

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM BENDER and NAVAL SEA SYSTEMS COMMAND,
NAVAL SHIPYARD PHILADELPHIA, Philadelphia, PA

*Docket No. 00-832; Submitted on the Record;
Issued March 7, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established a recurrence of disability causally related to his accepted conditions.

The Office of Workers' Compensation Programs accepted that appellant sustained a right wrist sprain while working as a machine tool operator on April 4, 1985. Appellant underwent a triscaphoid fusion surgery on June 17, 1987. The Office subsequently accepted the condition of post-traumatic arthritis of the right wrist. Appellant received appropriate compensation from May 2, 1985 through November 1, 1987. Following rehabilitation services, appellant returned to work as a messenger/clerk on November 2, 1987.

A recurrence of disability claim was filed on November 6, 1987 and appellant stopped work the same day. Appellant received compensation for the period November 6 through November 18, 1987. He returned to his messenger-clerk position on November 19, 1987. Appellant resigned from the employing establishment in December 1987. He commenced working as an unemployment claims examiner as of December 4, 1989.

By decision dated May 2, 1994, the Office granted appellant a schedule award for 40 percent impairment of his right arm for the period December 2, 1993 through April 23, 1996.

In 1996 appellant advised the Office that he wanted to be compensated for the difference between the wages he was earning at the time of his April 1985 injury and his current wages. He additionally related that his right wrist condition had progressively worsened.

By decision dated August 4, 1999, the Office denied appellant's claim for loss of wage-earning capacity. The Office found that appellant's resignation from the employing establishment in December 1987 was due to personal reasons and was not related to the right wrist injury. The Office noted that the messenger position was suitable for his work restrictions and that the job would have remained available if appellant had not resigned. The Office further

found that there was no medical evidence to show that appellant's right wrist injury had worsened since he resigned in 1987.

The Board finds that appellant has not established a recurrence of disability due to his injury of April 4, 1985.

An individual 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 compensation is claimed is causally related to the accepted injury.¹ 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 rationale.² Where no such rationale is present, medical evidence is of diminished probative value.³

In this case, the evidence of record reveals that, when appellant returned to work at the employing establishment in a modified position on November 19, 1987, he was in the process of voluntarily resigning from the shipyard. The record is devoid of any evidence to establish that appellant's resignation or work stoppage was due to disability related to his accepted injury. Appellant's modified position as a messenger was within his medical restrictions. In a Form OWCP-5 dated October 14, 1987, Dr. Amitabha Mitra, a hand surgeon, advised that appellant had reached maximum medical improvement and could work eight hours a day with the condition of undergoing therapy three times a week for several weeks. Restrictions on the use of the right hand for lifting, carrying and climbing were provided. There is no indication that the job did not comport to Dr. Mitra's October 14, 1987 restrictions. Accordingly, there is no showing that appellant's work stoppage occurred because of any change in appellant's injury-related condition affecting his or her ability to work in the modified position.

Appellant's claim was accepted by the Office for a right wrist sprain and a subsequent condition of post-traumatic arthritis of the right wrist. The evidence of file reflects that Dr. Mitra ordered electromyogram (EMG) and x-ray studies of the right wrist on April 4, 1996. A May 13, 1996 EMG study noted evidence suggestive of a right C7-8 radiculopathy. A May 31, 1996 x-ray noted hypertrophic changes which appeared to be probable post-traumatic osteoarthritis. A clinical correlation was suggested. By letter dated April 9, 1997, the Office advised appellant that a current narrative medical report from Dr. Mitra was needed to address his current diagnosis and current restrictions. An OWCP-5c form was enclosed. By letters dated August 19, 1997 and April 7, 1998, the Office notified appellant that it had not received a narrative medical report or a completed OWCP-5c form from Dr. Mitra. Appellant was again advised of his responsibility to arrange the submission of this information to the Office. By letter dated February 18, 1999, the Office sent appellant another OWCP-5c form to be completed by Dr. Mitra and advised that a narrative report from Dr. Mitra was still needed. A March 11,

¹ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

² *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

1999 x-ray report revealed a probable old ununited fracture of the triquetrum. A March 11, 1999 Form OWCP-5c from Dr. Mitra advised that appellant has limitations on pushing, pulling and lifting, and can perform 4 to 5 hours of repetitive wrist movement. However, no narrative medical report was submitted by Dr. Mitra to establish that appellant's current condition is a progression or a worsening of the accepted injury. Appellant has not sustained his burden of establishing that his disability is due to his accepted employment injuries.

The decision of the Office of Workers' Compensation Programs dated August 4, 1999 is affirmed.

Dated, Washington, DC
March 7, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member