

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLY R. ASH and DEPARTMENT OF AGRICULTURE, U.S. FOREST
SERVICE, NEZ PERCE NATIONAL FOREST, Grangeville, Idaho

*Docket No. 97-147; Submitted on the Record;
Issued December 7, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant had any disability after November 24, 1995 causally related to his April 11, 1995 employment injury.

On April 11, 1995 appellant, then a 40-year-old equipment operator, was driving a dump truck on a dirt road when he turned suddenly to avoid rocks in the roadway. The edge of the road gave way and the dump truck rolled down a 125-foot embankment. Appellant's coworker was killed in the accident. Appellant stopped work that day. X-rays showed appellant sustained a fracture of the anterior process of the C4 vertebra. The Office of Workers' Compensation Programs accepted appellant's claim for chest contusion, low back strain, crush injury of the right hand, neck strain and comminuted fracture of the C4 vertebra. Appellant received continuation of pay for the period April 11 through May 26, 1995. The Office thereafter paid temporary total disability compensation.

Appellant returned to work on August 14, 1995. He was placed on administrative leave beginning September 8, 1995 pending an investigation of an employing establishment proposal to remove him from his job due to safety violations arising out of the April 11, 1995 employment injury. In a November 8, 1995 decision, the employing establishment removed appellant from his job effective November 24, 1995. Appellant sought compensation beginning November 27, 1995 because no light duty was available. In a March 8, 1996 decision, the Office rejected appellant's claim for compensation effective November 25, 1995 on the grounds that he did not have any disability after that date causally related to the employment injury. In a July 22, 1996 merit decision, the Office denied appellant's request for modification of the March 8, 1996 decision.

The Board finds that appellant did not have any disability after November 25, 1996 causally related to the April 11, 1995 employment injury.

In the March 8, 1996 decision, a senior Office claims examiner reported that the employing establishment had indicated that accommodations of appellant's employment to meet physical restrictions related to his employing establishment would still have been available to

him if he had not been terminated for violation of safety regulations. She concluded that there was no evidence of record to show that appellant's employment was terminated due to his physical inability to perform his assigned duties or that he stopped work due to his physical condition. In a July 22, 1996 decision, a different senior claims examiner reported that appellant had returned to a light-duty position that would have remained available to him had it not been for the subsequent personnel action. While appellant was not assigned to a specific light-duty position when he returned to work on August 14, 1995 he was given light-duty assignments which did not involve heavy lifting. 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

In a July 5, 1995 report, Dr. Mark W. Peterson, a Board-certified radiologist, stated that a magnetic resonance imaging (MRI) scan showed a healed fracture of the C4 vertebra. In an August 4, 1995 report, Dr. J. Gerald McManus, a Board-certified orthopedic surgeon, indicated that appellant was able to work without restriction except to avoid lifting over 100 pounds, especially above the shoulder level. He noted that appellant's C4 vertebra fracture had healed and that he had a mallet finger on the right hand. Dr. McManus commented that appellant may do almost all of his regular duties but might have difficulties with a torque wrench for awhile. The employing establishment indicated that appellant's job required heavy lifting which was defined as lifting 50 to 100 pounds. The evidence of record therefore shows that appellant had recovered from the accepted conditions to the point that he was also ready to resume his regular duties by August 14, 1995. He therefore was not disabled for work at the time his position with the employing establishment was terminated due to any of the conditions accepted by the Office.

In a May 5, 1995 report, Dr. McManus noted that appellant had hypesthesia around the posterior aspect of the upper arm, across the posterolateral elbow, dorsal forearm and mid dorsal wrist down to the middle finger. He noted that the numbness would suggest a C6 or C7 nerve root irritation or localized neuritis. In a June 9, 1995 report, he reported that he suspected appellant had a cervical disc problem at a lower level. The July 5, 1995 MRI scan showed small bulging discs at C3-4 and C4-5 with the disc at C4-5 pressing on the spinal cord. The rest of the disc spaces were normal. In July 7, 1995 report, Dr. McManus commented that the bulging seen on the MRI scan was out of the ordinary but did not require surgical intervention.

In a July 12, 1995 report, Dr. Michael Boykin, a neurologist, stated that since the employment injury appellant had complained of persistent paresthesias in the right index finger, middle finger, dorsum of the right hand and up the dorsum of the right forearm. He indicated that the MRI findings did not correlate with the sensory symptomatology. Dr. Boykin suggested appellant had a brachial plexus stretch injury and recommended an electromyogram (EMG). In a July 21, 1995 report, he stated that the EMG was compatible with a bilateral carpal tunnel syndrome with no current evidence to suggest brachial plexus involvement on the right. In an October 6, 1995 report, Dr. Boykin stated, based on the employment injury and appellant's clinical picture over time, he probably had a brachial plexus stretch injury. In a December 13,

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

1995 report, he commented that appellant still had some limitation of strength in his right arm. Dr. Boykin noted that it was difficult to demonstrate any weakness in the muscle groups in the upper arm in the tests he performed in examining appellant. He related, however, that appellant complained of pain while lifting a 70-pound object with a sharp, stabbing pain extending up to his neck. Dr. Boykin concluded that appellant had some permanent partial disability in the right arm. He restricted appellant's lifting to less than 20 pounds with the right arm. In a May 30, 1996 note, Dr. Boykin stated that appellant had persistent complaints in the right forearm of altered sensation without any evidence of weakness. He indicated that appellant still carried a diagnosis of brachial plexus stretch injury. While Drs. McManus and Boykin both noted numbness and weakness in appellant's right arm, Dr. Boykin indicated that a cervical MRI did not show a cause for appellant's complaints. He diagnosed a brachial plexus stretch injury but noted that an EMG did not support this diagnosis. Despite Dr. Boykin's reports diagnosing a brachial plexus stretch injury, the medical evidence of record is insufficient to show that such a condition was causally related to appellant's employment injury or rendered him unable to perform his duties as of November 25, 1995. The Office therefore properly determined that appellant did not have any disability after that date causally related to his employment injury.

The decisions of the Office of Workers' Compensation Programs dated July 22 and March 8, 1996 are hereby affirmed.

Dated, Washington, D.C.
December 7, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member