

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM SHADE and U.S. POSTAL SERVICE,
PROCESSING & DELIVERY CENTER, Los Angeles, CA

*Docket No. 03-2209; Submitted on the Record;
Issued November 25, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he was totally disabled from January 28 to August 7, 2003, due to his accepted employment injuries.

Appellant, a 56-year-old maintenance mechanic, filed a notice of occupational disease on January 5, 2002 alleging that he had sustained a recurrence of occupational disease with additional work factors resulting in injury to both of his feet, his neck, both of his knees, his lower back, both of his hands as well as chronic bilateral sinusitis. By letter dated March 4, 2002, the Office of Workers' Compensation Programs requested additional factual and medical evidence in support of appellant's claim.

Appellant submitted a narrative statement dated March 17, 2002, asserting that he sustained an aggravation of his bilateral foot condition, which rendered him totally disabled. Appellant stated that his new position beginning in 2001, required him to stand and walk for longer periods of time. He alleged that, as a result of his increased foot pain, he began to limp, which consequentially caused neck and back pain. In addition to his foot condition, appellant alleged that he developed carpal tunnel syndrome in both hands due to his use of tools, that his rhinitis was chronic but stable and that he had pursued several courses of physical therapy for four years. Appellant stated that he believed that he was entitled to medical treatment due to a 1997 claim. Appellant submitted a series of medical reports in support of his claim.¹

¹ Dr. Frederick D. Davis, a physician Board-certified in physical medicine and rehabilitation, found on March 11, 2002 that appellant had mechanical low back pain and subjective complaints of lumbar radiculopathy. Dr. Davis attributed this condition to heavy lifting at the employing establishment. In a report dated August 19, 2001, Dr. Terry Scott diagnosed allergic and nonallergic rhinitis and stated that these symptoms could be exacerbated by certain environmental as well as allergy factors. Appellant also submitted medical notes regarding his low back pain. The Office has not issued final decisions addressing appellant's claim for low back pain or rhinitis in this claim file. Therefore, the Board may not address these issues on appeal. 20 C.F.R. § 501.2(c).

The Office accepted appellant's claim for aggravation of Morton's neuroma of the left foot on June 14, 2002. The Office stated that the medical reports received regarding other conditions were not sufficient to accept any other condition and that appellant's neck and back conditions had been previously denied in a separate claim.² Appellant's attending physician, Dr. Lawrence A. Feiwell, a Board-certified orthopedic surgeon, recommended surgical treatment of the left neuroma on September 17, 2002. The Office authorized this procedure on September 24, 2002. Appellant did not undergo foot surgery due to an increase in his left knee symptoms, accepted under a separate claim.

Appellant submitted additional medical evidence from Dr. Albert Simpkins, a Board-certified orthopedic surgeon, beginning October 10, 2002. Dr. Simpkins diagnosed bilateral carpal tunnel syndrome, bilateral post-traumatic synovitis of the knees with crepitus and lumbosacral radiculitis. He found that appellant could continue to work and attributed appellant's conditions to his federal employment.

In a letter dated February 20, 2003, the Office accepted that appellant sustained bilateral carpal tunnel syndrome "in addition to the bilateral foot condition already accepted." The Office noted that appellant's previous claim for a left knee condition was accepted. The Office authorized appellant's request to change physicians to Dr. Simpkins on March 6, 2003.

Appellant submitted a series of claims for compensation beginning January 27, 2003, alleging that he was totally disabled beginning January 28 through August 7, 2003. In support of these claims, he submitted reports from Dr. Simpkins, indicating that appellant was totally disabled due to the alleged work-related conditions of bilateral carpal tunnel syndrome, bilateral knee synovitis and lumbosacral radiculitis. By decision dated August 14, 2003, the Office denied appellant's claim for total disability finding that Dr. Simpkins' reports did not specify that appellant's disability was due to the accepted conditions and that he failed to support his finding of total disability with objective findings and medical rationale.³

² As mentioned in footnote 1, this informational sentence is not sufficient to constitute an adverse decision on the remainder of appellant's claim. It does not contain findings of fact and a statement of reasons and is not accompanied by appellant's appeal rights. 20 C.F.R. § 10.126.

