

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of DENNIS BRUCE O'KELLY and U.S. POSTAL SERVICE  
POST OFFICE, Cleveland, OH

*Docket No. 03-796; Submitted on the Record;  
Issued July 17, 2003*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant met his burden of proof to establish that he sustained recurrences of disability for the periods: May 2, May 11, May 19, May 24, June 8, June 14, June 22, June 28, July 5, July 10, August 4 and September 8, 2001.

On February 2, 1994 appellant, then a 44-year-old letter carrier, filed an occupational disease claim alleging that he sustained carpal tunnel and tardy ulnar palsy in the left and right wrists and elbows in the performance of duty. On October 7, 1994 the Office of Workers' Compensation Programs accepted his claim for bilateral tenosynovitis<sup>1</sup> of the hands and wrists. The claim was later expanded to include bilateral carpal tunnel syndrome and bilateral ulnar nerve palsy. Appellant returned to limited duty on February 2, 1994 and on August 6, 1998 accepted a position as a modified mail carrier.

Appellant filed a recurrence claim on January 19, 1999, which the Office accepted on February 16, 1999 as a no time lost recurrence. On January 2, 2001 he received a schedule award for a 19 percent permanent impairment to the left upper extremity and a 19 percent permanent impairment to the right upper extremity. Appellant filed several recurrence forms for the dates: December 27, 2000; February 20 and February 27, 2001. By letter dated March 22, 2001, the Office advised appellant of the additional factual and medical information needed to establish his claim. He was allotted 30 days to submit the requested evidence.

Appellant subsequently filed additional recurrence claims for the dates of May 2, May 11, May 19, May 24, June 8, June 14, June 22, June 28, July 5, July 10, August 4 and September 8, 2001.<sup>2</sup> In letters dated September 20 and 26, 2001, the Office advised him of the

---

<sup>1</sup> The statement of accepted facts indicates the claim was accepted for bilateral elbow enthesopathy and bilateral hand and wrist tendinitis.

<sup>2</sup> The record reflects that appellant's nonscheduled off days were changed from Saturday and Sunday to Sunday and Monday.

additional factual and medical information needed to establish his claim. Appellant was allotted 30 days to submit the requested evidence.

In a July 12, 2001 report, Dr. E. Luke Bold, a Board-certified otolaryngologist, advised that appellant, who had been under his care since 1999, was initially seen for recurrent epistaxis and obstructive sleep apnea. He added an overnight sleep study demonstrated moderate obstructive sleep apnea. Dr. Bold stated that appellant still had problems sleeping, had daytime somnolence and would fall asleep at the wheel while working as well as on the way home from work at night. He emphasized that “[t]here is no question that [appellant] is at risk for driving a government vehicle because of his inadequately treated obstructive sleep apnea.”

In disability certificates dated: February 21, June 28 and July 31, 2001, Dr. Richard Kucera, a Board-certified family practitioner, indicated that appellant might miss work on occasion due to somnolence from sleep apnea, worsened by carpal tunnel syndrome and ulnar nerve palsies with paresthesias.

In a report dated October 18, 2001, Dr. Kucera explained that appellant’s dual diagnoses of carpal tunnel and ulnar nerve palsies and sleep apnea were two separate problems, but with a clear interaction. He noted that appellant needed to wear a C-PAP unit<sup>3</sup> to maintain an open airway and adequate breathing during the night. Dr. Kucera explained that appellant generally did well but on occasion awakened in the early hours with elbow, hand and wrist pain and paresthesias due to the carpal tunnel and ulnar nerve palsies. He explained that, when this occurred, appellant found it difficult to get back to sleep, which resulted in significant somnolence the following day which was problematic as his job involved mostly driving. Dr. Kucera explained that a person wearing a C-PAP might have difficulty sleeping if awakened early with pain or paresthesias. Further, he indicated that he would not prescribe medication to help appellant return to sleep as it would certainly result in morning somnolence and a hangover effect which would impact negatively on his motor vehicle operational skills.

In an October 26, 2001 decision, the Office denied appellant’s claim on the grounds that the medical evidence was insufficient to establish that he sustained recurrences of disability causally related to the January 20, 1994 accepted employment injury.

On October 20, 2002 appellant requested reconsideration. In support of his request for reconsideration, appellant explained that the reason he lost time from work was not solely caused by his sleep apnea but rather from a loss of sleep as a result of being awakened by pain in his hands, wrists and elbows. He stated that the lack of sleep caused him to be in hazardous situations at work. Appellant also forwarded several articles on carpal tunnel syndrome and submitted additional evidence.

By decision dated January 14, 2003, the Office found that the evidence submitted in support of the application for reconsideration was insufficient to warrant modification of its prior decision dated October 26, 2001.

---

<sup>3</sup> Dr. Kucera explained this was a face-mask that was fitted over the nose and mouth that blew out pressurized air into appellant’s airways.

The Board finds that appellant has not established that he sustained recurrences of disability for the periods: May 2, May 11, May 19, May 24, June 8, June 14, June 22, June 28, July 5, July 10, August 4 and September 8, 2001.

