

)	
WENDELL I. WILLIAMS, Appellant)	
)	Docket No. 04-679
and)	Issued: June 9, 2004
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
Bell, CA, Employer)	
)	

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On January 14, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 17, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

ISSUE

The issue on appeal is whether appellant met his burden of proof to establish that he was disabled for the periods August to December 18, 1999 and November 17, 2000 to March 2001, causally related to the accepted bilateral carpal tunnel syndrome.

¹ Appellant submitted additional evidence after the Office's January 17, 2003 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c). The record also contains a September 30, 2003 decision approving fees charged by appellant's attorney, but this decision has not been appealed and is not currently before the Board.

FACTUAL HISTORY

On May 2, 1996 appellant, then a 40-year-old mail handler and sack sorting machine operator, filed an occupational disease claim alleging that he sustained repetitive motion trauma due to employment duties. Appellant asserted that he first became aware of his condition on March 20, 1996 and realized that the condition was caused or aggravated by his employment on April 10, 1996.² Appellant did not initially stop working as a result of this injury. On November 20, 1997 the Office accepted the claim for bilateral carpal tunnel syndrome with releases. Appellant underwent left carpal tunnel decompression on July 24, 2000 performed by his physician, Dr. Jacob Tauber, a Board-certified orthopedic surgeon. Following surgery, appellant was also out of work for intermittent periods.

On August 26, 2001 appellant filed a CA-7 claim for compensation for the period “August 1999 to March 2001” as a result of the accepted carpal tunnel syndrome. In support of the claim, appellant submitted reports from his physician, Dr. Tauber, including his initial orthopedic examination dated December 13, 1999. In the report Dr. Tauber discussed appellant’s work-related carpal tunnel syndrome, his findings on examination and recommendation that appellant undergo surgery. Dr. Tauber also noted that appellant had a history of an injury to his right shoulder for which he underwent a rotator cuff repair in April 1999. The physician indicated that appellant continued to complain about his shoulder pain. Dr. Tauber concluded that appellant remained disabled from his customary employment and directed that appellant should avoid repetitive motion activities.

In an October 6, 2000 report, Dr. Tauber reviewed his examination of appellant’s wrists and stated: “It should be noted that the patient originally became disabled due to his carpal tunnel syndrome in August 1999. He has been disabled from August 1999 to the present time.”

In a report dated November 17, 2000, Dr. Tauber indicated that appellant continued to have shoulder pain and numbness and tingling in his upper extremities. He also requested authorization to evaluate appellant’s shoulder and recommended physical therapy for his hands. Dr. Tauber further noted that appellant had recently had a child and was required for full-time care at home. He concluded that appellant remained temporarily totally disabled.

In a medical note dated January 12, 2001, Dr. Tauber indicated that appellant was being treated for an orthopedic condition and noted that appellant could return to work on January 15, 2001 with repetitive motion and heavy lifting restrictions.

In a letter dated October 30, 2001, the Office advised appellant that the medical evidence submitted was deficient to support disability for the period claimed. The Office reviewed the carpal tunnel claim and the previous shoulder claim and determined that appellant had been released from work restrictions by July 23, 1999 following surgery for the shoulder condition. The Office noted that although Dr. Tauber indicated that appellant was disabled from

² The record reflects that appellant sustained a previous work-related injury to his shoulder on April 10, 1996 and returned to work with temporary light duty from approximately April 17 through July 1, 1996. He underwent surgery for the shoulder injury on April 5, 1999 and was out of work until May 18, 1999. Appellant was released to regular duty regarding the shoulder injury on approximately July 23, 1999.

August 1999 he did not begin treating him until December 13, 1999. The Office therefore stated that there was no contemporaneous medical evidence which supported the period of disability claimed from August 1999 through December 1999. The Office further stated that appellant underwent carpal tunnel release on July 24, 2000 which would cause some period of disability; however, a significant time later, Dr. Tauber stated in his November 17, 2000 report that appellant remained off work. The Office noted that Dr. Tauber did not attribute appellant's disability to the accepted carpal tunnel syndrome at that time but stated that appellant was needed at home to care for his newborn child. The Office then stated that Dr. Tauber later released appellant to work on January 14, 2001 although appellant continued to claim disability through April 13, 2001. The Office concluded that the medical evidence merely supported disability from December 13, 1999 through November 17, 2000 and that clearer medical evidence based on examination and objective findings to support disability before December 13, 1999 and after November 17, 2000 was necessary.

