

FACTUAL HISTORY

On October 6, 1984 appellant, then a 37-year-old temporary seasonal deck hand, sustained an employment-related cervical strain and bilateral carpal tunnel syndrome.² He stopped work on November 15, 1984, when his temporary duty ended and was terminated from employment effective December 30, 1984. On February 7, 1985 appellant underwent a left carpal tunnel release and was placed on the periodic rolls. On April 16, 1986 Dr. Sam E. Hunter, Board-certified in internal medicine, advised that appellant could return to work with no restrictions³ and on October 31, 1986, appellant had a left wrist ganglion excision. In January 1988, appellant returned to private employment as a campus security guard and by decision dated May 13, 1988, the Office reduced his compensation benefits based on his actual earnings as a security guard. He continued at this job until August 14, 1990 when the college hired contract employees. Appellant, thereafter, worked at a number of private jobs, including carpet cleaning and at Lowe's. By report dated December 28, 1998, Dr. S.C. Ray, a Board-certified family practitioner, advised that appellant was under his care for an employment-related knee injury.⁴ In 2001, appellant began employment as a building assistant for the city of Jackson, Tennessee, where he was trained to operate a forklift, personnel lift, backhoe, table saws and drills.

In May and June 2007, the employing establishment offered appellant a temporary position as a lock and dam operator, which he refused, stating that he had multiple medical problems including neck, arm and shoulder pain which he stated were directly related to the employment injury. Appellant submitted an April 17, 2007 cervical spine x-ray that demonstrated a degenerative process, and a May 7, 2007 computerized tomography (CT) scan of the head that was within normal limits. A July 20, 2007 magnetic resonance imaging (MRI) scan of the cervical spine that revealed a mild disc bulge at C6-7 and blocked vertebrae at C5 and C6, and a left shoulder MRI scan demonstrated diffuse tendinopathy with partial tear and degenerative changes. On September 27, 2007 the Office requested additional medical information. Appellant submitted unsigned notes stating that he was last seen on November 1, 2007 and was being treated for a left shoulder partial rotator cuff tear and left shoulder arthritis.

On January 22, 2008 the Office referred appellant to Dr. Carl W. Huff, Board-certified in orthopedic surgery and occupational medicine. On March 13, 2008 Dr. Jason T. Hutchison, a Board-certified orthopedic surgeon, performed left shoulder surgery and advised that appellant could return to limited duty. By report dated June 26, 2008, he noted his review of the statement of accepted facts including the history of injury, appellant's past medical history and employment history and the medical record.⁵ Dr. Huff reported appellant's complaint of

² In separate claims, appellant has an accepted right knee condition, for which he received a schedule award on March 2, 1977 for a 27 percent impairment of the right leg, and a binaural hearing loss for which he received a schedule award on March 2, 1977 for a 13 percent hearing loss.

³ Dr. Hunter's credentials could not be ascertained.

⁴ *Id.*

⁵ The medical record consisted of reports dating from October 7, 1984 to October 31, 1986 and May 16 to July 20, 2007.

generalized neck pain, radiating to his left shoulder and left hand numbness, and his report that he fell on February 12, 2008, injuring his left shoulder, for which he had surgery on March 13, 2008. He performed physical examination, noting mild tenderness with firm palpation in the midline from C4-6 with minimal tenderness in the posterior cervical triangle bilaterally. The nerve root compression test bilaterally caused neck pain. The vertex compression test was negative and the shoulder abduction test had no effect on the pain bilaterally. The maneuvers for thoracic outlet compression were negative bilaterally. No muscle spasm or muscle atrophy was noted. Left shoulder and left wrist and hand examinations demonstrated full range of motion with minimally positive shoulder impingement signs and 5/5 shoulder strength. Right wrist and hand examination was normal. X-rays of the cervical spine demonstrated a congenital block vertebra at C5-6 with failure of segmentation and degenerative disc disease. Electromyography (EMG) demonstrated C6-7 radiculopathy and nerve conduction study (NCS) was normal. Dr. Huff's impression was postoperative status carpal tunnel release on the left without residual median neuropathy; cervical degenerative disc disease at C6-7 with radiculopathy on the left; postoperative status of left rotator cuff repair due to a February 12, 2008 injury, unrelated to the October 6, 1984 employment injury; and hypertension and diabetes, not work related. He opined that there was no indication of any pathological condition of either wrist or hand except for a nonanatomical sensory loss of the left upper extremity which suggested some degree of symptom magnification and that in the absence of positive physical or EMG findings, there was no hint that any condition of appellant's wrists and hands was in anyway related to the October 6, 1984 employment injury or any work duties at the employing establishment. Regarding the cervical spine, Dr. Huff advised that, while appellant had a cervical strain, this had resolved, noting that x-rays of the cervical spine on October 7, 1984 were normal except for the congenital blocked vertebra. He stated that any further condition or complaint of pain was related to a chronic arthritic condition which was not caused, aggravated or accelerated by the October 6, 1984 employment injury. Dr. Huff concluded that appellant had reached maximum medical improvement with regard to the employment injury, having returned to baseline on or about April 6, 1985 and had no employment-related diagnosed conditions.

