

**United States Department of Labor
Employees' Compensation Appeals Board**

D.M., Appellant

and

**DEPARTMENT OF THE ARMY, CAMP
LEJEUNE, NC, Employer**

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**Docket No. 07-2210
Issued: May 20, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 22, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated October 12, 2006 and March 22 and August 6, 2007. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he was entitled to compensation for wage loss as of May 27, 2004 causally related to his employment.

FACTUAL HISTORY

Appellant, a 52-year-old mechanic, filed a Form CA-2 claim for benefits on November 20, 2003, alleging that he developed a bilateral carpal tunnel condition causally related to employment factors.

In a May 19, 2004 report, Dr. Richard S. Bahner, Board-certified in orthopedic surgery, noted that appellant was experiencing advancing carpal tunnel syndrome which was interfering with his work as a heating and air conditioning mechanic. In a report dated June 8, 2004,

Dr. Ray B. Armistead, Board-certified in orthopedic surgery, diagnosed bilateral carpal tunnel syndrome causally related to repetitive wrist motions required by appellant's employment.

By decision dated September 21, 2004, the Office accepted appellant's claim for bilateral carpal tunnel syndrome. The Office advised him that if his injury resulted in time lost from work he could claim disability compensation by filing a Form CA-7.

In a letter received by the Office on February 28, 2005, appellant indicated that his North Carolina driver's license had been suspended for one year on May 26, 2004 due to his being convicted of driving under the influence of alcohol [DUI]. As a result of this suspension, he was forced to resign from the employing establishment because his inability to operate a motor vehicle disqualified him from federal employment.

By letter dated March 7, 2005, the Office advised appellant that it had received a December 21, 2004 Form CA-7 from him, which did not indicate whether he was seeking a schedule award or compensation based on wage loss. The Office stated:

"If you filed the CA-7 [form] for wage loss incurred on and after May 27, 2004, we note that you were discharged from [the employing establishment] due to losing your drivers license as a consequence of a DUI conviction. A driver's license was required for you to maintain your federal civil service employment. Wage loss incurred for that reason is not compensable under the FECA [Federal Employees' Compensation Act.]"

In an October 24, 2005 report, Dr. Armistead stated:

"[Appellant] has been recently evaluated by me for ongoing problems involving his upper extremities. He does not feel he can continue in his current job due to the disabilities in his hands and has requested either disability retirement or retraining. Based on findings today, I would suggest a functional capacity evaluation [FCE] which would give more specific information regarding his current abilities and then make some determinations regarding his current job or training accordingly."

Appellant submitted a June 6, 2006 Form CA-7 requesting compensation for wage loss as of May 27, 2004 and continuing.

In a May 2, 2006 report, Dr. Armistead stated:

"[Appellant] was evaluated at the Industrial Physical Therapy Clinic in New Bern where a [f]unctional [c]apacity [e]xamination was performed. As a result of that examination, [appellant] was determined to have restrictions on the use of his hands. He would be classified as physical demand classification light-medium. Thus, [appellant] could lift occasionally 28 pounds, frequently 12 pounds and constantly lift 4 pounds."

By letter dated June 19, 2006, the Office asked appellant to submit additional medical evidence to support disability for the period claimed.

In a memorandum dated July 7, 2006, the Office stated that appellant informed them in a July 5, 2007 telephone call that he quit his job because he was not able to do it. The Office noted that there was no medical evidence to support his claim that he was totally disabled, no evidence that he requested light duty from the employing establishment and no evidence that the employing establishment was not able to accommodate his restrictions.

In a July 24, 2006 letter to the Office, Dr. Armistead stated:

“We initially treated [appellant] on June 8, 2004 for problems of numbness in his hand, felt to be secondary to carpal tunnel syndrome. [Appellant] had had surgery on a finger prior to his presentation in our office and undoubtedly he did have some periods of time in which he was disabled for work. However, we did not care for him for that particular period of surgical treatment; thus, I cannot comment on the appropriate periods of disability and this should be directed to the treating surgeon.”

By decision dated October 12, 2006, the Office denied appellant’s claim for compensation based on wage loss commencing May 27, 2004. The Office found that appellant failed to submit medical evidence to support that he was disabled due to residuals of his accepted injury.¹ The Office noted that his driver’s license was suspended on May 27, 2004 due to a DUI conviction. As a consequence, appellant was not able to meet the condition of his employment. The Office stated that he was given the option of resigning in lieu of discharge and he elected to resign effective July 12, 2004.

On December 20, 2006 appellant requested reconsideration of the October 12, 2006 decision.

In a January 15, 2007 report, Dr. Noel Rogers, Board-certified in orthopedic surgery, found that appellant had a five percent permanent impairment of the left and right upper extremities. He related complaints of pain and numbness in his hands, radiating up the arm, with grip weakness and inability to grasp. Dr. Rogers noted that appellant had worked as a heating and air conditioning mechanic at the employing establishment for three years until he resigned on July 12, 2004; he had not worked since that time. Appellant had been referred to Dr. Rogers for a second opinion examination to evaluate the degree of impairment for his left and right upper extremities, pursuant to a separate claim for a schedule award he had filed.²

¹ The Office noted that in a July 18, 2003 report, Dr. Richard S. Moore, Board-certified in orthopedic surgery and his treating physician, had diagnosed carpal tunnel syndrome but released appellant to return to full duties without restrictions. No contemporaneous medical evidence supporting the period of disability claimed by appellant was received by the Office.

² In a previous Board decision, Docket No. 06-1609 (November 21, 2006) the Board set aside the Office’s December 1, 2005 schedule award decision and remanded for further development of the medical evidence to determine the appropriate degree of permanent impairment for appellant’s left and right upper extremities causally related to his accepted bilateral carpal tunnel condition. The schedule award determination is not the subject of this appeal.