³ The Office addressed appellant's claims for compensation for total disability, in part, in terms of a recurrence of disability in accordance with *Terry R. Hedman*, 38 ECAB 222 (1986). This analysis is not appropriate in this case. The record establishes that appellant had previously filed claims for both a left knee condition and a back condition. The left knee claim was accepted by the Office. Appellant filed a new claim for occupational disease on January 5, 2002 alleging that, as a result of additional occupational exposures in his modified position assumed in 1998 and changed in 2001, he had sustained or aggravated various injuries, which he became aware of on March 8, 2001. Therefore, appellant has not sustained a recurrence of disability as defined by the Office's regulations as he had new exposures to the work environment, which he felt caused his conditions. 20 C.F.R. § 10.5(x). *Hedman* is not applicable to appellant's initial claim as appellant alleged new injuries, rather than merely a change in the nature and extent of his previously accepted knee condition. Furthermore, as appellant did not stop work after filing his claim on January 5, 2002 until January 2003 and as there is no clear evidence in the record that appellant was restricted to or began light-duty work on or before January 5, 2002, he has not alleged an additional recurrence of disability after January 5, 2002. Indeed appellant's attorney argued that appellant's work became more onerous after April 6, 2002, when he was promoted to electronic technician. The work stoppage in January 2003, is the first period of disability claimed by appellant due to his newly accepted employment injuries and will be analyzed as such by the Board.

The Board finds that appellant has not met his burden of proof in establishing that he was totally disabled from January 28 to August 7, 2003, due to his accepted employment injuries.

An employee seeking benefits under the Federal Employee's Compensation Act⁴ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and 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 or specific condition, for which compensation is claimed is causally related to the employment injury.⁵

In support of his claim for total disability, appellant submitted several reports from Dr. Simpkins, a Board-certified neurologist. In a narrative report dated October 10, 2001, Dr. Simpkins reviewed appellant's history of injury, performed a physical examination and diagnosed bilateral carpal tunnel syndrome, bilateral post-traumatic synovitis of the knees with crepitus and lumbosacral radiculitis. He stated that appellant could continue with his modified duty.

Dr. Simpkins completed a form report on February 2, 2003 and indicated that appellant was totally disabled from December 5, 2002 through February 27, 2003. He diagnosed bilateral carpal tunnel syndrome, bilateral post-traumatic synovitis of the knees and lumbosacral radiculitis. Dr. Simpkins indicated with a checkmark "yes" that appellant's conditions were due to his employment and further stated: "Due to continuous trauma brought on by the course of his work duties." Dr. Simpkins also submitted a work release note dated December 5, 2002, stating that appellant was totally disabled until January 24, 2003, due to the above-mentioned list of conditions. In a form report dated February 20, 2003, Dr. Simpkins made the same assertions and also included appellant's bilateral foot condition among the diagnosed conditions. He repeated his diagnoses and conclusions on February 27, 2003.

These form reports are not sufficient to meet appellant's burden of proof of establishing that he was totally disabled for the periods in question due to his accepted employment injuries of bilateral carpal tunnel syndrome and bilateral neuromas of the feet. The Office has not accepted either a right knee condition nor a spine condition as causally related to appellant's employment. Dr. Simpkins continued to attribute appellant's total disability to the variety of conditions without offering reasoning, physical findings in support of his conclusion or explaining why appellant could not perform light duty. Therefore, these reports do not establish that appellant was totally disabled from January to August 2003.

Dr. Simpkins also submitted a narrative report on April 3, 2003. He stated that appellant had not worked, had not undergone additional testing and had not sustained additional injuries. Dr. Simpkins noted that appellant reported a decrease in his hand symptoms due to home therapy and stated that appellant felt that if his knee and back conditions were corrected his foot

⁴ 5 U.S.C. §§ 8101-1893.

