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. 02-1766; Submitted on the Record;
Issued December 12, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained a recurrence of disability on or after July 23, 1996 due to his work-related condition.

This case was previously before the Board.[1] To briefly summarize, appellant filed an occupational disease claim for bilateral frostbite of the hands, which was accepted by the Office of Workers' Compensation Programs. He returned to restricted duty on August 6, 1993. On July 23, 1996 he filed a claim for a recurrence of disability alleging that the employing establishment had failed to accommodate his medical restrictions and he experienced a worsening of his hand symptoms and was unable to work. The employing establishment terminated appellant's employment for the reason that it was unable to accommodate his work restrictions. The Office denied appellant's claim for a recurrence of disability in a March 14, 1997 decision. An Office hearing representative affirmed the denial on July 28, 1998. The Board found that the case required further development as to whether the employing establishment required appellant to work in an environment, which did not conform with his medical restrictions. The Office was further directed to have appellant examined by a Board-certified physician. The facts of the case are hereby incorporated by reference.

On remand the Office referred appellant, together with a copy of the medical record and a statement of accepted facts, to Dr. Padraic Carmody, a Board-certified vascular surgeon, for a second opinion medical evaluation on September 28, 2001. In a report dated October 11, 2001, he discussed appellants' history of work-related frostbite and the medical record. Physical findings were recorded. Dr. Carmody noted:

> "A specific question was related to a reoccurrence of his symptoms in 1996. From reading the notes of his family physician, Dr. Van Dyken, it would appear that there was not actually [a recurrence] of symptoms, but rather a continuation

[1] *Dan J. Stephan*, Docket No. 00-351 (issued May 9, 2001).

of the same and the form filled out and turned in at that time evidently was for [a recurrence] and this probably led to some confusion."

Dr. Carmody next related appellant's work restrictions effective January 23, 1997, noting that they were broad and not expected to define the parameters of appellant's work ability for every minute of the day. He went on to state that the alleged recurrence in July 1996 was not a question of a recurrence "but rather of his previous symptomatology." Dr. Carmody did not feel that appellant's hand condition could be easily diagnosed in one category. He opined that appellant had elements of Raynaud's disease, reflex sympathetic dystrophy, a connective tissue disorder and the possibility of carpal tunnel syndrome. Dr. Carmody concluded that appellant would have been able to carry out his limited-duty assignment on July 23, 1996.

In an October 29, 2001 decision, the Office denied compensation on the grounds that the evidence was insufficient to establish that appellant sustained a recurrence of disability on or after July 23, 1996 due to his work injury of January 22, 1993.

By letter dated January 24, 2002, appellant requested reconsideration. He submitted copies of medical evidence and correspondence that was already of record. In addition there was a copy of a newspaper or magazine discussing the topic of peripheral neuropathy.

In a March 21, 2002 decision, the Office denied appellant's request for reconsideration on the merits.

The Board finds that this case is not in posture for a 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.[2]

The Office has accepted that appellant sustained bilateral frostbite of the hands in the performance of duty. Appellant's treating physician restricted his work duties such that he was not to work in an environment where the room was air-conditioned below 60 degrees. He indicated on his claim for a recurrence of disability that he was unable to work on or after July 23, 1996 due to cold air in his workplace that was making his hand symptoms worse. Appellant submitted a report from Dr. Van Dyken, which indicated that a worsening of his symptoms was to be expected if he was exposed to air conditioning. In the prior appeal, the Board remanded the case for further development regarding the issue of whether appellant became disabled from work on or after July 23, 1996 because the employing establishment exposed him to air conditioning in the workplace below 60 degrees.

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

On remand the Office sent appellant for a second opinion evaluation but did not make any factual finding as to whether he was exposed to air that was below 60 degrees on July 23, 1996. This finding is relevant to any opinion offered by a medical specialist regarding whether or not appellant was disabled for work on or after July 23, 1996. Dr. Carmody was not asked to take into consideration whether or not appellant was exposed to temperatures below 60 degrees on July 23, 1996. Since the Office referred appellant to Dr. Carmody, it should secure an appropriate medical report on the relevant issue.[3] The Office should prepare an amended statement of accepted facts, include a finding on whether appellant was exposed to temperatures below 60 degrees at work on July 23, 1996 and request a reasoned medical opinion as to whether appellant sustained a recurrence of disability on or after that date. After such further development as it deems necessary, the Office should issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated October 29, 2001 and March 21, 2002 are hereby set aside and the case remanded for further development in conformance with this decision.

Dated, Washington, DC
December 12, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[3] *See Robert Kirby*, 51 ECAB 474 (2000).