

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL P. KAEHLER and U.S. POSTAL SERVICE,
POST OFFICE, St. Cloud, MN

*Docket No. 99-328; Submitted on the Record;
Issued July 13, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that his intermittent disability from March 24, 1994 through August 2, 1996 was causally related to his accepted employment injury of bilateral epicondylitis and ulnar neuropathy.

On January 25, 1995 appellant filed an occupational disease claim alleging that on March 1, 1994 he first realized that his bilateral epicondylitis was due to the repetitive work required in his job. The Office of Workers' Compensation Programs accepted the claim for bilateral epicondylitis and ulnar neuropathy

In an April 11, 1996 attending physician's report (Form CA-20), Dr. Christopher M. Tacl¹ diagnosed ulnar neuropathy aggravated by appellant's repetitive employment duties. Dr. Tacl indicated that appellant had "ongoing flares of medical condition continue causing intermittent difficulty with employment duties causing missed work (period February 3, 1993 to April 2, 1996.)"

On May 17, 1996 appellant filed a claim for compensation (Form CA-7) for lost wages during the period February 3, 1993 to April 22, 1996.

By letter dated July 24, 1996, the Office informed appellant that his claim for wage-loss compensation for the period February 3, 1993 to April 22, 1996 was not payable at that time and that additional medical evidence was required.² In addition, the Office advised him to specify the dates for which he claimed lost time due to his bilateral epicondylitis condition and to provide medical evidence for each date he claimed lost wages.

¹ An attending Board-certified family practitioner.

² The Office noted that appellant had a prior claim that was accepted for a strain and was assigned claim number A10-362176. The claim before the Board is Office file no. A10-443357.

In a response letter dated April 14, 1996, appellant submitted evidence including leave slips and a report by Dr. Tacl to support his claim for intermittent disability during the period February 3, 1993 to April 22, 1996. Appellant also submitted a list of dates with the hours he was requesting to purchase back from the employing establishment for total 264.11 of sick leave used for medical appointments and days he was disabled from working.

Appellant submitted a claim for continuing disability (Form CA-8) dated October 15, May 20, June 5, July 17 and August 2, 1996.

In a September 6, 1996 attending physician's supplemental report (Form CA-20a), Dr. Tacl indicated that appellant was disabled on May 20, June 5, July 17 and August 2, 1996 due to his bilateral ulnar neuropathy, fibromyalgia, bilateral epicondylitis and chronic pain syndrome.

Dr. Tacl, in an August 20, 1996 Form CA-20, diagnosed fibromyalgia, ulnar neuropathy, bilateral epicondylitis and chronic pain syndrome and that appellant had "ongoing flares of medical condition continue causing intermittent difficulty with employment duties."

By letter dated August 8, 1997, the Office informed appellant that it was evaluating his request for compensation for the period February 3, 1993 through August 6, 1996. The Office advised appellant that dates prior to March 1, 1994 were payable under his claim No. A10-362176.

On August 22, 1997 the Office advised appellant that he was entitled to two hours of compensation during the period March 4, 1994 to February 2, 1996. The Office informed appellant that the dates of March 24 and November 18, 1994 and June 14, 1995 would be considered the three waiting days, which made September 21, 1995 and February 2, 1996 the only dates for which he could receive payment and referred to the decision regarding the remainder of the dates for which he had claimed compensation.

In a decision dated August 27, 1997, the Office denied appellant's request for intermittent compensation for the period March 24, 1994 through August 2, 1996 on the basis that the medical evidence of record failed to establish that appellant was disabled due to his accepted March 1, 1994 employment injury.

On September 5, 1997 the Office referred appellant, together with a statement of accepted facts, medical evidence and list of questions to Dr. Steven S. Lebow³ for a second opinion on whether the diagnosis of bilateral epicondylitis and ulnar neuropathy was established and any restrictions or disability due to his accepted employment injury.

By letter dated September 11, 1997, appellant requested an oral hearing before an Office hearing representative which was held on April 27, 1998.

³ A Board-certified neurologist.

