

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GALEN H. OWENS and U.S. POSTAL SERVICE,
POST OFFICE, Coppell, TX

*Docket No. 98-2012; Submitted on the Record;
Issued March 9, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained recurrences of disability for the periods August 15, 1995 to January 9, 1996 and March 20 to September 16, 1996.

The Office of Workers' Compensation Programs accepted that on July 5, 1995 appellant, then a 46-year-old rural letter carrier, sustained a left wrist strain.¹ Thereafter the Office also accepted that appellant sustained bilateral carpal tunnel syndrome.² Appellant was noted to have preexisting unrelated polyneuropathy secondary to diabetes mellitus.

Dr. Byron Niebruegge, a Board-certified occupational medicine specialist, appellant's treating physician since July 6, 1995, released him at that time to restricted duty until July 28, 1995 and thereafter to full duty. Appellant worked limited duty from July 6 through 27, 1995 and he resumed full duty effective July 28, 1995. Medical reports from Dr. Niebruegge dated August 4, 7, 11 and 15, 1995 indicate that appellant was released to work with restrictions during that time, and the August 15, 1995 reports indicated "[follow-up] after family crises."

On August 15, 1995 appellant did not work but phoned the employing establishment and requested leave without pay claiming that he had had a flat tire. He reported to work on August 16, 1995 and requested leave without pay to care for his ill mother who resided in Kentucky. Appellant stopped work at that time and did not return. He relocated from Texas to

¹ OWCP case number A16-263638.

² OWCP case number A16-273040.

Kentucky for personal reasons and formally resigned from the employing establishment on December 12, 1995.³ On November 26, 1995 appellant filed a claim for recurrence of disability commencing August 11, 1995. On December 30, 1995 appellant filed a claim for a recurrence of disability commencing August 15, 1995.

Appellant began treatment with Dr. Frank J. Kolb, III, a Board-certified orthopedic surgeon, for his left wrist sprain and carpal tunnel syndrome on October 17, 1995. Dr. Kolb's reports between October 19, 1995 and January 9, 1996 did not support that appellant was unable to perform his regular duties due to his bilateral carpal tunnel syndrome.

On January 10, 1996 appellant underwent a left carpal tunnel release and on February 7, 1996 he underwent a right carpal tunnel release and a right ulnar nerve release at the right wrist. He received compensation for temporary total disability for the period January 10 through March 19, 1996.⁴

By return to work certificate dated March 4, 1996, Dr. Kolb released appellant to return to regular work with no restrictions on March 20, 1996.

On February 12, 1997 appellant also underwent right shoulder surgery for acromioclavicular spurring and impingement syndrome.

Appellant claimed compensation from August 15, 1995 to September 12, 1996 and from January 10, 1996 for an indefinite period.

By decision dated May 9, 1997, the Office denied compensation for the period August 15, 1995 to January 9, 1996, finding that the medical evidence of record did not establish disability for work during those periods due to the accepted injuries. Subsequent to the May 9, 1997 decision, the cases were combined under the Office case number A16-263638.⁵

By letter to appellant dated January 14, 1998, the Office posed several questions for Dr. Kolb, including an explanation of how appellant could be totally disabled since January 1996 when he was released to work in March 1996 after successful surgeries and when he was able to work at Wal Mart from September 1996 until February 1997. In a January 26, 1998 response, Dr. Kolb referred the Office to previously submitted medical notes and stated in response to the question on total disability from January 1996 that appellant "wanted to attempt to work, was unable to do so."

By letter dated January 28, 1998, appellant requested reconsideration and in support he submitted a copy of the November 25, 1996 hearing representative's decision, a copy of the

³ Appellant took 12 weeks of family leave without pay, refused to return to work and did not provide any information supporting that he was unable to work, and removal action was being initiated by the employing establishment when he resigned.

⁴ On January 23, 1996 appellant was involved in an automobile accident during which his right hand was impacted on the steering wheel.

⁵ Thereafter claims were made for a schedule award and for wage loss beginning May 20, 1997. As no formal final decisions have been made in these claims, they are not now before the Board on this appeal; *see* 20 C.F.R. § 501.2(c).

May 9, 1997 decision and memorandum to the Director, medical records from the Occupational Health Center dated July 25 and August 7 and 15, 1995, Dr. Kolb's 1995 preoperative office notes indicating a diagnosis of possible work-related carpal tunnel syndrome, office notes from January to April 1996, electrophysiologic evaluation reports dated October 27, 1995 and July 18, 1996 as well as an electromyogram (EMG) report dated April 18, 1997 and medical records from Dr. Kolb dated June 25, July 26 and August 26, 1996 and April 1, 22 and 29, May 20, August 19 and 22 and November 21, 1997. A December 16, 1997 letter from a medical assistant was also submitted.

In his 1995 office notes, Dr. Kolb does not address appellant's ability to work except to state on November 14, 1995 that he felt there was a very good chance that appellant could return to his preinjury job after surgery. Dr. Kolb's office notes from January through April 1996 also did not address appellant's ability to work, except to note that he was releasing appellant to return to work around March 18, 1996.

