

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN WHITLOCK, JR. and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 00-1404; Submitted on the Record;
Issued April 18, 2001*

DECISION and ORDER

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

The issue is whether appellant has established that he sustained a recurrence of disability beginning August 12, 1999 due to his September 22, 1997 employment injury.

On October 26, 1993 the Office of Workers' Compensation Programs accepted that appellant, then a 39-year-old machinery mechanic sustained bilateral carpal tunnel syndrome while federally employed.¹ Appellant developed the condition while shoveling charcoal and gravel from filter tanks. Appellant underwent surgical release on both sides and returned to permanent limited duty on June 15, 1993.²

On October 8, 1997 the Office accepted a separate claim for bilateral carpal tunnel syndrome, caused or aggravated by work factors on September 22, 1997.³ Appellant developed the subsequent condition as a result of his limited duties of computer usage, handling tools, restocking shelves, testing electrical tools and shipping and receiving. Appellant immediately returned to his limited-duty position.

On February 13, 1998 the Office proposed to terminate appellant's entitlement to compensation benefits regarding the September 22, 1997 injury, on the grounds that appellant no longer suffered residuals of the accepted condition sustained on or about that date. The Office based its proposed termination on the report of Dr. Brian Wicks, a Board-certified orthopedic surgeon, dated January 26, 1997, who opined that in light of normal electrical studies and a normal bone scan, appellant's work-related problem of bilateral carpal tunnel syndrome had

¹ Claim number A14-285347.

² On May 22, 1995 the Office issued appellant a schedule award for five percent permanent loss of use of each arm for the period April 19 through November 23, 1995.

³ Claim number 140327353.

resolved. Appellant was afforded 30 days with which to submit additional evidence or argument relevant to the issue involved or his compensation would be terminated.

In an undated letter received by the Office on March 5, 1998 appellant indicated that he was not satisfied with the evaluation and treatment by Dr. Wicks and requested a new physician in order to obtain a second opinion. By letter dated March 6, 1998, the Office denied appellant's request.

By decision dated March 16, 1998, the Office terminated appellant's compensation benefits effective that date, on the grounds that the evidence of record did not establish entitlement to compensation.

On August 12, 1999 appellant filed a recurrence of disability claim alleging that his accepted bilateral carpal tunnel syndrome had worsened over time. Appellant stopped work on August 12, 1999 and alleged that his recurrence of disability began on that date.

In a letter dated September 2, 1999, the Office advised appellant that additional factual and medical evidence was necessary in order to make a determination on his claim. The Office subsequently referred appellant to Dr. Lewis Almaraz, a Board-certified neurologist, on November 19, 1999. Dr. Almaraz concluded that appellant's current hand symptomatology was not employment related and that his light-duty position had not likely caused his progressive symptoms. The Office reviewed Dr. Almaraz's findings, along with the medical evidence submitted by appellant in support of the recurrence of disability claim.

By decision dated December 16, 1999, the Office denied the claim on the grounds that the medical evidence was insufficient to establish a recurrence of disability accepted September 22, 1997 due to the work injury.

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained a recurrence of disability beginning August 12, 1999 due to his September 22, 1997 employment injury.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁴ As part of this burden, appellant must furnish rationalized medical opinion evidence, based on a complete and accurate factual and medical history, showing a causal relationship between the claimed recurrence of

⁴ *Terry R. Hedman*, 38 ECAB 222 (1986).

disability and an accepted employment injury.⁵ Causal relation and disability are medical issues that must be resolved by competent medical evidence.⁶

In the present case, appellant has not submitted any medical evidence showing that the alleged recurrence of disability occurring on August 12, 1999 is causally related to the September 22, 1997 employment injury. He also has not shown that the nature and extent of his injury worsened due to the September 22, 1997 employment injury or that his light-duty job requirements changed. The only medical report addressing appellant's disability beginning August 12, 1999 was a note from an unidentified employing establishment physician dated August 12, 1999, which indicated that appellant was sent home from work that day due to lack of limited-duty work. This report did not indicate whether appellant's disability was related to his September 22, 1997 employment injury and is, therefore, insufficient to establish appellant's claim for a recurrence of disability due to this injury. Appellant also submitted a report from Dr. Peter Ciani, a Board-certified family practitioner dated September 30, 1999, which discussed appellant's current bilateral carpal tunnel syndromes and period of disability. Dr. Ciani did not indicate whether appellant's disability was related to his September 22, 1997 employment injury. He also stated that appellant had been off work for six weeks due to a lack of modified work. Therefore, his report is insufficient to establish appellant's claim for a recurrence of disability due to this injury.

As appellant has not submitted competent medical evidence showing that he sustained a recurrence of disability beginning August 12, 1999 due to his accepted September 22, 1997 employment injury, he has not met his burden of proof.⁷

⁵ *Armando Colon*, 41 ECAB 563 (1990).

⁶ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁷ The Board notes that subsequent to the Office's December 16, 1999 decision, the Office received medical evidence. The Board, however, cannot consider evidence on appeal that was not before the Office at the time of the final decision; see *Dennis E. Maddy*, 47 ECAB 259 (1995). 20 C.F.R. § 501.2(c).

The December 16, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 18, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member