U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS WILLIAMS and DEPARTMENT OF THE NAVY, PHILADELPHIA NAVAL SHIPYARD, Philadelphia, PA

Docket No. 03-387; Submitted on the Record;
Issued April 9, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, WILLIE T.C. THOMAS

The issue is whether appellant established that he had a consequential injury to the right elbow, arising from his injury to the left wrist.

On August 5, 1995 appellant, then a 38-year-old insulating worker, was applying insulation to a tank on an aircraft carrier when he developed a sharp pain in his left wrist. He stopped working on August 9, 1995 and returned to work on August 21, 1995. He received continuation of pay for the period he did not work.

X-rays showed fractured cyst of the left triquetrum bone in the left wrist. A magnetic resonance imaging (MRI) scan confirmed the diagnosis. Appellant stopped working on September 16, 1995 and applied for compensation. The Office of Workers' Compensation Programs accepted appellant's claim for a fracture of the left triquetrum and an intraosseous cyst at the left triquetrum. The Office began payment of temporary total disability effective September 17, 1995. An October 30, 1995 electromyogram (EMG) and nerve conduction studies showed a mild left carpal tunnel syndrome in the left arm. The Office accepted appellant's claim for a carpal tunnel syndrome.

On July 26, 1996 appellant underwent surgery for a left median nerve decompression at the wrist, left flexor superficialis tenosynovectomey and reconstruction of the left transverse carpal ligament. In a December 17, 1996 report, Dr. William H. Kirkpatrick, a Board-certified orthopedic surgeon, stated that appellant had no further tingling or numbness in his hands but did have continued ulnar hand pain. Dr. Kirkpatrick found tenderness with palpation of the triquetrum, especially the ulnar side. He indicated x-rays showed evidence of a possible irregularity in the triquetrum.

On January 29, 1997 appellant underwent additional surgery for excision of the left pisiform, left ulnar nerve exploration and decompression at the wrist and exploration and decompression of the distal nerve in the palm of the left hand. In an April 2, 1998 report, Dr. Kirkpatrick stated that appellant was able to work at the 50-pound level. He noted some

difficulty with pushing activities and related that appellant reported discomfort in the wrist and some tingling in his fingers when he applied pressure to the ulnar proximal tenderness. Dr. Kirkpatrick found no tenderness over the areas of surgery of the left hand, including the site of the pisiform excision. He indicated that appellant had no tenderness on provocative wrist maneuvers.

In a June 25, 1998 decision, the Office found that appellant could perform the duties of a maintenance dispatcher and, therefore, had a 42 percent loss of wage-earning capacity.

On May 1, 2000 appellant underwent surgery for release of Guyon's canal of the left wrist with neurolysis of the ulnar nerve, curettage of an interosseous ganglion of the left triquetrum and distal radial bone graft to the left triquetrum. The Office reinstated temporary total disability compensation as of the date of the surgery. In a January 31, 2001 decision, the Office reinstated appellant's loss of wage-earning capacity determination.

Appellant requested a hearing before an Office hearing representative. At the hearing appellant's representative argued that there existed a conflict in the medical evidence on whether appellant could perform the duties of a maintenance dispatcher. He also stated that appellant had a speech impediment that would prevent him from performing the talking required of the position. He further contended that appellant had a consequential injury to the right elbow due to efforts to insert intravenous (IV) lines into the right elbow area for appellant's surgery.

In a January 15, 2002 decision, the Office hearing representative found a conflict in the medical evidence on whether appellant could physically perform the duties of a maintenance dispatcher. She also found that the Office had not considered whether appellant would be able to perform the duties of the job by taking into consideration his preexisting speech impediment. She, therefore, set aside the Office's January 31, 2001 decision and remanded the case for further development on the issue of appellant's wage-earning capacity.

