U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM T. WHATLEY and DEPARTMENT OF AGRICULTURE, AGRICULTURE MARKETING SERVICE, Delhi, LA

Docket No. 03-735; Submitted on the Record;
Issued August 22, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant had any employment-related disability due to his accepted carpal tunnel syndrome after October 1, 1997.

On October 21, 1998 appellant, then a 62-year-old seasonal employee, filed a notice of occupational disease and claim for compensation (Form CA-2) for pain in his wrists and fingers which he related to his federal employment. He noted gradually worsening symptoms, which first occurred in October 1997, caused by repetitive stress to his hands after prolonged lifting, reaching, gripping and grasping of cotton samples and trays. Appellant's claim was accepted for mild carpal tunnel syndrome.[1]

In a July 28, 1998 form report, appellant's treating physician, Dr. Sidney Bailey, an orthopedic surgeon, released appellant to work eight hours a day with restrictions including no repetitive work, no climbing, kneeling or squatting, with intermittent sitting, walking, lifting and standing. He was not to lift over 20 pounds. In an August 19, 1998 letter, the employing establishment made appellant a light-duty utility job offer, involving cleaning duties and some traying of cotton. According to the job description, traying cotton involved picking 8 ounce samples of cotton from a table 33 inches high and placing them into a plastic tray. The job was initially to be performed during the day shift but would change to the night shift as the workload increased. In an August 19, 1998 letter, the Office found the job consistent with appellant's medical restrictions. In an August 22, 1998 letter, appellant wrote that he had no choice but to accept the job though he felt strongly that he could not perform it because of the night shift and because traying cotton had caused pain in his hands in 1997. In an October 9, 1998 letter,

[1] On October 13, 1997 appellant injured his left knee, left arm and right ankle when he stepped into an open trap door. He did not return to work until he was released to light duty on December 17, 1997, at which point his seasonal job had expired. In a January 12, 1998 decision, the Office of Workers' Compensation Programs accepted appellant's claim for multiple contusions and abrasions and he received total temporary disability until August 31, 998.

appellant alleged that the job was outside his medical restrictions and that he could not perform the midnight shift because he was not a day sleeper.

In reports dated September 30, 1998, a nurse assigned to appellant's case wrote that she visited with appellant and his supervisor, Terry Sims, at the job site. According to the nurse, Mr. Sims said that appellant was concerned that the work was outside his medical restrictions. Mr. Sims told appellant to do only as much as he felt he could medically do. Appellant also complained to the nurse of aching hands and said that he "did not feel right."

In a November 11, 1998 report, Dr. Bailey wrote that appellant was being treated for osteoarthritis of the hands, a permanent condition that he felt was "most probably caused by his repetitive work while employed by the [employing establishment.]"

In a November 24, 1998 decision, the Office determined that the light-duty position appellant had been performing since August 31, 1998 represented his wage-earning capacity. On December 1, 1998 appellant's seasonal employment ended. In a December 4, 1998 letter, appellant wrote that the wage-earning capacity determination was "grossly incorrect" and did not reflect his actual work. He indicated that his October 13, 1997 injuries were permanent; he was in constant pain and, at age 62, unable to do his light-duty job or perform simple tasks like buttoning his shirt without pain.

In a December 31, 1998 letter, the Office requested more information and explained to appellant the deficiencies in the medical evidence. In a January 8, 1999 letter, he responded that his light-duty job was outside his medical restrictions because he performed repetitive tasks and heavy lifting, such as, loading and unloading trucks and lifting trays.

In an undated letter from the employing establishment, Mr. Sims wrote that appellant did mostly janitorial work; adding that, while he did tray some cotton, the belt moved slowly, approximately three feet a minute and there were nine other employees helping. Mr. Sims wrote that the trays appellant lifted were plastic and held approximately ten eight-ounce cotton samples.

In a March 9, 1999 decision, the Office denied appellant's claim due to insufficient medical evidence.

In a March 12, 1999 letter, appellant requested a hearing and submitted a March 5, 1999 report from Dr. Douglas Brown, an attending Board-certified orthopedic surgeon, who diagnosed carpal tunnel syndrome and right shoulder bursitis and recommended nerve conduction and rheumatoid tests. In a March 17, 1999 report, he wrote that appellant indicated that his nerve conduction test was positive and that he presented with numbness and tingling in his right hand secondary to repetitive hand and wrist flexion and use. According to Dr. Brown, appellant said that he handled as many as 3,000 cotton samples a day in addition to his other work.

Appellant requested a hearing, which was held on June 23, 1999. He testified that his actual job duties exceeded his medical restrictions and that he was still having problems with his knees and shoulders from the accepted injury of 1997.

In a July 21, 1999 letter, James Vernon, the night shift supervisor, wrote that in 1998 appellant worked the night shift for eight days; during that time he did not load or unload trucks or tray cotton. In a July 21, 1999 letter, Stephen Haydel, the Assistant Area Director wrote that sweeping and cleaning were the only jobs appellant was required to do and he was given extra breaks to do them. He indicated that appellant did tray some cotton, but never more than a few minutes at a time and according to [appellant's] own judgment. In a July 21, 1999 letter, Mr. Sims wrote that appellant and his supervisors were told that appellant was to do mostly cleaning and was not to perform any task for more than two hours a day. He noted that he instructed appellant that, if he did tray cotton, it should not be for more than 30 minutes.

