

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES E. HIGH and DEPARTMENT OF THE NAVY,  
NORFOLK NAVAL SHIPYARD, Portsmouth, VA

*Docket No. 03-24; Submitted on the Record;  
Issued April 10, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained a recurrence of disability, due to the March 24, 1995 employment injury, commencing April 23, 2001.

The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome with bilateral carpal release resulting from the March 24, 1995 employment injury. Appellant returned to light-duty work with restrictions as a file clerk on July 11, 2001.

On April 23, 2001 appellant filed a recurrence of disability, due to the March 24, 1995 employment injury, commencing April 23, 2001. Appellant stated that since the original injury he could not lift 50 pounds and he had permanent pushing and pulling restrictions. Appellant stated that the recurrence happened when he was sent right back to the same job.

By letter dated June 19, 2001, the Office requested additional information from appellant including a narrative report from his treating physician addressing the causal relationship between his condition and the original injury.

An Office memorandum dated July 13, 2001 stated that appellant returned to light-duty work with restrictions as a file clerk on July 11, 2001.

In a report dated July 16, 2001, appellant's treating physician, Dr. Patrick F. Kilhenny, an ophthalmologist with a specialty in neurology, stated that appellant had switched to a filing job and felt that his hands were stable. Dr. Kihenny performed a physical examination, diagnosed bilateral carpal syndrome and stated that if appellant violated his restrictions, his symptoms would worsen with time but at the present time his condition was static.

By decision dated August 11, 2001, the Office denied appellant's claim, stating that the evidence of record failed to establish that the claimed recurrence was causally related to the approved injury.

By letter dated November 1, 2001, appellant requested reconsideration of the Office's decision and submitted additional evidence. Appellant resubmitted a work restriction form dated April 23, 2001 from Dr. Kilhenny, in which he indicated that appellant could work 8 hours a day but not lift more than 20 pounds and should perform no typing. An electromyogram (EMG) and nerve conduction studies dated May 16, 2001 were "suggestive" of underlying sensory peripheral neuropathy with residual distal median neuropathy and chronic cervical radiculopathy. A magnetic resonance imaging (MRI) scan dated June 7, 2001 showed multilevel degenerative disc disease involving C5-6, C6-7 and C7-T1 and moderate degenerative changes of the intervertebral joints at those same levels. Appellant submitted medical reports from Dr. Richard D. Knauft, a Board-certified orthopedic surgeon, dated from May 8 and 22, July 3 and September 30, 2001. These reports document appellant's ongoing symptoms in his hands. In the September 30, 2001 report, Dr. Knauft stated that he "did not have any specific history of work[-]related injuries as to cause" appellant's problems of median nerve symptoms, diabetes and peripheral neuropathy. In his May 22, 2001 report, he diagnosed degenerative cervical disc disease with probable cervical root neuropathy.

Appellant also submitted a medical report from Dr. Kilhenny dated October 8, 2001. Dr. Kilhenny stated that "[d]espite the fact that the patient has had bilateral carpal tunnel release surgery, his symptoms remain active." He stated that appellant had work restrictions in place to reduce the likelihood of progression of his neurologic disorder.

By decision dated January 22, 2002, the Office denied appellant's request for modification.

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained a recurrence of disability, due to the March 24, 1995 employment injury, commencing April 23, 2001.

An individual who claims a recurrence of disability, due to an accepted employment-related 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.<sup>1</sup> When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she 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 show that she cannot perform such light duty.<sup>2</sup> As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the injury-related condition.<sup>3</sup> This burden 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.<sup>4</sup> An award

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<sup>1</sup> *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

<sup>2</sup> *George DePasquale*, 39 ECAB 295, 304 (1987); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>3</sup> *Id.*

<sup>4</sup> *See Nicolea Brusco*, 33 ECAB 1138 (1982).

of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant's unsupported belief of causal relation.<sup>5</sup>

In this case, the only evidence appellant submitted, which addresses causation is Dr. Knauff's September 30, 2001 report, in which he stated that he did not have any specific history of work-related injuries as to cause appellant's problems. Therefore, his report is insufficient to establish that appellant sustained a recurrence of disability at work on April 23, 2001. Dr. Kauf's May 8 and 22 and July 3, 2001 reports, document appellant's ongoing symptoms and indicate that appellant requires restrictions but do not address causation. In his July 16, 2001 report, Dr. Kilhenny diagnosed bilateral carpal syndrome and stated that if appellant violated his restrictions, his symptoms would worsen. In his October 8, 2001 report, Dr. Kilhenny stated that appellant's symptoms of bilateral carpal syndrome remained active and opined that appellant had work restrictions to reduce the progression of his neurological disorder. However, he also provided no rationalized medical opinion explaining how appellant's current condition is work related. The diagnostic tests including the EMG, nerve conduction studies and MRI scan dated May 16 and June 7, 2001 respectively and Dr. Kilhenny's April 23, 2001, work restriction form provide no opinion on causation. Despite the Office's informing appellant of the evidence he must submit to establish his claim, appellant did not submit the requisite evidence. Appellant did not submit any evidence containing a medical rationale explaining how his April 23, 2001 recurrence of disability arose from his March 24, 1995 employment injury.<sup>6</sup> He, therefore, has failed to establish his claim.

The January 22, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 10, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> See *William S. Wright*, 45 ECAB 498, 503 (1994).

<sup>6</sup> See *Kenneth R. Love*, 50 ECAB 193, 199 (1998).