

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KIM LAW-JACKSON and U.S. POSTAL SERVICE,  
POST OFFICE, Trenton, NJ

*Docket No. 00-2635; Submitted on the Record;  
Issued March 1, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant established that her accepted condition of right carpal tunnel syndrome should be expanded to include left carpal tunnel syndrome as a result of her December 26, 1991 accepted employment injury.

On December 28, 1991 appellant, then a 33-year-old machine clerk, filed a notice of traumatic injury claiming that, on December 26, 1991, her right hand swelled and she developed pain in her right arm up to her neck, shoulder and breast, due to lifting tubs of mail. Appellant's claim was accepted for right carpal tunnel syndrome, right shoulder tendinitis and right medial epicondylitis. The Office of Workers' Compensation Programs also authorized right carpal tunnel surgery and right ulnar surgery. Appellant stopped work on December 28, 1991 and worked intermittently until approximately April 1995.

An electromyogram (EMG) performed on December 13, 1995 by Dr. Aurora P. Dela Rosa indicated that appellant also suffered from carpal tunnel syndrome in the left upper extremity. Appellant's representative requested that, the Office expand appellant's accepted condition to include left carpal tunnel syndrome and authorize surgery as recommended by her attending physician, Dr. Stuart G. Dubowitch. Appellant submitted medical reports from Dr. Dubowitch indicating that appellant had numbness and weakness in her left hand and elbow since approximately October 1993. A second EMG performed on July 10, 1997 indicated a worsening of appellant's left extremity.

Appellant was referred to Dr. Marc L. Kahn, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated October 19, 1998, Dr. Kahn opined that appellant's left carpal tunnel syndrome was not related to the work-related incident of December 26, 1991 but was due to her pregnancy and gestational diabetes.

By decision dated November 5, 1998, appellant's claim was denied. Appellant requested a hearing and submitted a November 30, 1998 report from Dr. Dubowitch. Dr. Dubowitch disagreed with Dr. Kahn's October 19, 1998 second opinion report and noted that appellant had

been complaining of pain and numbness in her left hand since 1993, prior to her pregnancy in 1995.

By decision dated June 4, 1999, the hearing representative determined that there was a conflict in medical opinion and remanded the case for an impartial medical evaluation.

In a report dated August 20, 1999, Dr. Stanley R. Askin, a Board-certified orthopedic surgeon and impartial specialist, diagnosed appellant with bilateral carpal tunnel syndrome but opined that it was not related to her work. He stated: "There is a difference between carpal tunnel syndrome and tissue intolerance to work activity." He indicated:

"[Appellant] has been diagnosed as having carpal tunnel syndrome which I hold to a reasonable degree of medical certainty to be a disease process afflicting her but without causal relationship either by way of induction, precipitation or aggravation to her work activities. I do recognize that, in [appellant's] history, ... she has work intolerance for the nature of her physical activities at her place of employment, a separate and distinct process which is addressable by means under her own control. ... Work intolerance, or overuse, or repetitive stress or accumulative trauma sorts of consideration, may have been an applicable explanation for her discomfort when she had been working, but carpal tunnel syndrome is a disease which occurs in people in all walks of life separate and apart from work."

He also stated:

"Insofar as I am aware, there is no actual medical or scientific link between specific activities, whether repetitive stress or not, and thickening of the tissues which makes up the condition of carpal tunnel syndrome."

In a *de novo* decision dated September 13, 1999, the Office found that the weight of the medical evidence of record rested with the opinion of Dr. Askin and denied appellant's claim.

Appellant requested an oral hearing, which was held on February 14, 2000. By decision dated April 24, 2000, the hearing representative affirmed the Office's September 13, 1999 decision.

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

The Board has found that, in situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner for the purpose of resolving the conflict, the opinion of such examiner, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>1</sup>

In this case, however, the Board finds that Dr. Askin's report is not sufficiently well rationalized and requires clarification. Dr. Askin stated that, as far as he was aware, there is no

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<sup>1</sup> Jack R. Smith, 41 ECAB 691, 701 (1990).

actual medical or scientific link between specific activities, including repetitive stress, and the thickening of the tissues of carpal tunnel syndrome. He does not explain how or why the thickening of the tissues of carpal tunnel syndrome is not related to repetitive stress activities. Dr. Askin only states that “as far as he is aware” there is no medical or scientific link. He also does not explain his statement regarding the difference between carpal tunnel syndrome and “tissue intolerance to work activity” and how appellant was simply intolerant to this type of work.

The April 24, 2000 and September 13, 1999 decisions of the Office of Workers’ Compensation Programs are reversed and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, DC  
March 1, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member