

U.S. DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

In the matter of the claim for compensation under Title 5, U.S.C. Code 8101 et seq. of Sharon Newton, claimant; Employed by the U.S. Postal Service, Case no. A06-697243. Hearing was held on May 31, 2001, in Atlanta, Georgia.

The issue for determination is whether the claimant is capable of performing the physical requirements of the job held when injured.

The claimant, date of birth December 12, 1953, was employed by the U.S. Postal Service as a letter carrier. On February 16, 1998, she filed timely notice of occupational disease indicating a bilateral upper extremity condition related to her employment. The Office accepted the claim for bilateral carpal tunnel syndrome.

By report dated September 18, 1999, Dr. Edward Leader, psychiatrist, noted a diagnosis of "chronic pain disorder associated with psychological factors and a general medical disorder." He noted the claimant was unable to return to work "on psychiatric grounds alone at this time." He advised psychiatric treatment to assist in her recovery.

On April 26, 2000, Dr. D. Kirkpatrick released the claimant from care with restrictions of limited use of the arms, no gripping, and lifting limited to five pounds.

A postal investigative memorandum dated May 5, 2000 indicating the claimant was observed on two days in December 1999 and two days in January and February 2000, handling "what appeared to be bags weighing more than ten pounds without apparent difficulty." The postal service included photos of the claimant carrying what appeared to be bags of groceries from a car.

The Office referred the claimant to Dr. S. Houston Payne for second opinion examination. In its statement of accepted facts, the Office indicated that the claimant was observed driving and lifting bags of groceries weighing more than ten pounds "without any noticeable difficulty."

By report dated July 12, 2000, Dr. Payne noted an impression of residual symptoms of bilateral carpal tunnel release and symptoms of left cubital tunnel syndrome. He advised against lifting over five pounds in either hand or repetitive job activities.

By report dated August 15, 2000, Dr. Payne responded to questions posed by Mr. Theodore Caspe, employed by Bay Brook Medical Services. The record does not contain a copy of Mr. Caspe's letter. Dr. Payne wrote: "At the present time, I do not think she is totally disabled. As outlined, I do think that jobs that require heavy lifting or repetitive motion activities would be difficult for her to perform. If her job as a mail carrier could be carried out within the lifting restriction, then I think she would be able to perform it."

By letter dated September 1, 2000, the District Office requested Dr. Payne to state why the claimant would be able to perform the activities described in the postal investigation report, but not the position of a mail carrier. On October 18, 2000, Dr. Payne replied that the surveillance summary indicated the claimant could lift over ten pounds and drive, and "therefore I think it would be reasonable for her to attempt to return to her employment as a mail carrier."

On November 16, 2000, the Office proposed termination of compensation on the basis that the medical evidence established the claimant was capable of performing the job held when injured. The claimant submitted medical evidence in response. By report dated December 20, 1999, Dr. Ross Grumet, psychiatrist, noted diagnoses of major depression, job stress and chronic pain. He advised psychotherapy aimed at returning to work under limitations prescribed by a pain specialist or orthopedist.

By note dated November 30, 2000, Dr. Payne noted the claimant "returns for discussion of her upper extremity symptoms ... The point of her return today is to indicate that the job requirements for her are more significant than she can tolerate. She brings with her today a job description, which indicates that she will be required to lift up to 70 pounds ... I would agree that she is not able to lift up to 70 pounds."

The Office issued a final notice of termination of benefits on December 20, 2000, finding that the claimant had regained her pre-injury work capabilities. The claimant disagreed with that decision and requested an oral hearing.

During the hearing, held May 31, 2001, the claimant's attorney argued that Dr. Payne's opinion regarding the claimant's restrictions was not consistent with the physical requirements of the letter carrier job. He argued that the job required repetitive movement of the arms, contrary to his recommendation against repetitive arm motion. He argued that the job required lifting to seventy pounds, significantly exceeding her lifting recommendations. He noted that Dr. Payne provided an

addendum note, stating that the claimant was not capable of lifting 70 pounds. He further argued that the Office's Statement of Accepted Facts was prejudicial where it indicated that the claimant had refused light duty jobs. The claimant testified that she had not been offered light duty. The attorney argued that the Office had neglected to consider psychiatric reports regarding her disability status.

Additional medical evidence was submitted. A functional capacity examination dated February 12, 2001, concluded the claimant was incapable of performing the duties of a letter carrier.

By report dated January 10, 2001, Dr. Grumet concluded the claimant was suffering depression and anxiety resulting from the "chronic pain and inability to function she experiences from her carpal tunnel syndrome and hernia." He concluded her symptoms rendered her incapable of working.

The term "disability" as used in the Federal Employees' Compensation Act¹ means incapacity because of injury in employment to earn wages which the employee was receiving at the time of injury.² The general test for determining loss of wage earning capacity is whether the injury related impairment prevents the employee from performing the kind of work he was doing when injured.³

Factors which enter into the evaluation of the weight of medical evidence are the opportunity for and thoroughness of examination, the accuracy and completeness of the doctor's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion.⁴

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.⁵ After it has been determined that an employee has disability causally related to

¹5 USC 8100 et seq.

²See *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *Nathaniel G. Williams*, 27 ECAB 110 (1975).

³*Donald Johnson*, 43 ECAB ____ (Docket No. 92-459, issued March 1, 1993).

⁴*Essie L. Arnold*, 37 ECAB 754 (1986); *Naomi A. Lilly*, 10 ECAB 560 (1959).

⁵*Donald G. Aitken*, 42 ECAB 237,243 (1990).

The medical evidence therefore fails to demonstrate that the claimant is capable of performing the job held when injured. The decision of the District Office dated December 20, 2000 is hereby reversed on the basis that the Office has failed to meet its burden to demonstrate that the injury related disability has ceased. On return of the case record to the District Office, the Office must reinstate compensation effective with its termination.

Dated: AUG 31 2001

Washington, D.C.

A handwritten signature in cursive script that reads "Joe Baumgartner". The signature is written in black ink and is positioned above the printed name.

Joe Baumgartner

Hearing Representative

For

Director, Office of

Workers Compensation Programs