U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAN J. STEPHAN and U.S. POSTAL SERVICE,
POST OFFICE, Grand Rapids, MI

Docket No. 00-351; Submitted on the Record;
Issued May 9, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a recurrence of disability on or after February 22, 1993 as a result of an employment-related bilateral hand condition.

On June 16, 1993 appellant, then a 38-year-old letter carrier, filed a notice of occupational disease alleging that he developed a bilateral hand condition as a result of working in cold weather. Appellant noted that he first realized that his hand pain, stiffness and discoloration were related to his federal employment on February 22, 1993, when he delivered mail in below-zero temperatures. The Office of Workers' Compensation Programs accepted the claim for bilateral frostbite of the hands. Appellant received compensation for wage loss from June 12 through August 5, 1993. He returned to restricted duty and also received compensation for intermittent periods of disability.

Appellant was initially seen by his attending physician, Dr. Richard Van Dyken, a Board-certified internist, for complaints of cold hands on June 13, 1993. Appellant had thick hands that appeared somewhat swollen diffusely. Dr. Van Dyken indicated that appellant's symptoms were consistent with connective tissue disease. He noted that while the condition was not caused by appellant's work it could be worsened by exposure to cold.

Dr. Van Dyken referred appellant to Dr. Rich Martin, a rheumatologist. In an August 13, 1993 report, Dr. Martin noted physical findings and a history of cold-induced stiffness and swelling of the fingers. He stated:

> "At this time it is difficult to decide in certainty what actually occurred in March of this year. Certainly, exposure to cold can cause frostbite and with this blood vessel damage resulting in instability of the blood vessels and resulting Raynaud's phenomenon. He did note color changes and some edema and at least these are features that are suggestive, but not diagnostic, of frostbite. He does not relate classic Raynaud's phenomenon. Although some of the color changers that he has noted are consistent with vasomotor instability. I cannot entirely exclude the

possibility of reflex sympathetic dystrophy, although there is not a 'gold standard' test for diagnosing this. There is no evidence of an evolving inflammatory arthritis, media nerve compression or thoracic outlet obstruction."

In an August 25, 1993 report, Dr. Van Dyken, an internist, noted that appellant was evaluated for the symptom of cold hands, which first began in February 1993. He noted that appellant was a letter carrier and that his hands would turn blue then white, with pain in the tips of the fingers. Dr. Van Dyken listed physical findings and opined that appellant suffered from Raynaud's phenomenon.[1]

On September 29, 1993 the Office issued a decision denying appellant's claim for compensation.

Appellant requested a hearing and submitted a December 3, 1993 report by Dr. Van Dyken, which stated:

> "As I have mentioned to you before, my impression based on the history and physical exam[ination], is that you have had cold-induced injury which has resulted in the vasospastic disease causing your symptoms. I believe that because of your history, this cold-induced injury occurred while you were delivering mail on a very cold day last winter. As you know, the workup for other etiologies of your condition has been negative."[2]

In a May 24, 1994 decision, an Office hearing representative vacated the Office's September 29, 1993 decision and remanded the case for further medical development.

On remand, the Office received an (OWCP-5c) work restriction report dated June 10, 1994 from Dr. Van Dyken. He opined that appellant could perform light duty with a 10-pound lifting restriction. Dr. Van Dyken ordered appellant to avoid activities involving pulling and pushing and to avoid cold exposure below 60 degrees Fahrenheit.

The Office subsequently referred a statement of accepted facts and a copy of the medical record to an Office medical adviser who recommended that the Office accept appellant's claim for bilateral frostbite of the hands. Appellant was notified on the acceptance of his claim on June 15, 1994.

On August 20, 1994 appellant filed a CA-7 claim for lost wages between June 12 and August 5, 1993.

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[1] Raynaud's phenomenon is defined by intermittent bilateral attacks of ischemia of the fingers or toes and sometimes of the ears or nose, marked by severe pallor and often accompanied by paresthesia and pain; it is brought on characteristically by cold or emotional stimuli and relieved by heat and is due to an underlying disease or anatomical abnormality. When the condition is idiopathic or primary, it is termed Raynaud's disease. *See* DORLAND'S ILLUSTRATED, *Medical Dictionary* 1004 (26th ed. 1980).

[2] An electromyogram was performed on December 13, 1993 and showed evidence of distal neuropathy, bilaterally, which was noted as being consistent with a distal median nerve entrapment such as carpal tunnel syndrome.

The Office notified appellant, in a letter dated January 4, 1995, that he needed to provide a reasoned medical opinion addressing why he was disabled by frostbite during the summer months.

