires the surgical intervention previously authorized by the Office but postponed by appellant. While Dr. Keller's reports are insufficient to establish appellant's burden of proof, they are sufficient to require further inquiry.² Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion.

Therefore, upon remand the Office should refer appellant, together with a statement of accepted facts, questions to be answered and the complete case record, to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's current medical condition is causally related, either directly or by way of aggravation, acceleration or precipitation, to his 1983 accepted right hand condition. After such further development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

¹ *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

² *John J. Carlone*, 41 ECAB 354 (1989).

Consequently, the decisions of the Office of Workers' Compensation Programs dated January 29, 1997 and November 14 and May 13, 1996 are hereby set aside and the case is remanded for further development in accordance with this decision.

Dated, Washington, D.C.
May 21, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member