

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA M. JONES and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 01-830; Submitted on the Record;
Issued November 16, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant sustained a recurrence of disability on October 9, 1998, causally related to her May 6, 1997 employment injury; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's authorization for medical treatment.

On June 16, 1997 appellant, a 40-year-old window clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome while in the performance of duty. Appellant identified May 6, 1997 as the date she first became aware of her disease. The Office initially accepted appellant's claim for bilateral wrist sprain and later expanded the claim to include temporary aggravation of bilateral carpal tunnel syndrome.¹

On October 26, 1998 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that she experienced a recurrence of disability on October 9, 1998 causally related to her previously accepted employment injury of May 6, 1997.

The Office denied the claim on January 19, 1999 based on appellant's failure to establish a causal relationship between her claimed recurrence of disability and her accepted employment injury. The Office also terminated authorization for further medical treatment.

Appellant sought reconsideration on four occasions and in each instance the Office reviewed her claim on the merits and denied modification. In response to appellant's most recent request for reconsideration, the Office referred her for a second opinion examination by Dr. William H. Simon, a Board-certified orthopedic surgeon. In a report dated October 31, 2000, Dr. Simon refuted the prior diagnosis of cumulative trauma-related bilateral carpal tunnel

¹ Additionally, the Office determined that appellant had several preexisting conditions including juvenile diabetes, carpal tunnel syndrome, Bell's palsy, diabetes mellitus and peptic ulcer disease.

syndrome and instead diagnosed progressive peripheral neuropathy due to diabetes. He also diagnosed cervical radiculopathy and left frozen shoulder syndrome. Dr. Simon concluded that appellant's current condition was not employment related.

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

Where appellant claims a recurrence of disability due to an accepted employment-related injury, she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.² This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.³

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ 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.⁵ The Board notes that when the Office initially terminated authorization for further medical treatment in its decision dated January 19, 1999, the Office failed to identify any affirmative medical evidence establishing that appellant no longer had residuals of an employment-related condition. And in fact, the record at that time contained no such evidence. While appellant had not submitted sufficient evidence to establish her claim for recurrence of disability, her failure to do so did not justify termination of medical benefits. The only medical evidence that ostensibly justified termination of medical benefits was obtained some 21 months after the Office's January 19, 1999 decision. And for the reasons discussed below, this evidence is insufficient to justify termination of medical benefits for appellant's accepted conditions.

As noted, the Office initially accepted appellant's claim for bilateral wrist sprain. The claim was subsequently expanded to include temporary aggravation of bilateral carpal tunnel syndrome. This latter diagnosis was established based upon the second opinion evaluation of Dr. Richard J. Mandel, a Board-certified orthopedic surgeon and Office referral physician. Dr. Mandel examined appellant on May 18, 1998 and issued a report that same day. He also provided a supplemental report dated June 9, 1998, in which he explained that appellant had preexisting carpal tunnel syndrome related to longstanding juvenile diabetes. Dr. Mandel further explained that the repetitive nature of appellant's job duties exacerbated her preexisting condition. Appellant's treating physician, Dr. Scott M. Fried, an osteopath and Board-certified orthopedic surgeon and Dr. Steven Mandel, a Board-certified neurologist, similarly diagnosed employment-related carpal tunnel syndrome as early as May 1997.

² 20 C.F.R. § 10.104(b) (1999); *see Robert H. St. Onge*, 43 ECAB 1169 (1992).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

⁵ *Furman G. Peake*, *supra* note 4; *Calvin S. Mays*, 39 ECAB 993 (1988).

In conjunction with her most recent request for reconsideration, appellant submitted an October 20, 1999 report from Dr. Fried. In his report, Dr. Fried explained that appellant remained significantly disabled with respect to the use of her upper extremities, which he attributed to her work-related wrist sprain. Dr. Fried also explained the relationship between appellant's employment injury and her carpal tunnel syndrome. Dr. Fried's October 20, 1999 report prompted the Office to refer appellant for a second opinion examination by Dr. Simon. Based upon Dr. Simon's October 31, 2000 report, the Office denied modification.

As previously noted, Dr. Simon refuted appellant's prior diagnosis of cumulative trauma-related bilateral carpal tunnel syndrome and instead diagnosed progressive peripheral neuropathy due to diabetes. By relying upon Dr. Simon's opinion, the Office effectively rescinded its prior acceptance of the claim for temporary aggravation of bilateral carpal tunnel syndrome. However, Dr. Simon's opinion is in conflict with at least three other physicians of record and the Board finds that his October 31, 2000 report is not sufficiently well rationalized to represent the weight of the medical evidence. In particular, Dr. Simon did not address appellant's other accepted condition of bilateral wrist sprain. Additionally, he did not administer any recent objective studies or obtain new x-rays.

The Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.⁶ As there remains an unresolved conflict in medical opinion between Drs. Simon and Fried, the case is remanded to the Office for further development of the record.

The November 17, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
November 16, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

⁶ 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).