In a January 5, 1995 report, Dr. Van Dyken noted that appellant had persistent basal spasm of the hands beginning in February 1993, with symptoms made worse with exposure to cold air. He noted that the "degree of cold can be as mild as air-conditioning." Dr. Van Dyken reported physical findings and indicated that appellant had easy fatigue in the hands and was unable to grasp objects weighing more than five pounds for any length of time. He related that appellant recently complained of decreased flexibility, weakness and pain in his hands, which appellant attributed to having to work in an air conditioned room.

The Office referred appellant for a second opinion evaluation with Dr. Farook J. Kidwai, a Board-certified neurological surgeon. In a March 1, 1995 report, Dr Kidwai noted that appellant had been complaining of severe pain, numbness, tingling burning and swelling of both hands, feet, mouth and nose since he was exposed to extreme cold while delivering mail on February 22, 1993. He related that, while appellant no longer worked outside, he continued to have an aggravation of his symptoms when he was around an air conditioner. Under "Impression" Dr. Kidwai listed the following diagnoses: reflex sympathetic dystrophy; carpal tunnel syndrome, bilaterally and probable Raynaud's syndrome. He advised that taking time off from work should be expected from appellant "as his reflex sympathetic dystrophy symptoms can fluctuate widely." Dr. Kidwai further stated:

> "As far as the etiology of his reflex sympathetic dystrophy and other symptoms is concerned, my impression is based only on the history that he has provided and it seems to be related to the extreme exposure which occurred on February 22, 1993. In the presence of connective tissue disorder, he could be prone to this type of disorder. Nevertheless, this incident certainly precipitated the current vasomotor instability based on the history that he has provided."

In an OWCP-5 work evaluation form dated March 10, 1995, Dr. Van Dyken reported that appellant was restricted to four hours of sitting, one hour of lifting, two hours of squatting, kneeling and standing and eight hours of intermittent bending. He noted that appellant could perform simple grasping but no pushing or pulling and that he could not be exposed to temperatures below 60 degrees on the job.

In a March 15, 1995 report, Dr. Kidwai opined that appellant could work as a mailhandler or sorter as long as he avoided repetitive bending and twisting of his wrist and adhered to a 10-pound lifting restriction. It was his opinion that appellant suffered from work-related deficits of carpal tunnel syndrome and vasomotor instability.

In a decision dated April 18, 1995, the Office denied appellant's claim for wage loss for the period of June 12 through August 5, 1993.

Appellant requested a hearing and submitted additional evidence including a report from Dr. Van Dyken dated April 28, 1995. He stated:

> "To summarize what I have said before, [appellant] had a cold-induced injury on or around February 22, 1993. He has had persistent vasospasm of the hands since that time which is made worse by cold. The degree of coldness can be as mild as air conditioning and, therefore, he can have significant pain even in the summertime. We have estimated that 60 degrees is the temperature below which his pain is worse. He actually has chronic pain at all times, even in warmer temperatures.... I believe this information explains why [appellant] has difficulty performing his job and was unable to work in the summers of 1993 and 1994."

On May 4, 1995 appellant's case was referred to an Office medical adviser.

In a report dated May 4, 1995, an Office medial adviser opined that there was enough support in the medical record from which to conclude that appellant's bilateral hand condition "did arise from the incident of [February 23, 1993]." He further stated, "I feel that at this time all of [appellant's] problems can be attributed to his cold exposure and the changes that occurred as a result of this. I do not believe he has Raynaud's or reflex sympathetic dystrophy but may have ischemic neuritis [2 degrees to frostbite]." He recommended that appellant undergo a work-up to rule out an autoimmune-type disease as well as to rule out entrapment neuropathy in the upper extremities. The Office medical adviser further suggested that appellant undergo a psychiatric evaluation to determine whether there was a psychogenic component to his symptoms.

In a decision dated March 20, 1996, an Office hearing representative reversed the Office's April 18, 1995 decision and determined that appellant was entitled to compensation for wage loss for the period of June 12 through August 5, 1993.

On December 11, 1996 appellant filed a claim for a recurrence of disability beginning July 23, 1996. Appellant noted that he was not supposed to be working in air conditioning because it would cause his hands to become cold and immobile. When asked to describe how his recurrence happened, appellant wrote "Not a recurrence -- a continuation."

In a December 27, 1996 letter, the Office informed appellant of the factual and medical evidence required to establish his claim for a recurrence of disability.

In a report dated January 27, 1997, Dr. Van Dyken stated, "Unfortunately I do n[o]t believe that there was ever a break in his disability and thus recurrence is not the correct word. As far as I can tell there has been no change in his condition for as long as his disability has been a problem." He suggested that it was inconsequential whether the temperature of appellant's work area on July 23, 1996 was below or above 60 degrees when appellant claimed his disability. Dr. Van Dyken opined that appellant's "cold-induced injury" is a permanent condition exacerbated by many factors, but stemming from a cold exposure on the job in February 1993.

