U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM H. DAVIS and DEPARTMENT OF THE NAVY, NAVAL AIR REWORK FACILITY, MARINE CORPS AIR STATION CHERRY POINT, N.C.

Docket No. 98-40; Submitted on the Record;
Issued June 28, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained a recurrence of disability, causally related to his September 9, 1988 accepted cervical and thoracic muscular strain injuries.

On October 7, 1988 the Office of Workers' Compensation Programs accepted that appellant sustained cervical and thoracic muscular strain after falling from a scaffold. Compensation was paid through March 17, 1989, after which appellant returned to work on light duty intermittently until 1991 when he retired on disability. Thereafter appellant requested a schedule award for permanent impairment due to his muscle strain injuries which, after appropriate development of the record, was denied on January 3, 1994 on the basis that appellant had no injury-related ratable permanent impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* On February 7, 1994 appellant requested an oral hearing on the denial of a schedule award, which was denied as untimely requested on March 29, 1994.[1]

On December 28, 1996 appellant filed a Form CA-2a alleging recurrence of disability which was continuous from the date of injury in 1988. Appellant alleged that the pain never stopped and that his back and neck were hurting but that he was made to go back to work, and that thereafter his legs began hurting and that his right big toe went numb.

By letter dated January 31, 1997, the Office requested further information including a detailed medical narrative explaining causal relation with his 1988 employment cervical and thoracic muscular strain injuries.

In response appellant submitted a personal statement claiming that his original injury included his legs, arms, back and neck, and that he had needed surgery. He also submitted an August 10, 1989 nerve conduction and electromyographic study report revealing a right carpal

[1] The Board notes that appellant has a separate claim, Office No. A06-480167, regarding carpal tunnel syndrome which is not now before the Board on this appeal; *see* 20 C.F.R. § 501.2(c).

tunnel syndrome and a slightly increased insertional activity with occasional fasciculations with a single high frequency discharge in the left triceps, which was thought to suggest a radial nerve or C7 root impairment. Also submitted were September and October 1991 medical progress notes which noted that at that time appellant was tender at the base of his neck, with cervical range of motion at about 50 percent on lateral bending, that x-rays revealed anterior calcification at C4-5 and that magnetic resonance imaging scan showed spurring at C3, C4, C4-5 and C5-6 levels. The examining physician opined that appellant's persistent cervical problems and affected upper extremity were a direct result of the osteophytic impingement on his cervical nerve roots; he diagnosed "chronic cervical strain; possible chronic lumbar strain," and opined that he had a seven percent impairment of the cervical spine and a three percent impairment of the lumbar spine.

By decision dated July 24, 1997, the Office rejected appellant's recurrence claim, finding that the evidence of record failed to establish that the claimed recurrence was related to the 1988 injury. The Office found that the evidence submitted failed to establish a recurrence on or around December 28, 1996 and did not relate appellant's symptoms to his 1988 accepted cervical or thoracic muscular strain injuries.

The Board finds that appellant had failed to establish that he sustained a recurrence of disability, causally related to his September 9, 1988 accepted cervical and thoracic muscular strain injuries.

As used in the Federal Employees' Compensation Act,[2] the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[3] An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[4] Causal relationship is a medical issue and can be established only by medical evidence.[5]

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to disability compensation; *see Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury). *Cf.* 5 U.S.C. § 8107 (entitlement to schedule compensation for loss or permanent impairment of specified members of the body).

[4] *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

[5] *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

Further, 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 of establishing 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 his 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.[6]

In this case, the medical evidence submitted by appellant does not do this. Neither the electrodiagnostic study results from 1989 nor the medical progress notes from 1991 causally relate their findings to appellant's accepted 1988 cervical or thoracic muscular strain injuries. The electrodiagnostic study results do not include a discussion on causal relation, and the medical progress notes attribute appellant's cervical and upper extremity problems to cervical osteophytic spurring, which was not a condition accepted by the Office as related to the 1988 muscular strain injuries. Consequently, none of this evidence supports appellant's recurrence claim. Additionally, appellant has not demonstrated a change in the nature or extent of his 1988 muscular strain injuries or in the light duty to which he returned in 1989. Consequently, appellant has not met his burden of proof to establish his recurrence claim.

Accordingly, the decision of the Office of Workers' Compensation Programs dated July 24, 1997 is hereby affirmed.

Dated, Washington, D.C.
June 28, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

[6] *Terry R. Hedman*, 38 ECAB 222 (1986).