

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID M. MORRIS and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Portland, Oreg.

*Docket No. 97-2891; Submitted on the Record;
Issued December 21, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established continuing disability on and after June 18, 1997 causally related to his employment-related conditions.

On April 11, 1996 appellant, then a 42-year-old maintenance mechanic, filed a occupational disease and claim for compensation (Form CA-2) alleging that on April 4, 1996 he told his physician that he had a burning sensation in the palm of his hands, tingling and numbness in his hands, and finger spasms. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral wrist strain. This condition was resolved May 13, 1996.

From March 1 to December 27, 1996, appellant was placed on light duty with restrictions of working with epoxy 2 hours per day, 5 days a week for a total of 10 hours per week. Appellant's restrictions were increased from December 28, 1996 to June 17, 1997 and were designated to be his permanent modified duties. Appellant continued to undergo physical therapy and medical treatment.

On September 11, 1996 appellant filed a notice of traumatic injury (Form CA-1) alleging that on July 25, 1996 he was tying a load with a rope when the rope slipped and he fell backward hitting his tailbone. Appellant stated that he landed with outstretched hands. The Office accepted bilateral wrists strain, bilateral hand contusions, and a right shoulder strain as a result of this injury. Appellant did not stop work. The employing establishment terminated appellant on June 17, 1997.

Appellant filed a claim for continuing compensation on June 25, 1997 and requested compensation from June 18, 1997 and continuing. The employing establishment submitted a memorandum dated July 2, 1997 stating that the employing establishment had accommodated appellant's need for light duty and that there was no medical evidence that appellant was not able to work. The employing establishment noted that appellant was removed for cause and not for his employment injuries.

By decision dated July 30, 1997, the Office denied appellant's claim finding that the evidence did not establish that the claimed disability was causally related to appellant's employment injury. The Office found that the medical evidence of record did not support that when appellant was terminated, effective June 17, 1997, he could no longer perform his light-duty assignment. The Office found that appellant would have remained able to perform his light-duty position had he not been terminated for cause due to his argumentative behavior and failure to follow instructions. The Office further stated that appellant remained entitled to medical benefits.

The Board finds that appellant has not established continuing disability on or after June 18, 1997 causally related to his employment-related conditions.

In the instant case, appellant established that he sustained bilateral wrist strain, bilateral hand contusions, and a right shoulder strain. Appellant was placed on light duty on March 1, 1996 and his restrictions were increased as of December 28, 1996. Appellant continued working light duty until June 17, 1997, when his appointment was terminated for cause. Appellant requested wage-loss compensation from June 18, 1997 and continuing.

Section 8102(a) of the Federal Employees' Compensation Act¹ states that an employee is eligible for compensation benefits and "[t]he United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty." In general under the Act, the term "disability" means "incapacity because of injury in employment to earn the wage which the employee was receiving at the time of such injury."² This meaning, for brevity, is expressed as "disability for work."³

The Board finds that evidence of record clearly demonstrates that appellant's employment was terminated because of his improper conduct and not because of any disability causally related to his accepted employment conditions. In the instant case, appellant had been working successfully performing light duty as a maintenance engineer at the time of his termination, and that the position would have remained available for him had he not been terminated for improper conduct. There is no evidence in the record that appellant was terminated due to his physical inability to perform his assigned duties; nor is there evidence that appellant stopped work due to his physical condition. As there is no evidence in the record that appellant was not capable of performing his assigned duties on and after June 18, 1997, the Office correctly found that he had no disability within the meaning of the Act on and after that date.⁴

¹ 5 U.S.C. § 8102(a).

² *Gene Collins*, 35 ECAB 544 (1984).

³ *Clarence D. Glenn*, 29 ECAB 779 (1978).

⁴ *John W. Normand*, 39 ECAB 1378 (1988). The term "disability" under the Act means "incapacity because of injury in employment to earn the wage which the employee was receiving at the time of such injury." *Id.* at 1381.

As appellant had no disability for work within the meaning of the Act on and after June 18, 1997, he had no entitlement to compensation for disability after that date within the meaning of section 8102(a) of the Act.

Consequently, the decision of the Office of Workers' Compensation Programs dated July 30, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 21, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member