

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNICE L. CRAIN and U.S. POSTAL SERVICE,
POST OFFICE, Cleveland, OH

*Docket No. 98-823; Submitted on the Record;
Issued February 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issues are: (1) whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective March 1, 1996; and (2) whether the Office abused its discretion by refusing to reopen appellant's claim for consideration of the merits on December 2, 1997.

The Board has duly reviewed the case on appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits.

Appellant, a clerk, filed a claim alleging on June 16, 1983 she injured her wrist lifting in the performance of duty. The Office accepted her claim for sprained right wrist, de Quervains syndrome and chronic stenosing tenosynovitis of the right wrist. The Office authorized surgery on November 21, 1984. The Office entered appellant on the periodic rolls on December 3, 1985. Appellant accepted a clerk/typist position with the Department of Veterans Affairs on March 4, 1991 but was discharged during the probationary period effective September 30, 1991. By decision dated September 23, 1991, the Office determined that the position of clerk/typist represented appellant's wage-earning capacity and authorized compensation based on her loss of wage-earning capacity. By decision dated December 3, 1991, the Office denied appellant's claim for total disability from October 21, 1990 to February 23, 1991. By decision dated October 7, 1992, the Office denied appellant's claim for recurrence of disability beginning on or after October 1, 1991. In a letter dated January 25, 1996, the Office proposed to terminate appellant's compensation benefits. The Office terminated appellant's compensation benefits effective March 1, 1996 by decision of that date. Appellant requested reconsideration on October 24, 1996. By decision dated January 23, 1997, the Office denied modification of its March 1, 1996 decision. Appellant requested reconsideration on November 12, 1997. By decision dated December 2, 1997, the Office declined to reopen appellant's claim for review of the merits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify 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 Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

Appellant's attending physician, Dr. George Smirnoff, a Board-certified family practitioner, completed reports in support of appellant's continuing disability. On January 28, 1994 Dr. Smirnoff noted appellant's history of injury and stated that there was no change in her physical findings which previously included tenderness to palpation in the right wrist and base of the thumb, restricted range of motion of the thumb and wrist with pain. He described her treatment and stated that appellant had positive Phalen's and Tinel's signs "for progression of her injury of her wrist with possible median mononeuropathy." He recommended further treatment and stated that there was a likelihood of progression to carpal tunnel syndrome. Dr. Smirnoff stated:

"This is a soft tissue injury which has healed with scarring and fibrosis and a permanent impairment. The claimant continues to exceed this on a regular basis pursuing her present lifestyle and will more than likely continue to do so for the rest of her life. This injury predisposes her to microtrauma and therefore it tends to be progressive, with the microtrauma causing additional scarring and fibrosis of a cumulative nature. Since this injury affects the structural support of the wrist, it can also accelerate there the degenerative changes associated with aging. There is a certain probability that she will develop carpal tunnel syndrome and require surgical intervention. Those changes, to date, are not apparent. Medical intervention is required to provide symptomatic relief and to minimize progression of her injury and impairment. She will benefit from that treatment for the rest of her life."

The Office referred appellant for a second opinion evaluation with Dr. Stanley H. Nahigian, a Board-certified orthopedic surgeon. In a report dated October 6, 1995, Dr. Nahigian reviewed the statement of accepted facts and performed a physical examination. He stated that appellant had excellent pulses and a negative Finkelstein's Test indicating that the de Quervain's disease was no longer a problem. He noted tenderness at the base on the right thumb and stated that x-rays showed minimal changes at the carpometacarpal joint with some evidence of slight abnormality. Dr. Nahigian stated that appellant's findings were compatible for a patient of her

¹ *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

age. He stated that appellant's current complaints were due to medial nerve compression and that her work duties were not sufficient to have caused carpal tunnel symptoms of such persistence. Dr. Nahigian further stated, "I do not think from her history that the diagnosis of a carpal tunnel syndrome with median nerve compression at the wrist can be directly attributable to the incidents in the 1980's in which she developed the de Quervain's disease while employment as a full-time typist and clerk." He concluded, "There is no causal relationship between her problems today with the medical nerve compression and the disability of the injury of June 16, 1983. There is a very common correlation in people with de Quervain's disease who develop carpal tunnel syndrome and vice versa but they are not related in this particular patient. All of her symptoms at this time are directly related to developing carpometacarpal joint arthritis at the base of her thumb with evidence of compression of the median nerve in the carpal tunnel at the right wrist and to a lesser extent in the left wrist."

In a report dated February 1, 1996, Dr. Smirnoff noted appellant's history of injury and listed her objective findings as significant tenderness to palpation overlying the articulating surfaces of the right wrist and the base of the right thumb with loss of range of motion. He stated that appellant's thumb changes on x-ray were tenosynovitis and/or arthritis as a result of the de Quervain's syndrome. Dr. Smirnoff stated that appellant was disabled due to the constant nature of her wrist and hand pain. He repeated his earlier conclusion regarding appellant's prognosis. On July 2, 1996 Dr. Smirnoff attributed appellant's condition of carpal tunnel syndrome to her de Quervain's syndrome. He stated that appellant required further medical treatment.

Section 8123(a) of the Federal Employees' Compensation Act,⁵ provides, "If there is 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." In this case, appellant's attending physician, Dr. Smirnoff, opined that appellant continued to experience symptoms of pain and loss of range of motion related to her accepted de Quervain's syndrome and that she was disabled due to this condition. The Office's second opinion physician, Dr. Nahigian opined that appellant's de Quervain's syndrome had resolved without residuals and that her current symptoms were due to arthritis and carpal tunnel syndrome, neither of which was related to either her accepted condition or factors of her federal employment. The Board finds that there is an unresolved conflict of medical opinion evidence in the record. Due to the unresolved conflict between Drs. Nahigian and Smirnoff, the Office failed to meet its burden of proof to terminate appellant's compensation benefits.⁶

⁵ 5 U.S.C. §§ 8101-8193, 8123(a).

⁶ Due to the Board's disposition of this issue, it is not necessary to consider whether the Office abused its discretion in denying appellant's November 12, 1997 request for reconsideration.

The decisions of the Office of Workers' Compensation Programs dated December 2 and January 23, 1997 are hereby reversed.

Dated, Washington, D.C.
February 11, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member