In a February 14, 1997 statement, Daryle Rocco, a manager for the employing establishment, indicated that appellant had been on sick leave since July 24, 1996, at which time "he informed everyone within ear shot that working, even 'casing mail' was causing his

condition to worsen." He noted that appellant had mentioned that he was having difficulty working in an air conditioned building as it caused pain and discomfort in his hands. Mr. Rocco further stated:

> "I informed him that I could not continue to provide him work knowing that he assumed I was trying to worsen his condition. I asked him if he wanted to be off the clock and he said yes that as far as he was concerned, he shouldn't be working at all. I asked if he wanted Annual [l]eave or Sick leave, he stated 'Sick leave,' so beginning July 24, 1996, it was done."

In a decision dated March 14, 1997, the Office denied compensation on the grounds that the evidence of record was insufficient to establish that appellant sustained a recurrence of disability causally related to the February 22, 1993 work injury.

Appellant subsequently requested a hearing.

In an April 14, 1997 letter, appellant alleged that the employing establishment had told him there was no work for him within his medical restrictions; therefore, he was sent home with the option of using his sick or annual leave for payment. Appellant reiterated that his medical condition was not a "recurrent one" but had been permanent for four years.

In a reported dated September 3, 1997, Dr. Van Dyken reiterated that appellant's hand condition was permanent and not a recurrent injury.

In a January 13, 1998 report, Dr. Van Dyken stated:

> "[I]t has long been my opinion that [appellant] sustained an injury while being a mail carrier several years ago. Since that time he has not been able to perform any job at the [employing establishment] despite our efforts to try and find conditions that would allow him to work. It is obvious that slight fluctuations in temperatures away from normal and many different types of working conditions causes chronic pain due to his frostbite to be exacerbated. His condition never improved since the initial event. It is becoming clear that he will never be able to be a profitable full-time employee in any job that is offered. It would be my opinion after all this time that he has been permanently injured as a result of conditions on his route which caused his frostbite and that he deserves compensation."

In a report dated March 9, 1998, Dr. Van Dyken noted that appellant had been trying to help his mom with a paper route but "even with gloves on, he cannot roll up the Grand Rapids Press and put it in Press boxes for more than an hour at a time." He related that appellant frequently had to keep his coat on indoors to keep his hands warm and stated that appellant described pain in the hands when the temperature fell below 73 degrees. Dr. Van Dyken indicated that, despite his work restrictions, appellant would be unable to work at times depending on his symptoms.

In a decision dated July 28, 1998, an Office hearing representative affirmed the Office's March 14, 1997 decision.

On March 26, 1999, appellant requested reconsideration.[3]

In a decision dated July 2, 1999, the Office denied modification following a merit review.

The Board finds that this case is not in posture for decision.

When an employee who is disabled from the job 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 and probative 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]

In this case, the Office accepted that appellant sustained bilateral frostbite of the hands. Appellant's treating physician specifically restricted him from working in an environment where the temperature was below 60 degrees. Appellant indicated on his claim form that he was unable to work because of cold air that was making his hand symptoms worse. Dr. Van Dyken indicated that a worsening of appellant's symptoms was to be expected if he were exposed to air conditioning.

Although Dr. Van Dyken has not provided a sufficiently reasoned opinion on whether appellant sustained a recurrence of disability, his opinion is supportive of appellant's claim and is not contradicted by other medical evidence.

Furthermore, appellant's supervisor indicated that the employing establishment made no inquiry into whether appellant's complaint about the temperature of his work area was valid. On reconsideration, appellant submitted a letter indicating that the employing establishment terminated appellant's employment because it was unable to provide work within appellant's medical restrictions.

Appellant has alleged a change in his light-duty work, *i.e.*, the failure of the employing establishment to monitor the air conditioning, made him unable to perform his duties. While the reports by Dr. Van Dyken are not sufficiently rationalized to establish appellant's claim, they raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office. The Board concludes that the Office should undertake further medical development of appellant's claim for a recurrence of disability, including an examination by a Board-certified physician.

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[3] In support of his reconsideration request, appellant submitted a factual statement, a statement from his mother, Karen Stephan, copies of monthly billing statements, personal financial budget ledgers, a copy of a proposed notice of separation dated February 1, 1999 and a letter of separation dated March 4, 1999.

[4] *Doris J. Wright*, 49 ECAB 230 (1997); *Sherry A. Hunt*, 49 ECAB 467 (1998).

The July 2, 1999 decision of the Office of Workers' Compensation Programs is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
May 9, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member