⁵ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

symptoms would decrease. He stated that appellant complained of lower back and left knee pain.

The Board finds that Dr. Simpkins' report does not provide any findings on physical examination to explain appellant's period of disability. In the initial report in October 2001, Dr. Simpkins found that appellant was capable of performing his modified duties. He then found that appellant was totally disabled beginning in December 2001 and appellant stopped work in January 2001. Dr. Simpkins attributed appellant's disability to the unaccepted back condition in April 2003, as well as to his previously accepted left knee condition. He noted that appellant's carpal tunnel syndrome had improved. The April 3, 2003 report does not clearly establish that appellant is totally disabled due to his accepted conditions under this claim of bilateral carpal tunnel syndrome and bilateral foot neuroma. Dr. Simpkins suggested that appellant's foot condition was due to the unaccepted back injury and did not explain how and why appellant's accepted conditions had worsened such that appellant was totally disabled. Therefore, the April 3, 2003 report is not sufficient to meet appellant's burden of proof.

In a report dated May 23, 2003, Dr. Simpkins simply described appellant's job duties and mentioned his left knee injury as well as his bilateral carpal tunnel syndrome. He stated that appellant could not perform his usual and customary duties and was totally disabled. The May 23, 2003 report from Dr. Simpkins did not provide any physical findings or medical reasoning in support of his conclusion. Without medical findings and reasoning supporting this conclusion, Dr. Simpkins' report is not sufficient to establish a period of total disability due to appellant's accepted employment injuries. Dr. Simpkins suggested that appellant could sustain further injury as a result of performing his employment duties. The Board has held that the possibility of a future injury does not constitute an injury under the Act and, therefore, no compensation can be paid for such a possibility.⁶ Finally, Dr. Simpkins again failed to provide diagnostic studies, physical findings or any reasoning explaining why and how he reached the conclusion that appellant could not perform his job duties. Without medical evidence clearly attributing appellant's total disability to the accepted employment condition and offering medical reasoning explaining why appellant's accepted conditions rendered him totally disabled, Dr. Simpkins report is not sufficient to meet appellant's burden of proof.

In a report dated July 10, 2003, Dr. Simpkins stated that appellant was unable to perform light duty as:

"The carpal tunnel syndrome that he has is advanced to the point where he is not able to grip, push, pull or do fine manipulation with his hands due to the extent of his carpal tunnel syndrome. He is unable to stand for extended periods of time due to the injury, pain and swelling of both of his feet. The afore mentioned patient is unable to stand for more than five minutes without experiencing difficulty with inability to maintain his balance. This can further injury and damage, requiring surgical intervention if he stands more than five minutes at a time."

⁶ *Gaetan F. Valenza*, 39 ECAB 1349 1356 (1988).

This report is not sufficient to meet appellant's burden of proof in establishing total disability for the period January to August 2003. Dr. Simpkins' finding that appellant's carpal tunnel had evolved to the point that appellant could not use his hands, made on July 10, 2003, seems in direct contradiction to the April 3, 2003, finding that appellant's carpal tunnel syndrome had improved. Furthermore, as appellant has had no additional employment-related exposure since January 2003, Dr. Simpkins did not offer any medical reasoning explaining how or why this worsening of the carpal tunnel syndrome would be due to appellant's employment. In regard to appellant's bilateral foot condition, appellant was not found to be totally disabled in August 28, 2003, when the Office authorized surgical treatment for this condition and Dr. Simpkins has not explained why appellant's foot condition worsened with no employment exposure after January 2003. Finally, as noted above the fear of future injury due to a fall is not compensable under the Act.⁷ As appellant has submitted no rationalized medical opinion evidence complete with objective medical findings supporting his claim for total disability on or after January 2003, he has failed to meet his burden of proof and the Office properly denied his claim.

The August 14, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 25, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ *Id.*