On August 14, 2008 the Office proposed to modify appellant's wage-earning capacity to a zero loss and terminate his medical benefits. In an undated response, appellant asserted that he continued to be handicapped due to the October 6, 1984 injury, stating that he did not have full use of his arms and shoulders, was in constant pain and could no longer perform hard physical labor. He also noted that he injured his left shoulder when he slipped and fell while working for the city of Jackson, but did not injure his right shoulder there and that he was awarded full Social Security Act (SSA) disability benefits. Appellant submitted a May 3, 1985 report in which Dr. William G. Jennings, a general practitioner, noted that he was injured on October 6, 1984 and diagnosed musculoskeletal headaches and bilateral polyneuropathy of the upper extremities and a June 26, 1985 report in which Dr. Hunter diagnosed carpal tunnel syndrome and noted that he underwent left decompression surgery on February 6, 1985. A July 20, 2007 MRI scan of the right shoulder demonstrated two partial tears and degenerative changes. In an August 15, 2008 letter, the SSA informed appellant that he would begin receiving disability benefits in September 2008.

By decision dated September 25, 2008, the Office modified the May 13, 1988 decision to reflect that appellant had no loss of wage-earning capacity and finalized the termination of his medical benefits, effective September 28, 2008.

LEGAL PRECEDENT -- ISSUE 1

A wage-earning capacity decision is a determination that a specific amount of earnings, either actual earnings or earnings from a selected position, represents a claimant's ability to earn wages. Compensation payments are based on the wage-earning capacity determination and it remains undisturbed until properly modified.⁶ The Office's procedure manual provides that, "[i]f a formal loss of wage-earning capacity decision has been issued, the rating should be left in place unless the claimant requests resumption of compensation for total wage loss. In this instance the [claims examiner] will need to evaluate the request according to the customary criteria for modifying a formal loss of wage-earning capacity."⁷ Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous.⁸ The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.⁹

In addition, Chapter 2.814.11 of the procedure manual contains provisions regarding the modification of a formal loss of wage-earning capacity. The relevant part provides that a formal loss of wage-earning capacity will be modified when: (1) the original rating was in error; (2) the claimant's medical condition has changed; or (3) the claimant has been vocationally rehabilitated. Office procedures further provide that the party seeking modification of a formal loss of wage-earning capacity decision has the burden to prove that one of these criteria has been met. If the Office is seeking modification, it must establish that the original rating was in error, that the injury-related condition has improved or that the claimant has been vocationally rehabilitated.¹⁰

ANALYSIS--ISSUE 1

The Office accepted that appellant sustained bilateral carpal tunnel syndrome and a cervical strain caused by an October 6, 1984 employment injury. The Board finds that it presented sufficient medical evidence to meet its burden of proof to modify appellant's wage-earning capacity, effective September 28, 2008. In a comprehensive report dated June 26, 2008, Dr. Huff, an Office referral physician, noted his review of the complete record and appellant's complaints. He provided physical examination findings, performed x-ray, EMG and NCS studies. Dr. Huff opined that there was no indication of any pathological condition of either wrist or hand except for a nonanatomical sensory loss of the left upper extremity, which

⁶ *Katherine T. Kreger*, 55 ECAB 633 (2004).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment, Determining Wage-Earning Capacity*, Chapter 2.814.9(a) (December 1995).

⁸ *Stanley B. Plotkin*, 51 ECAB 700 (2000).

