

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM D. WELCH and U.S. POSTAL SERVICE,  
GUTHRIE POST OFFICE, Guthrie, Okla.

*Docket No. 96-1235; Submitted on the Record;  
Issued April 2, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant had a recurrence of disability after April 29, 1994 causally related to factors of his employment.

On April 24, 1993 appellant, then a 60-year-old rural letter carrier, filed a claim for chronic tendinitis of his elbows. In an accompanying statement, appellant related his condition to repetitive motion in sorting mail into cases and in delivering mail into mailboxes on his mail route of 325 mailboxes over a distance of 120 miles. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral epicondylitis. The Office authorized buy back of leave for 720 hours of leave used in the period November 9, 1992 through March 26, 1993. The Office began payment of temporary total disability effective July 29, 1993. Appellant returned to a light-duty position on March 19, 1994. In an April 5, 1994 decision, the Office terminated appellant's compensation on the grounds that the actual wages he was receiving were equal to or greater than the wages he received at the time of his employment injury and therefore he had no loss of wage-earning capacity. Appellant stopped working on April 29, 1994. In a June 16, 1994 decision, the Office terminated appellant's compensation effective April 29, 1994 on the grounds that appellant neglected to work in a position that the Office deemed suitable. In a January 17, 1995 decision, an Office hearing representative found that the Office had improperly terminated appellant's right to compensation citing medical evidence that showed appellant was unable to work due to chronic pain in his elbows. However, the hearing representative found appellant had not met his burden of proof in establishing a change in the nature and extent of his injury-related condition which disabled him from performing the duties of his modified-duty position. In a February 8, 1995 decision, the Office issued a schedule award for a 16 percent permanent impairment of the right arm. In an August 4, 1995 decision, a second Office hearing representative affirmed the

February 8, 1995 schedule award decision.<sup>1</sup> In a December 14, 1995 merit decision, the Office denied appellant's request for modification of the January 17, 1995 decision.

The Board finds that the case is not in posture for decision.

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 to establish 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 this 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.<sup>2</sup>

In an October 28, 1992 report, Dr. Roger A. Mueller, a Board-certified orthopedic surgeon, diagnosed subluxating ulnar nerves of both elbows. He recommended that appellant undergo a medial epicondylectomy of the right elbow with ulnar nerve transposition which was performed on November 9, 1992. In a March 3, 1993 report, Dr. Mueller stated that appellant continued to have problems with his elbows although he had regained full range of motion and strength. He noted appellant had continued pain over the medial epicondyle. He indicated that appellant had no subluxating ulnar nerve over the right elbow as he did over the left elbow which was not bothering him. He concluded that the subluxating of the nerve was resolved but appellant's continued pain was probably due to inflammation of the tendon insertions on the epicondyle similar to that seen in tennis elbow and golfers elbow. He suggested that appellant should return to work and see if he would recover. In an August 19, 1993 report, Dr. James D. Dixon, a Board-certified internist, stated that there was evidence that appellant's right epicondylitis had caused him to stop work because of persistent pain and aggravation in the right arm to the point that he was unable to use the arm in a repetitive motion as required by his work. He commented that appellant continued to have this disability in spite of having no exposure to repetitive work which pointed to the fact that the right elbow condition was permanent and would not improve in the future. He indicated that the surgery did not alleviate appellant's pain. He concluded that the disability connected to appellant's right elbow condition would permanently prevent him from returning to work as a rural letter carrier.

The employing establishment offered appellant a position as a clerk which would require him to case mail at his own pace for one to four hours a day and would perform retail window duties one to four hours a day. In a February 2, 1994 report, Dr. Dixon stated that he did not feel appellant was capable of performing the duties of the job. In a February 22, 1994 report, Dr. Dixon stated that, after consulting with appellant, he would attempt employment with the employing establishment if suitable duty assignments could be accomplished for him. Appellant thereupon returned to work but stopped working by April 29, 1994. In a May 7, 1994 letter, appellant stated that the job offered to him consisted mainly of repetitive work which seemed

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<sup>1</sup> Appellant has not appealed from the Office's decisions on his schedule award but has submitted additional medical evidence and has requested reconsideration of those decisions. The issue of appellant's schedule award therefore will not be considered on this appeal.

<sup>2</sup> *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

strange to him since he had sustained repetitive injuries. He commented that when he asked questions about the job he was assured that he could work at his own pace. He stated that he was able to work through the pain and discomfort every day with the use of a heating pad at night. He indicated that on April 29, 1994 he did some direct mailboxing and working for an hour helping to box mail which was more than usual because volume was heavy and the employing establishment was shorthanded. He noted that his arms gave out so he rested them for a few minutes and then started scanning express mail deliveries. However, a supervisor instructed him to return to boxing mail. Appellant stated that he was only able to work for a few minutes before he was unable to continue due to pain. He saw his physician, rested for a few days and tried to work on May 2, 1994 but was only able to work two hours.

In a June 10, 1994 report, Dr. Dixon stated that appellant had persistent difficulties with both elbows and had severe pain to movement and manipulation of the elbow and even had pain at rest. He indicated that appellant tried to return to work but his condition had deteriorated since that point. He recommended that appellant not work as the repetitive actions that were required in his job and lifting were procedures that would preclude his functioning and would definitely worsen his pain which was present even at rest. He concluded that appellant was permanently and totally disabled due to bilateral medial epicondylitis. In an October 27, 1994 report, Dr. Dixon stated that the repetitive nature of appellant's work caused both of his arms to become incapacitated. He indicated that appellant remained incapacitated for repetitive work. He commented that the condition had started on April 24, 1994 and continued up to the current time.

In a January 24, 1995 report, Dr. William N. Harsha, a Board-certified orthopedic surgeon, stated that appellant was not able to perform repetitive work. He indicated that appellant had a chronic condition involving the base of the neck, shoulder girdles at the rotator cuff area and the muscles involving in stabilizing the proximal humerus. He noted that appellant had a tendinitis type of pain in the humerus and the elbows with radiating discomfort in his forearms and hands, weakness of grip and pinch. He stated that appellant had recurring tendinitis that was aggravated by an overload of work such as repetitive use of the arms over the shoulder level, past 70 degrees of abduction or forward flexion. He stated that appellant should also avoid pronation, supination, repetitive fist making and pinching.

The evidence submitted by appellant showed that the light-duty assignment he received was changed in that on April 29, 1994 he was required to work longer than usual in boxing mail and was not allowed to work at his own pace, as provided by the job description of his clerk position. Appellant indicated that he kept performing repetitive work even though Dr. Dixon had expressed skepticism on appellant's ability to perform the duties of the offered position. In his subsequent reports, Dr. Dixon indicated that the repetitive motion of the light-duty job offered to appellant caused his bilateral elbow condition to deteriorate. Dr. Harsha also indicated that appellant was unable to perform any repetitive tasks. The medical reports indicate that there was a change in appellant's physical condition to the extent that he was no longer able to perform the duties of the light-duty position. These reports, while not sufficient to meet appellant's burden of proof, are sufficient to require further development of the record.<sup>3</sup>

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<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

On remand the Office should refer appellant, together with the statement of accepted facts and the case record, to an appropriate specialist for an examination. The specialist should be requested to give a diagnosis of appellant's condition and provide his opinion on whether appellant had a recurrence of disability due to his bilateral elbow condition and whether the recurrence of disability was causally related to factors of appellant's employment, including his light-duty position from March 19 through April 29, 1994. After further development as it may find necessary the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs, dated December 15, 1995, is hereby set aside and the case remanded for further action in accordance with this decision.

Dated, Washington, D.C.  
April 2, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member