By decision dated December 3, 2001, the Office denied appellant's claim for disability compensation on the grounds that the medical evidence prior to December 18, 1999 and from November 17, 2000 and onward was inadequate to support that he had a disability in those claimed periods that was related to the accepted carpal tunnel syndrome.³

On November 29, 2002 appellant through counsel requested reconsideration. Appellant's counsel argued that the claimed period from August through December 18, 1999 should be paid based on Dr. Tauber's report of October 6, 2000 which reported disability from August 1999 to the present. He argued that with regard to the later period from November 17, 2000 through March 2, 2001, Dr. Tauber indicated in his November 17, 2000 report that "With respect to his hands, I am recommending a course of physical therapy.... He remains temporarily totally disabled." Appellant's counsel asserted that, although Dr. Tauber briefly discussed appellant's shoulder condition, he was primarily concerned with appellant's wrist problems as he had undergone surgery four months prior. Appellant's counsel argued that, although it was not totally clear which condition was disabling at the time of the November 17, 2000 report, it was reasonable to conclude the wrist condition was disabling based on his prior surgery.

By decision dated January 17, 2003, the Office reviewed the merits of the claim and denied modification of the prior December 3, 2001 decision.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act,⁴ the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or

³ The Board notes that the Office received a second CA-7 claim for compensation for the period December 3, 1997 through March 2001 from appellant's counsel on December 4, 2001. The record does not reflect that the expanded claim for disability has been adjudicated by the Office and is not before the Board at this time. In a letter dated December 5, 2001, the Office determined that there was sufficient medical evidence to establish temporary total disability from December 19, 1999 through November 16, 2000.

⁴ 5 U.S.C. §§ 8101-8193.

may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury has no disability as that term is used in the Act.⁵

A claimant, for each period of disability claimed, has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she is disabled for work as a result of the employment injury. Whether a particular injury causes an employee to be disabled for employment, and the duration of that disability, are medical issues which must be proved by a preponderance of the reliable, probative and substantial evidence.⁶

ANALYSIS

The Office accepted appellant's claim for bilateral carpal tunnel syndrome. However, the medical evidence submitted in support of the wage-loss compensation claim for disability for the period beginning August to December 13, 1999 and from November 17, 2000 and beyond is insufficient to establish that the claimed periods of disability were caused or aggravated by the accepted employment condition.

There are no medical records contemporaneous with August 1999, the date appellant first claims total disability which supports the claim. The report submitted most contemporaneously with the initial period of disability claimed was the report from Dr. Tauber dated December 13, 1999, which indicated that appellant was disabled from August 1999 to the present. Dr. Tauber did not see or treat appellant prior to December 13, 1999; therefore, his opinion of disability prior to his examination date lacks probative value. His opinion is clearly not based on his physical examination, and he failed to substantiate his opinion with any objective medical evidence. Therefore, Dr. Tauber's December 13, 1999 report only establishes that appellant sustained a period of disability causally related to the accepted carpal tunnel syndrome beginning that day.

The Board further notes that the medical evidence of record establishes that appellant was no longer disabled from work as a result of his accepted bilateral carpal tunnel syndrome as of November 17, 2000. Dr. Tauber indicated in his November 17, 2000 report that appellant was unable to work based solely on his responsibility to care for his newborn child full time, and did not relate appellant's disability at all to the accepted March 20, 1996 wrist condition. Dr. Tauber's only reference to the accepted wrist condition was his recommendation that appellant undergo physical therapy. On January 15, 2001 Dr. Tauber determined that appellant was capable of returning to work and released him with restrictions. He did not indicate in the latter report that appellant had been disabled prior to that date or that his return to work would be temporary.

⁵ *Cherly L. Decavitch*, 50 ECAB 397 (1999).

⁶ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

Appellant has not established with reliable probative medical evidence that he was disabled from work before December 13, 1999 or after November 17, 2000 as a result of the accepted March 20, 1996 bilateral carpal tunnel syndrome.

The Board notes that the Office in its January 17, 2003 decision incorrectly determined that appellant had not established disability prior to December 18, 1999, although Dr. Tauber's report upon which it relied was dated December 13, 1999. The record reflects that based on Dr. Tauber's report appellant has established disability beginning December 13, 1999 although he was paid for periods of disability from December 19, 1999 to November 16, 2000. Therefore, he is entitled to six additional days of disability compensation.

Upon return of the case, the Office should pay appellant appropriate compensation for the period December 13 through 18, 1999 for disability compensation.

CONCLUSION

The Board finds that appellant has failed to establish that the period of disability claimed from August to December 13, 1999 and November 17, 2000 to March 2001 is causally related to the accepted bilateral carpal tunnel syndrome of March 20, 1996.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 17, 2003 is affirmed as modified, to find that appellant is entitled to disability compensation from December 13 to 18, 1999 causally related to the accepted bilateral carpal tunnel syndrome.

Issued: June 9, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member