By decision dated March 22, 2007, the Office denied modification of the October 30, 2006 decision. The Office stated that appellant had failed to submit medical evidence establishing that he was disabled due to residuals causally related to his accepted bilateral carpal tunnel condition.

By letter dated May 30, 2007, appellant requested reconsideration.

In a report dated April 5, 2007, Dr. Edwin Cooper, Board-certified in orthopedic surgery, found that appellant had a 24 percent permanent impairment of the left and right upper extremities, causally related to his bilateral carpal tunnel condition. He stated that appellant was disabled from returning to his job as a heating and air conditioning technician. Dr. Cooper opined that his diagnoses and ratings were directly related to appellant's duties at the employing establishment, from which he resigned on May 27, 2004. Appellant had been referred to Dr. Cooper for a referee medical examination to resolve the conflict in medical evidence regarding the degree of impairment for his upper extremities, pursuant to his separate schedule award claim.

By decision dated August 6, 2007, the Office denied modification of the October 30, 2006 decision. The Office noted again that the evidence of record established that appellant had voluntarily resigned from his job with the employing establishment on July 12, 2004, for reasons unrelated to his medical condition. The Office stated that appellant had failed to submit medical evidence indicating that he was totally disabled for the period claimed due to his accepted condition. The Office noted that Dr. Cooper had indicated that he was disabled from his former job as heating and air conditioning mechanic; however, it noted that this examination was conducted for the purpose of resolving the conflict in medical opinion regarding the proper degree of permanent impairment in his upper extremities stemming from his accepted bilateral carpal tunnel condition, not to determine whether appellant was totally disabled. The Office stated that Dr. Cooper was not provided with a copy of appellant's position description, nor did he provide a rationale for his opinion that appellant was not able to work his former job with the employing establishment. The Office also noted that Dr. Cooper was not aware of the reasons appellant had resigned from the position.

LEGAL PRECEDENT

An employee seeking benefits under the Act³ has the burden of establishing that the essential elements of his or her claim by the weight of the evidence.⁴ Under the Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.⁵ For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.⁶ Whether a

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Prince E. Wallace*, 52 ECAB 357 (2001).

⁶ *Dennis J. Balogh*, 52 ECAB 232 (2001).

particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁷ The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸ The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.⁹

ANALYSIS

Appellant submitted a Form CA-7, claim for compensation, for the period beginning May 27, 2004 and continuing. He has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed disability as of May 27, 2004 and the accepted employment-related injury. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.¹⁰ The Office properly denied compensation because appellant failed to provide sufficient medical evidence to support that he was disabled due to residuals of his accepted bilateral carpal tunnel syndrome.

None of the contemporaneous medical reports appellant submitted contained a probative, rationalized medical opinion explaining how he was disabled as of May 27, 2004 due to his accepted carpal tunnel syndrome.¹¹ Dr. Bahner stated in his May 19, 2004 report that appellant was experiencing advancing carpal tunnel syndrome which was interfering with his work as a heating and air conditioning mechanic. He did not, however, indicate that the condition was disabling. Dr. Armistead advised on June 8, 2004 that appellant had bilateral carpal tunnel syndrome causally related to repetitive wrist motions required by his employment. He stated in his October 24, 2005 report that he had recently evaluated appellant for ongoing problems involving his upper extremities and related his complaints that he could not continue working at his current job due to the disabilities in his hands. Dr. Armistead did not opine that appellant was totally disabled due to his accepted carpal tunnel syndrome, but recommended a functional capacity evaluation in order to acquire more specific information regarding his current ability to perform his job as a mechanic. While he advised in his May 2, 2006 report that appellant had restrictions on the use of his hands based on the results of his functional capacity evaluation, he informed the Office on July 27, 2006 that he was not able to comment on the periods of time in which he was disabled for work.

⁷ *Gary L. Watling*, 52 ECAB 278 (2001).

⁸ *Manual Garcia*, 37 ECAB 767 (1986).

⁹ *Amelia S. Jefferson*, 57 ECAB 183 (2001).

¹⁰ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

¹¹ *William C. Thomas*, 45 ECAB 591 (1994).

The Office noted that the medical evidence contemporaneous to the injury did not list any rationale for disability. Causal relationship must be established by rationalized medical opinion evidence. Appellant has failed to submit such evidence.

The 2007 reports from Drs. Rogers and Cooper noting that appellant was off work and claimed disability as of May 27, 2004 have no probative weight in determining whether he was disabled due to his accepted conditions as of that date. These physicians evaluated appellant for the purpose of determining the degree of permanent impairment in connection with his schedule award claim. Their statements pertaining to appellant's claimed disability were based entirely on the history given to them by appellant. Drs. Rogers and Cooper thus lacked an accurate history regarding appellant's May 27, 2004 resignation from the employing establishment. They did not indicate an awareness that his driver's license had been suspended on May 27, 2004 due to a DUI conviction, rendering him unable to meet a condition of his employment.¹²

The Board has held that an employee is not disabled within the meaning of the Act where there is no evidence that he was terminated due to his physical inability to perform his assigned duties. There is no evidence that appellant stopped work due to residuals of his accepted bilateral carpal tunnel syndrome.¹³

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹⁴ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence. Consequently, appellant has not met his burden of proof, as he failed to establish that he sustained any employment-related disability as of May 27, 2004. The Board will affirm the Office's October 12, 2006, March 22 and August 6, 2007 decisions.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he was entitled to compensation for wage loss as of May 27, 2004 causally related to his federal employment.

¹² See *Geraldine H. Johnson*, 44 ECAB 745 (1993).

¹³ *Major W. Jefferson, III*, 47 ECAB 295 (1996).

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 12, 2006 and March 22 and August 6, 2007 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: May 20, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board