In a May 16, 2002 decision, the Office denied appellant's claim that the right elbow was a consequential injury arising from the injury to appellant's left wrist on the grounds that the medical evidence of record did not support a causal relationship between the left wrist condition and the right elbow condition. Appellant requested a written review of the record by an Office hearing representative. In a November 20, 2002 decision, a second Office hearing representative affirmed the Office's May 16, 2002 decision.

The Board finds that appellant has not met his burden of proof in establishing that his right elbow condition is causally related to his August 5, 1995 employment injury.

In the case of *John R. Knox*,[1] regarding consequential injury, the Board stated:

> "It is an accepted principal of workers' compensation law and the Board has so recognized that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent

[1] *John R. Fox*, 42 ECAB 193 (1990).

> intervening cause which is attributable to the employee's own intentional conduct. As is noted by Professor Larson in his treatise: '[O]nce the work-connected character of any injury, such as a back injury, has been established, the subsequent progression of that condition remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause.... [S]o long as it is clear that the real operative factor is the progression of the compensable injury, associated with an exertion that in itself would not be unreasonable [under] the circumstances. A different question is presented, of course, when the triggering activity is itself rash in the light of claimant's knowledge of his condition.'"[2]

Dr. Kirkpatrick, in his reports after appellant's first and second operations, discussed the progress of appellant's left wrist and arm condition. He made no mention of any problem with appellant's right elbow. The first mention of appellant's right elbow condition occurred in a June 1, 1998 report from Dr. James F. Bonner, Board-certified in preventive medicine, which came 18 months after appellant's second surgery. Dr. Bonner indicated that appellant had some tightness in his left hand but was more concerned about his right elbow since he had the IV and he could not extend his elbow completely. Dr. Bonner reported some swelling over the medial aspect of the elbow. In a July 13, 1998 report, he indicated that appellant reported continuing symptoms involving the right elbow, which occurred when he underwent surgery. He noted that appellant was unable to extend the elbow fully. He also noted some swelling in the elbow.

In a September 1, 1998 report, Dr. Kirkpatrick indicated that appellant had two masses in his right antecubital fossa. He noted that appellant thought his condition was related to his IV line placement in his most recent surgery. He found limited extension in the right elbow. He reported that appellant had two, one centimeter, palpable masses in the antecubital fossa. He noted tenderness on palpation of the region. He stated that an MRI scan showed inflammatory arthritis of the right elbow as well as several subcutaneous nodules in the antecubital fossa. Dr. Kirkpatrick stated that appellant's right elbow condition was not related to his prior surgery. He commented that he did not know whether blood was drawn or an IV inserted into the region. He stated that, nevertheless, appellant's inflammatory elbow arthritis would not be related to such actions. He suggested further evaluation of appellant's condition.

In a June 12, 2002 report, Dr. F. William Bora, a Board-certified orthopedic surgeon, acting as an impartial specialist on the issue of the extent of appellant's disability for work, commented that appellant had a 35 degree flexion deformity of the right elbow. Dr. Bora stated that the flexion deformity had no relation to appellant's left hand injury.

Dr. Bonner noted appellant's right elbow condition and related appellant's belief that it was due to the insertion of an IV line at the time of surgery on appellant's left arm. He, however, did not give his own opinion on whether appellant's right elbow condition was related to the employment injury. Dr. Kirkpatrick attributed appellant's condition to inflammatory arthritis, which was not related to the insertion of the IV line or drawing of blood around the right elbow. He concluded that appellant's right elbow condition was not related to the

[2] *Id*. at 196.

employment injury. Dr. Bora stated that appellant's right elbow condition was not related to the employment injury, although he gave no rationale in support of his opinion. Of all the physicians who commented on appellant's right elbow condition, none considered it to be a consequence of his August 5, 1995 employment injury. There was no explanation on why the right elbow condition was not mentioned in any medical report until 18 months after appellant's second surgery. Appellant, therefore, has not established a causal relationship that would show that his right elbow condition was a consequence of the employment injury.

The decisions of the Office of Workers' Compensation Programs, dated November 20 and May 16, 2002, are hereby affirmed.

Dated, Washington, DC
April 9, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member