After the hearing appellant submitted an April 10, 1998 report, in which Dr. Gary A. Strandemo⁴ indicated that he first saw appellant on September 10, 1996. Dr. Strandemo noted that appellant was currently working with restrictions at his usual job and that his difficulties were “related to bilateral upper extremity, repetitive motion injuries” which included pushing, pulling, supination, pronation, lifting and grasping. Regarding disability due to his employment injury, Dr. Strandemo noted:

“The above mentioned repetitive movements, when not controlled or limited, led to pain and tenderness to palpation specifically in the extensor muscles of the wrist and hand bilaterally and at the epicondylar attachments of these muscles bilaterally. (When these symptoms flare from uncontrolled repetitive movement, he also experiences pain into the right upper arm, deltoid, trapezius and paraspinous muscles at the cervical level.) Because of pain associated with these flares, he may be either unable to come into work or may need to leave work. I have not requested that he come into the office with each episode because of the chronic and recurrent nature of this problem, but that he call and update me.”

In a report dated October 2, 1997, Dr. Lebow, based upon a physical examination, review of the medical records and statement of accepted facts, opined that appellant had no objective evidence to support the diagnosis of epicondylitis although he “had some mild slowing in his nerve conductions for the left ulnar nerve, but the right ulnar nerve -- which bothers him as much if not more -- was recently normal on testing without objective abnormalities.” Dr. Lebow indicated that there was no objective evidence to support any physical limitations or restrictions.

By decision dated July 13, 1998, the hearing representative found that the medical evidence of record was insufficient to establish that appellant was entitled to intermittent disability for the dates claimed during the period March 24, 1994 through August 2, 1996.

The Board finds that appellant has not met his burden of proof in establishing that his intermittent disability from March 24, 1994 through August 2, 1996 was causally related to his accepted employment injury of bilateral epicondylitis and ulnar neuropathy.

An employee seeking benefits under the Federal Employees’ Compensation Act⁵ has the burden of establishing the essential elements of his or her claim including the fact that the injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ As used in the Act, the term “disability” means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ Disability is thus not synonymous with

⁴ An attending Board-certified family practitioner.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *Patricia A. Keller*, 45 ECAB 278 (1993); *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

physical impairment, which may or may not result in an incapacity to earn wages.⁸ Whether a particular injury caused an employee disability from employment is a medical issue which must be resolved by competent medical evidence.⁹

The record in this case contains no such medical opinion to support that appellant was intermittently disabled from work from March 24, 1994 through August 2, 1996. In attending physician's forms dated April 11 and August 20, 1996 and a September 6, 1996 physician's supplemental report, Dr. Tacl noted dates appellant was disabled and attributed this to ongoing flare ups of his medical condition which included bilateral ulnar neuropathy, fibromyalgia, bilateral epicondylitis and chronic pain syndrome. While he noted dates in which he found appellant disabled from employment due to his medical condition, the physician provided no rationalized medical opinion explaining how appellant's disability was causally related to his employment injury. Without explanation or rationale, a medical report has diminished probative value and is insufficient to establish causal relationship.¹⁰ Therefore, Dr. Tacl's reports are insufficient to establish that appellant had an employment-related disability on the dates in question.

Dr. Strandemo's report is also insufficient to establish causal relationship. In his April 10, 1998 report, Dr. Strandemo opined that appellant's pain caused by flare ups might cause him to be unable to work or leave work, if the flare up occurred while he was working. He failed to specify any dates that appellant was disabled due to his medical condition, beyond noting that appellant's "symptoms flare from uncontrolled repetitive motions" which caused appellant pain. As Dr. Strandemo fails to identify specific dates on which appellant was disabled and began treating appellant subsequent to the dates in question, his opinion is insufficient to support a causal relationship between appellant's employment injury and his intermittent periods of disability.

Although the Office advised appellant of the type of medical evidence needed to establish his claim for intermittent disability, appellant failed to submit medical evidence responsive to the request. Consequently, the Office properly denied appellant's request for compensation for intermittent periods of disability from March 24, 1994 through August 2, 1996.

⁸ See *Fred Foster*, 1 ECAB 21 (1947).

⁹ See *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

¹⁰ *Deborah S. King*, 44 ECAB 203 (1992).

The decision of the Office of Workers' Compensation Programs dated July 13, 1998 is affirmed.

Dated, Washington, D.C.
July 13, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member