In his June 25, 1996 office note, Dr. Kolb noted appellant's complaints of right hand pain and swelling and he opined: "I think basically his major problem is related to the diabetic neuropathy." In his July 26, 1996 office note, Dr. Kolb stated that he thought "there will be a slow improvement in his symptoms but at this time when he tries to do any activities significantly he gets pain [in both median and ulnar nerves]." The April 18, 1997 EMG reported findings most consistent with a generalized acquired sensory polyneuropathy with axonal involvement and with superimposed bilateral carpal tunnel syndrome of moderate severity. In his April 1 and 22, 1997 notes, he noted that appellant's continued hand symptomatology was hard to explain, that this much difficulty after surgery was very rare, and that it was hard to separate appellant's problem into what was causing what components. In his May 20, 1997 note, Dr. Kolb indicated that appellant continued to have swelling and numbness in his hands and opined that he had "a combination of chronic changes in his nerve from his carpal tunnel and from his diabetes mellitus." He opined that appellant's hands were going to keep him from doing any type of repetitive activity, and that his ability to return to his previous employment was nil. In his August 22, 1997 report, Dr. Kolb opined that appellant's carpal tunnel syndrome was related to his 1995 "problems," but opined that he did not believe that "this is a recurrence, but just a chronic ongoing problem. It is also associated with his diabetic neuropathy." In his November 21, 1997 report, he noted appellant's continuing numbness in both hands, questioned whether this was related to his diabetic neuropathy or scarring of his median nerves, but noted that there was no way to electrically discern which was which. No where in any of these reports did Dr. Kolb opine about appellant being totally disabled due to his carpal tunnel syndrome during the periods August 15, 1995 to January 9, 1996 and March 20 to September 16, 1996.

By decision dated March 12, 1998, the Office denied modification of the May 9, 1997 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that the prior decisions and occupational health records were already of record and previously considered, that the electrodiagnostic reports did not include a medical opinion as to whether appellant was disabled for work during the periods claimed, and that none of Dr. Kolb's records provided a definite medical opinion or explanation supporting that appellant was totally disabled for work for the periods August 15, 1995 to January 9, 1996 and March 20 to September 16, 1996 due to his accepted bilateral carpal tunnel syndrome.

The Board finds that appellant has failed to establish that he sustained a recurrence of disability for the periods August 15, 1995 to January 9, 1996 and March 20 to September 16, 1996.

As used in the Federal Employees' Compensation Act,⁶ the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁷ An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden of proof 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 the employment injury and supports that conclusion with sound medical reasoning.⁸ Causal relationship is a medical issue and can be established only by medical evidence.⁹ Where no such rationale is present, medical evidence is of diminished probative value.¹⁰

In the present case, appellant has not met his burden of proof to establish his recurrences of disability as none of the medical evidence submitted contains an affirmative statement supporting that he was totally disabled from his employment during the periods August 15, 1995 to January 9, 1996 and March 20 to September 16, 1996, let alone any medical rationale supporting such an opinion.

The reports from Dr. Niebruegge released appellant to work restricted duty until July 28, 1995 and released him thereafter to return to work full time. However, Dr. Niebruegge's reports from August 4 through August 15, 1995 noted some working restrictions, but did not contain any statements attesting to total disability during that period or after August 15, 1995, as the reason noted for terminating treatment was appellant's family emergency. Therefore, these reports do not support total disability for the periods August 15, 1995 to January 9, 1996 and March 20 to September 16, 1996.

Beginning with treatment on October 17, 1995 Dr. Kolb at no time provided any affirmative statement supporting appellant's total disability for the periods August 15, 1995 to January 9, 1996 and March 20 to September 16, 1996. Most of his reports and office notes did not even address disability, with his November 14, 1995 note indicating that appellant could

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *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). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to disability compensation; see *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury).

⁸ *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

⁹ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

¹⁰ *Michael Stockert*, 39 ECAB 1186 (1988).

return to regular work after his surgeries, and with his March 4, 1996 office return to work certificate indicating that appellant could return to regular duty on March 20, 1996. In response to later Office questions regarding appellant's total disability from January 1996 Dr. Kolb merely responded that appellant "wanted to attempt to work but was unable to do so." No period of time was specified, and considering that the Office had already accepted that appellant was totally disabled from January 10 through March 19, 1996, no medical rationale supporting objective reasons for this unspecified period of disability from March 20, 1996 and continuing were given. Consequently, this response from Dr. Kolb is of diminished probative value and is insufficient to support total disability for the period March 20 to September 16, 1996. Further, in Dr. Kolb's subsequent reports he was unable to quantify or qualify what amount of appellant's continuing hand problems were due, in fact, to the surgically treated carpal tunnel syndrome and what amount was due to appellant's preexisting diabetic-related polyneuropathy. These reports also do not support total disability and even bring causal relationship with appellant's employment into question for disability after September 16, 1996. As none of Dr. Kolb's reports and office notes identified appellant as being totally disabled for the periods August 15, 1995 to January 9, 1996 and March 20 to September 16, 1996 or provided medical rationale to support such total disability, none of them support recurrence of disability during these periods.

As no further rationalized medical evidence was submitted which supported appellant's claim of total disability for the periods August 15, 1995 to January 9, 1996 and March 20 to September 16, 1996, he has failed to establish his recurrence claims.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 12, 1998 is hereby affirmed.

Dated, Washington, D.C.
March 9, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member