U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GWENDOLYN TISDALE and U.S. POSTAL SERVICE,
POST OFFICE, Baltimore, MD

Docket No. 99-1752; Submitted on the Record;
Issued July 25, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on and after May 1, 1998 causally related to her accepted employment conditions of bilateral flexor tenosynovitis and bilateral carpal tunnel syndrome.

On September 20, 1985 appellant, then a 32-year-old letter sorting machine operator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she developed pains in her hands as a result of her federal employment. The claim was accepted for bilateral flexor tenosynovitis and bilateral carpal tunnel syndrome. Appellant filed numerous Form CA-2a's, *i.e.*, notices of recurrences of disability.

One notice of recurrence and the subject of the case at hand was filed on November 30, 1998 alleging a recurrence commencing May 1, 1998. Therein, appellant alleged that she was only able to work six hours a day four days a week. In support of her claim, appellant filed a medical report by Dr. G. Howard Bathon, a Board-certified orthopedic surgeon, dated May 1, 1998, wherein he indicated that, since both appellant's bilateral carpal tunnel syndrome and cervical strain syndrome were probably related to her repetitive motion, appellant was limited daily to six hours of repetitive grasping, three hours doing fine manipulation and four hours of reaching over her head. He also limited appellant to 15 pounds to lift and carry and on an intermittent basis only. Dr. Bathon noted that, if she did not respond well to these restrictions, he would agree that a functional capacity evaluation would probably be indicated. He noted, "With these restriction (sic) I [am] going to allow her to continue working and will reevaluate her in six weeks." In a short medical note from the same date, Dr. Bathon noted that appellant was "only able to *file* four hours per day. She may return on Monday, May 4, 1998." (Emphasis in the original.) In a medical note dated August 3, 1998, Dr. Bathon indicated that appellant was out of work on July 31, 1998 and that she will return on August 3, 1998 with the same restrictions of working six hours a day four days a week. Appellant also submitted a note from Dr. Bathon dated October 23, 1998 wherein he indicated that appellant may work only six hours a day four days a week. Finally, she submitted a personal statement dated December 3, 1998, wherein she noted that, when she followed Dr. Bathon's suggestion that she only work six hours a day, she

could really feel the reduction in the amount of pain and fatigue in her hands, wrist, neck and shoulder.

Prior to her filing this claim for recurrence, appellant had submitted other medical reports by Dr. Bathon. In attending physician's supplemental reports (Form CA-20a) dated August 5 and October 2, 1998, he limited appellant to work six hours a day. Dr. Bathon also responded to the question on the form: "Is [appellant's] present condition due to the injury for which compensation is claimed?" by checking the box labeled "yes." In a duty status report dated September 4, 1998, (Form CA-17), Dr. Bathon indicated that appellant may work 4 days a week, with limited continuous lifting of 20 pounds for 8 hours a day and intermittent lifting of 20 to 40 pounds for 8 hours a day. He limited appellant to four hours a day of sitting and standing, three to four hours a day of bending, stooping and fine manipulation, three hours a day of walking and five to six hours a day of reaching above shoulder.

By letters dated September 28 and October 30, 1998, and January 12, 1999, the Office of Workers' Compensation Programs advised appellant of the deficiencies in her evidence.

In a decision dated January 28, 1999, the Office denied appellant's claim for intermittent wage-loss compensation for the period of May 4, 1989 through July 30, 1998, finding that the evidence of file failed to establish that appellant was disabled from work for these dates.

The Board finds that appellant has not established that she sustained a recurrence of disability beginning May 1, 1998 due to her previously accepted work injury.

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[1] Causal relation and disability are medical issues that must be resolved by competent medical evidence.[2]

In the instant case, the medical evidence does not meet appellant's burden to show that her recurrence of disability was causally related to her accepted work injury. Dr. Bathon's duty restriction form of September 4, 1998 and the short medical note of May 1, 1998 make no reference to the cause of appellant's disability. In his medical report of May 1, 1998, Dr. Bathon merely noted that appellant's disability is "probably related to repetitive motion." However, this report is speculative, and does not directly link appellant's disability to her employment. In his August 5 and October 2, 1998 attending physician's reports (Form 20a), Dr. Bathon, when asked, "Is employee's present condition due to the injury for which compensation is claimed?" he did check the box marked "yes." However, he provided no rationale for this conclusion.

[1] *Helen K. Holt*, 50 ECAB ___ (Docket No. 97-1196, issued March 11, 1999); *Dennis J. Lasanen*, 43 ECAB 549 (1992).

[2] *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *Ausberto Guzman*, 25 ECAB 362 (1974).

Simply checking the "yes" box in this instance without offering any reasons why appellant's disability was related to her employment is not sufficient to meet appellant's burden of proof.[3]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.[4] Appellant failed to submit rationalized medical evidence establishing that her claimed recurrence of disability is causally related to the accepted employment injury and; therefore, the Office properly denied her claim for compensation.

The decision of the Office of Workers' Compensation Programs dated January 28, 1999 is affirmed.

Dated, Washington, DC
July 25, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[3] *See Ancil R. Gann*, 31 ECAB 1752, 1756 (1980).

[4] *See Walter D. Moorehead*, 31 ECAB 188, 194-95 (1986).