U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL L. TIPPER and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, Calif.

Docket No. 97-1632; Submitted on the Record;
Issued June 21, 1999

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained a recurrence of disability beginning March 22, 1995 causally related to his accepted employment injuries.

Appellant developed carpal tunnel syndrome in the right wrist and cubital tunnel syndrome of the right elbow while in the performance of his duties as a building maintenance custodian on or about February 1, 1991. The Office of Workers' Compensation Programs accepted his claim, authorized surgeries and paid compensation for temporary total disability until September 7, 1994, when appellant returned to work in a limited-duty position approved by his attending physician, Dr. Gordon A. Brody, a Board-certified orthopedic surgeon.[1] On July 11, 1995 appellant filed a claim asserting that he sustained a recurrence of disability on March 22, 1995 causally related to his accepted employment injuries.

In a decision dated December 27, 1996, the Office denied appellant's claim of recurrence.

The Board finds that the medical opinion evidence of record is insufficient to establish that appellant sustained a recurrence of disability on March 22, 1995 causally related to his accepted employment injuries.

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires 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

[1] The evidence of record indicates that appellant returned to regular duty before November 15, 1994.

causally related to the employment injury and who supports that conclusion with sound medical reasoning.[2]

The medical evidence of record through August 1995 supports appellant's complaints of pain and discomfort in early 1995 but fails to explain with sound medical reasoning how the accepted employment injuries caused a recurrence of disability for work on March 22, 1995. On January 17, 1995 Dr. Brody reported that appellant was working full duties without restrictions but continued to have pain and tenderness in the medial epicondylar region of the right arm as well as pain in the region of the right palmar fasiectomy. He reiterated that appellant was permanent and stationary. On March 22, 1993 the date of the claimed recurrence of disability, Dr. Brody reported that appellant was having pain and discomfort in the right elbow as well as a new pain in the left hand. Appellant advised him that he could not perform his usual and customary occupation because of this pain and discomfort. Dr. Brody reported that appellant was a candidate for vocational rehabilitation. Responding to an Office inquiry, he reported on August 15, 1995 that all of his current findings were based on appellant's subjective complaints of frequent pain of moderate intensity and on appellant's insistence that he could not perform his usual and customary occupation.

Dr. Brody first directly addressed the issue of causal relationship in his report of November 7, 1995. Following an Office decision denying appellant's claim, Dr. Brody reported that he disagreed with the Office's finding on causal relationship: "The subjective discomfort that [appellant] is suffering at this time is due to his initial industrial injury in my opinion. I know of no other injury which has caused this problem. Based on this, the patient, in my opinion, is a qualified injured worker."[3]

Although this report draws a connection between appellant's current discomfort and his initial industrial injury, it fails to address appellant's disability for work beginning March 22, 1995 and it offers no medical explanation of how the work stoppage occurred. To establish the critical element of causal relationship, Dr. Brody must address appellant's disability for work beginning March 22, 1995 and must support his opinion on causal relationship with sound medical reasoning. It is not necessary that his discussion be so conclusive as to suggest a causal connection beyond all possible doubt in the mind of a medical scientist. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.[4]

The only other opinion on causal relationship appearing in the record is found in the October 26, 1996 report of Dr. John D. Smiley, an orthopedic surgeon. He noted that after surgery in 1994 appellant returned to work for a period of time and continued to complain of

[2] *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

[3] An electrodiagnostic laboratory report of September 25, 1996 revealed findings suggestive of mild chronic ulnar neuropathy, findings suggestive of mild bilateral carpal tunnel syndrome and no electrophysiologic evidence of acute motor radiculopathy.

[4] *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.

pain in his right and left upper extremity.[5] Dr. Smiley noted that appellant developed pain during working hours and had decreased ability to function and eventually stopped working because of the pain. He reported that appellant was unable to continue with work at the employing establishment without severe pain in his elbow and wrist bilaterally. After reporting brief clinical findings, he stated that appellant was disabled from working for the employing establishment and that the condition was caused by his working for the employing establishment.

This report tends to support that appellant's current disability is employment related, but as was the case with Dr. Brody's report of November 7, 1995, it does not address appellant's disability beginning March 22, 1995 and it offers no medical explanation of how the accepted employment injuries caused appellant to stop work on that date. From his comment that appellant developed pain during working hours, it appears that Dr. Smiley may be attempting to relate appellant's current disability to the duties appellant performed after returning to work in 1994.[6] He did not identify these duties, however, and he offered no explanation of how specific duties affected appellant's condition so as to cause a work stoppage on March 22, 1995. Whether appellant claims a spontaneous return of disability on March 22, 1995 as a result of his accepted employment injuries or whether he claims a new injury to the same part of the body by renewed exposure to the causative agent of a previously suffered occupational disease, he must support his claim with a medical opinion that uses sound medical reasoning to establish the critical element of causal relationship. Without such reasoning, the conclusions of Dr. Brody and Dr. Smiley, while generally supportive of appellant's claim, are insufficient to establish appellant's entitlement to further benefits.[7]

[5] Appellant's claim of an employment injury to his left upper extremity is not before the Board on this appeal.

[6] The Office procedure manual defines a recurrence of disability to include a work stoppage caused by the following: (1) a spontaneous material change, demonstrated by objective findings, in the medical condition which resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness; (2) a return or increase of disability due to an accepted consequential injury; or (3) withdrawal of a light-duty assignment, made specifically to accommodate the claimant's condition due to the work-related injury, for reasons other than misconduct or nonperformance of job duties. A recurrence of disability does not include a work stoppage caused by the following: (1) termination of a temporary appointment, if the claimant was a temporary employee at the time of the injury; (2) cessation of special funding for a particular position or project (*e.g.,* "pipeline" grants); (3) true reduction-in-force where employees performing full duty as well as those performing light duty are affected; (4) closure of a base or other facility; or (5) a condition that results from a new injury, even if it involves the same part of the body previously injured, or by renewed exposure to the causative agent of a previously suffered occupational disease. If a new work-related injury or exposure occurs, Form CA-1 or CA-2 should be completed accordingly. The Office's procedure manual states, however, that in some occupational disease cases where the diagnosis remains the same but disability increases, the claimant may submit Form CA-2a, notice of recurrence of disability and claim for compensation, rather than filing a new claim. For instance, a claimant with carpal tunnel syndrome who has returned to work, but whose repetitive work activities result in the need for surgery, need not be required to file a new claim. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (January 1995).

[7] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954) (medical conclusions unsupported by rationale are of little probative value).

The December 27, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
June 21, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member