

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WENDELL A. LOWE and DEFENSE LOGISTICS AGENCY,
DEFENSE DISTRIBUTION DEPOT RED RIVER, Texarkana, TX

*Docket No. 98-187; Submitted on the Record;
Issued October 28, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a recurrence of disability, due to the March 11, 1993 employment injury, commencing March 6, 1996.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability, due to the March 11, 1993 employment injury, commencing March 6, 1996.

On April 26, 1993 appellant, then a 41-year-old supply clerk, filed a claim for an occupational disease, Form CA-2, alleging that he sustained carpal tunnel syndrome at work due to typing on his job, improper equipment, height, elevation arrangement and being in the same position for long periods. The Office accepted appellant's claim for carpal tunnel syndrome.

By decision dated March 3, 1995, the Office awarded appellant a schedule award for 19 percent loss of use of the right and left wrist from September 13, 1994 to December 20, 1996 and paid appellant in a lump sum.

On June 28, 1995 appellant filed a claim for an emotional condition which was assigned the case number of 16-2640202. The claim was denied on December 6, 1995.

By letter dated January 25, 1996, the employing establishment issued a warning notice of unacceptable work performance to appellant.

Appellant submitted progress notes dated from September 13, 1994 through December 18, 1996 and a medical report dated December 26, 1996 from his treating physician, Dr. Jeffrey T. DeHaan, a Board-certified orthopedic surgeon. Dr. DeHaan also submitted a nerve conduction study dated November 18, 1996. In the April 16, 1996 progress note, he noted that appellant returned after a two year absence and continued to have "quite a bit" of carpal

tunnel-like symptoms. Dr. DeHaan stated that appellant's hands are "more symptomatic" and appellant wished to reopen the file, redo his nerve conduction studies and obtain an impairment rating. He stated that appellant would return after undergoing more tests. The November 18, 1996 nerve conduction study showed minimal compression of the median nerves and ulnar nerves bilaterally at the wrist. In the December 19, 1996 progress note, Dr. DeHaan stated that appellant was unable to work because of the upper extremity problems and the repetitive type activities that his job entailed.

In his December 26, 1996 report, Dr. DeHaan considered appellant's history of injury, performed a physical examination and noted that the electromyogram (EMG) and nerve conduction studies were positive both for carpal canal and cubital tunnel entrapment neuropathies bilaterally. He described his current treatment for appellant including medication and splints and stated that appellant continued to have problems at work and had been unable to work due to his carpal and ulnar nerve symptoms.

On February 4, 1997 appellant filed a notice of recurrence of disability, Form CA-2a, alleging that the disability beginning on March 6, 1996 was due to the March 11, 1993 employment injury. He stated that on April 16, 1996 he continued to have carpal tunnel symptoms and had persistent problems with his hands and wrists for which he sought medical treatment.

In a statement received by the Office on March 19, 1997, appellant's supervisor stated that appellant had not returned to work since March 6, 1996 and had elected to retire on disability retirement due to stress on the job. The supervisor also provided a description of appellant's job duties as a supply clerk which included entering items on a personal computer and filing and retrieving documents.

By letter dated May 20, 1997, the Office requested that appellant furnish copies of the EMG and nerve conduction studies referred to by Dr. DeHaan in his December 26, 1996 report and have Dr. DeHaan complete the enclosed OWCP-5 form.

Appellant submitted a progress note dated April 10, 1997, work capacity evaluation dated June 2, 1997 and a medical report dated August 11, 1997 from Dr. DeHaan. In the April 10, 1997 progress note, Dr. DeHaan stated that appellant's bilateral carpal tunnel and ulnar nerve symptoms were unchanged since the last visit. In the June 2, 1997 work capacity evaluation, he stated that appellant could not lift more than 10 to 15 pounds and must avoid repetitive motion. Dr. DeHaan stated that appellant's restrictions were due to the March 11, 1993 employment injury. In his August 11, 1997 report, he stated that appellant's carpal tunnel syndrome was directly related to typing whether on a typewriter or a computer terminal and appellant could work half a day with limited periods of typing and rests in between them.

By decision dated September 8, 1997, the Office denied the claim, stating that the evidence of record failed to establish that the claimed recurrence of disability was causally related to the March 11, 1993 employment injury.

Appellant has the burden of establishing by reliable, probative and substantial evidence that the recurrence of a disabling condition for which he seeks compensation was causally

related to his employment injury.¹ This burden includes the necessity of 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 causally related to employment factors and supports that conclusion with sound medical reasoning.²

In the present case, appellant has not presented sufficient evidence that establishes that he sustained a recurrence of disability, commencing March 6, 1993, due to the March 11, 1993 employment injury. Dr. DeHaan's progress notes and medical reports dated from April 16, 1996 through April 10, 1997 stated that appellant had ongoing symptoms of carpal tunnel syndrome due to his typing at work which prevented him from working. In the April 16, 1996 progress note, Dr. DeHaan stated that appellant's hands were "more symptomatic" but did not explain why. In the June 2, 1997 work capacity evaluation, he placed lifting restrictions on appellant and in the August 11, 1997 report he stated that appellant could work half days with limited periods of typing and rests in between them. In his April 10, 1997 progress note, Dr. DeHaan stated that appellant's symptoms were unchanged since the last visit, apparently referring to the December 16, 1996 progress note. In none of his documentation did Dr. DeHaan address appellant's claim of a recurrence of disability commencing March 6, 1996. He did not provide a rationalized opinion as to how appellant's condition was related to the March 11, 1993 employment injury or why it was necessary for appellant to seek medical attention more than a month after he stopped working. Dr. DeHaan did not address the fact that appellant had not sought medical treatment for two years prior to stopping work. Inasmuch as appellant has failed to present sufficient medical evidence to establish that he sustained a recurrence of disability, due to the March 11, 1993 employment injury, commencing March 6, 1996, he has failed to establish his claim.

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986).

² *Louise G. Malloy*, 45 ECAB 613, 617 (1994).

The decision of the Office of Workers' Compensation Programs dated September 8, 1997 is hereby affirmed.

Dated, Washington, D.C.
October 28, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member