⁹ *Id.*

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.11 (June 1996).

suggested some degree of symptom magnification and that in the absence of positive physical or EMG findings, there was no hint that appellant had a continuing condition of his wrists and hands related to the October 6, 1984 employment injury or any work duties at the employing establishment. Regarding the cervical spine, he advised that, while appellant had a cervical strain, this had resolved, and that any further condition or complaint of pain was related to a chronic arthritic condition that was not caused, aggravated or accelerated by the October 6, 1984 employment injury. Dr. Huff concluded that appellant had reached maximum medical improvement with regard to the employment injury having returned to baseline on or about April 6, 1985 and had no current employment-related diagnosed conditions.

The medical evidence contemporaneous with Dr. Huff's June 26, 2008 opinion included Dr. Hutchinson's March 18, 2008 report in which he noted that he had performed left shoulder surgery and advised that appellant could return to limited duty. Appellant also submitted CT and MRI scans. These, however, did not provide an opinion regarding the cause of the diagnosed conditions and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ Furthermore, the record does not contain an opinion by a physician that appellant's contention that his current degenerative disc disease and bilateral shoulder conditions were caused by the October 6, 1984 employment injury. The medical evidence must demonstrate that the claimed conditions were caused, precipitated, accelerated or aggravated by the accepted injury. In this regard, the record must contain medical evidence of bridging symptoms between the current conditions and the accepted injury with a physician's conclusion of a causal relationship.¹² Appellant began private employment in 1988 and continued until he fell at work in January 2008, injuring his right shoulder for which he had surgery. There is no medical evidence to suggest that either of these claimed conditions was caused by the October 6, 1984 employment injury, and while he was determined to be disabled by the SSA, entitlement to benefits under one act does not establish entitlement to benefits under the other. The findings of other administrative agencies have no bearing on proceedings under the Federal Employees' Compensation Act (FECA)¹³ which is administered by the Office and the Board. The question of disability found under one statute does not prove disability under the other. Under FECA, for a disability determination, a claimant's injury must be shown to have arisen during the course of federal employment due to compensable factors of federal employment. Under the SSA, conditions which are not work related may be considered in determining disability. For this reason, a decision of the SSA finding a claimant disabled is not binding upon the Office in the adjudication of a claim under the FECA.¹⁴

The Board, therefore, finds that the Office properly modified the May 13, 1988 wage-earning capacity decision on the grounds that appellant's condition had changed. The June 26, 2008 report of Dr. Huff, who advised that appellant had no residuals of the October 6, 1984

¹¹ *Willie M. Miller*, 53 ECAB 697 (2002).

¹² *See generally C.W.*, 60 ECAB ____ (Docket No. 07-1816, issued January 16, 2009).

¹³ 5 U.S.C. §§ 8101-8193.

¹⁴ *See James E. Norris*, 52 ECAB 93 (2000).

employment injury, shows that there was a material change in the nature and extent of his employment-related conditions, *i.e.*, for the better, such that he no longer had wage loss due to his accepted conditions. Dr. Huff provided rationale for his opinion, explaining that in the absence of positive physical findings and negative studies, appellant's employment-related conditions had ceased. The Office, therefore, properly reduced appellant's wage-loss compensation to zero effective September 28, 2008.¹⁵

LEGAL PRECEDENT -- ISSUE 2

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment. The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that the Office met its burden of proof to terminate appellant's authorization for medical treatment for his bilateral carpal tunnel syndrome and cervical strain. As discussed above in a well-rationalized opinion, Dr. Huff advised that appellant had no current employment-related diagnosed conditions. His opinion is sufficient to establish that appellant has no residuals of his employment-related conditions that would require further medical treatment.¹⁷ Thus, the Office met its burden of proof to terminate appellant's medical benefits.¹⁸

CONCLUSION

The Board finds that the Office met its burden of proof to modify the May 13, 1988 wage-earning capacity determination and to terminate appellant's medical benefits.

¹⁵ *L.C.*, 60 ECAB ____ (Docket No. 08-2271, issued August 6, 2009).

¹⁶ *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

¹⁷ *E.J.*, 59 ECAB ____ (Docket No. 08-1350, issued September 8, 2008).

¹⁸ *Kathryn E. Demarsh*, *supra* note 16.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 7, 2008 be affirmed.

Issued: October 15, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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