In an October 7, 1999 decision, the hearing representative remanded the case for further development.

In an October 30, 1999 note, Dr. Brown diagnosed carpal tunnel syndrome and osteoarthritis of the hands and wrist due to repetitive hand and wrist flexion/extension and gripping 3,000 cotton samples per day as part of his job and in addition to his regular duties.

In a December 16, 1999 letter, appellant was referred for a second opinion. In a January 18, 2000 report, Dr. Daniel Dare, a Board-certified orthopedist, wrote that appellant presented with pain in his hands that radiated into his arms and pain in his left knee and right shoulder. On examination he found negative carpal compression test, good distal pulses and no loss of circulation. Appellant had subjective numbness in both the median and ulnar nerve but no weakness in the intrinsics, either the medial-ulnar enervated or the upper extremities. He found some lateral subluxation of the first carpometacarpal joint compatible with early osteoarthritis of that joint; a condition that was supported by x-rays. Dr. Dare indicated that nerve tests showed elevation of the right and left distal motor latency at the level of the wrist, but also showed elevation of the ulnar nerve of the median nerve at the elbow and significant elevation of the ulnar nerve on the left wrist. He diagnosed appellant with delayed motor conduction by surface electrode, median nerve wrist and elbow and delayed conduction across the Guyon's canal of the left wrist and mild osteoarthritis of the first carpometacarpal joint of both thumbs. He concluded by writing:

> "One cannot conclusively say that [appellant] has carpal tunnel syndrome based on these electrical studies or my examination today. He may well indeed have a peripheral neuropathy given the delayed conduction, both proximally and distally in the median nerve and distally in the left ulnar nerve… I suspect [that appellant] may have problems that are not related to his on the job alleged injury. It would be surprising to see such a significant carpal tunnel due to solely to this, which remained present through all the time from just 17 days of work."

After referring appellant for nerve conduction studies, in an April 6, 2000 report, Dr. Dare noted that appellant had an abnormal F wave in the median nerve. He wrote that appellant had no delayed distal motor latency and this represented a very mild bilateral carpal tunnel syndrome, at best.

In a May 2, 2000 decision, that accepted mild bilateral carpal tunnel syndrome, the Office informed appellant that, if his injury resulted in any disability for work or the need for medical treatment, he was to claim compensation on Form CA-7.

On June 6, 2000 appellant filed a Form CA-7 requesting wage-loss compensation from October 1, 1997 to the present though he indicated that he was paid over $7,000.00 in wage-loss compensation during that period. In a November 27, 2001 decision, the Office denied appellant's claim finding that he had submitted no medical documentation establishing entitlement to wage-loss compensation.

Appellant requested a hearing that was held on July 23, 2002. At the hearing appellant testified that his light-duty job was the same work that he did in 1997 and was outside his medical restrictions. In a November 13, 2002 decision, the hearing representative affirmed the Office's November 27, 2001 decision, finding that appellant had not submitted medical evidence indicating that he was disabled for work.

The Board finds appellant has not met his burden of proof to establish that he had a disability after October 1, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[4]

Appellant alleged that he worked beyond his medical restrictions, but has not submitted any evidence to support that allegation, while the employing establishment refuted it. Statements from appellant's supervisors, Mr. Sims, Mr. Vernon and Mr. Haydel all support that appellant did very little, if any, repetitive work or heavy lifting and that appellant was given the discretion to take additional breaks and work at his own pace. According to Mr. Sims, he specifically instructed appellant that, if he did tray cotton, he should not do so for more than 30 minutes and that he was not to do any task for more than 2 hours.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

Appellant has not submitted any medical evidence establishing that he was disabled from earning wages as of October 1, 1997. Dr. Dare's January 18 and April 6, 2000 reports are the most recent medical evidence submitted; but neither report indicates that appellant could not perform his date-of-injury job. In his January 18, 2000 report, Dr. Dare wrote that he could not conclusively diagnose appellant with carpal tunnel syndrome (CTS) and if appellant did have CTS, he did not believe it was work related because appellant only worked for 17 days while the symptoms were present for many months after stopping work. In his April 6, 2000 report, he wrote that appellant's symptoms represented a very mild bilateral carpal tunnel syndrome, at best. Dr. Dare never wrote that appellant was disabled from work.

The reports of Drs. Brown and Bailey, do not establish that appellant was disabled from work for the period commencing October 1, 1997. Additionally, Dr. Brown's report and diagnosis was based on appellant's statement that he gripped 3,000 cotton samples a day; a statement that is not supported by the record. There is no medical evidence in the record establishing that appellant was disabled after October 1, 1997. Absent medical evidence establishing that he was disabled for the period claimed, appellant has not met his burden of proof to entitlement to wage-loss compensation.

The decisions of the Office of Workers' Compensation Programs dated November 13, 2002 and November 27, 2001 are affirmed.

Dated, Washington, DC
August 22, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member