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.<sup>4</sup>

Causal relationship is a medical issue<sup>5</sup> and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.<sup>6</sup> The physician's opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>7</sup>

The record contains no medical opinion containing a rationalized, probative report which relates his disability for work for the periods: May 2, May 11, May 19, May 24, June 8, June 14, June 22, June 28, July 5, July 10, August 4 and September 8, 2001 to his accepted employment injury. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment injury.

Moreover, appellant has not provided any medical reports, based on objective findings, which establish that there has been a change in the nature and extent of his condition such that he can no longer perform his light-duty job and also has provided no evidence to establish that there has been a change in the nature and extent of his light-duty job requirements. On October 22, 2001 the Office advised appellant of the type of medical and factual evidence needed to establish his claim for a recurrence of disability; however, appellant has not submitted any evidence.

Appellant submitted numerous reports from Dr. Kucera who provided disability certificates dated February 21, June 28 and July 31, 2001. In these certificates, he indicated that appellant might miss work on occasion due to somnolence from sleep apneas, worsened by carpal tunnel syndrome and ulnar nerve palsies with paresthesias. His opinion was speculative and vague as it indicated appellant might miss work on occasion.<sup>8</sup> Further, the report does not

---

<sup>4</sup> *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>5</sup> *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

<sup>6</sup> *Duane B. Harris*, 49 ECAB 170, 173 (1997).

<sup>7</sup> *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

<sup>8</sup> The Board has held that an opinion, which is speculative in nature, has limited probative value in determining

contain a well-rationalized opinion on how appellant's sleep condition was caused or contributed to by a change in the nature of his accepted condition or the light-duty position.<sup>9</sup> Additionally, he offered no opinion with respect to the claimed periods that appellant alleged that he was unable to work.

In his report dated October 18, 2001, Dr. Kucera explained appellant slept with a C-PAP unit and when he was awakened by pain due to carpal tunnel and nerve palsies, it was difficult to get back to sleep, resulting in significant somnolence and "hangover effect." However, he did not offer an opinion with respect to changes in the nature of the conditions of appellant's light-duty requirements or suggest that appellant's condition has worsened. Dr. Kucera provided no rationalized medical opinion explaining how these conditions resulted from appellant's employment and the report is not probative.<sup>10</sup> Further, he, did not reference any of the dates that appellant alleged caused his recurrences.

Appellant also submitted treatment notes dated: October 24 and December 3, 2001 and April 29, July 3, July 24, August 27, October 23 and December 23, 2002, in which Dr. Kucera indicated that appellant missed work due to his sleep apnea which resulted from being awakened by paresthesias and aching due to his employment-related conditions. However, these reports are not relevant to appellant's claim as they refer to periods after the periods of time in question and there is no indication that appellant could not perform his light-duty position or that there was a change in his condition during the above-referenced time periods.

In the instant case, none of the reports submitted by appellant contained a rationalized opinion to explain why appellant could no longer perform the duties of his light-duty position.<sup>11</sup> As he has not submitted any medical evidence showing that he was disabled for the periods: May 2, May 11, May 19, May 24, June 8, June 14, June 22, June 28, July 5, July 10, August 4 and September 8, 2001, due to his accepted employment injury, he has not met his burden of proof.

The Board also finds that appellant has not established that he sustained a consequential injury causally related to his accepted employment injury.

The basic rule respecting consequential injuries, as expressed by *Larson*, is "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 likewise arises out of the employment."<sup>12</sup> The

---

the issue of causal relationship. *Arthur P. Vliet*, 31 ECAB 366 (1979).

<sup>9</sup> See *supra* note 4.

<sup>10</sup> See *Michael E. Smith*, 50 ECAB 313, 316 n.8 (1999); *Carolyn F. Allen*, 47 ECAB 240, 244-45 (1995).

<sup>11</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant; see *Charles E. Burke*, 47 ECAB 185 (1995).

<sup>12</sup> *Larson, The Law of Workers' Compensation* § 13.00.

subsequent injury is compensable if it is the direct and natural result of a compensable primary injury.<sup>13</sup> With regard to consequential injuries, the Board has stated that where an injury is sustained as a consequence of an impairment residual of an employment injury, the new or second injury is deemed, because of the chain of causation, to arise out of and be in the course of employment.<sup>14</sup>

In the instant case, appellant alleged that his sleep disorder, was affected by his employment injury, which the Office accepted for bilateral tenosynovitis of the hands and wrists. The only medical evidence which addresses the issue of the causal relationship between the sleep apnea and the accepted injury consists of Dr. Kucera's February 21, June 28 and July 31, 2001 disability certificates. In these reports, Dr. Kucera indicated that appellant's sleep apnea was worsened by appellant's accepted condition. In his October 18, 2001 report, he described how appellant might be awakened by pain from his accepted condition and how it would be difficult to get back to sleep, however, these opinions are unsupported by any medical rationale explaining the physiological process by which appellant's sleep apnea condition is causally related to his accepted employment injury. Further, Dr. Bold, in his July 12, 2001 report, indicated that appellant was seen for recurrent epistaxis. However, he did not offer any opinion to state that it was a consequence of appellant's accepted condition. The Board, therefore, finds that appellant has not submitted sufficient medical evidence to establish that his sleep disorder was the "direct and natural result" of his accepted injury.

---

<sup>13</sup> *Id.* at § 13.11.

<sup>14</sup> *Margarette B. Rogler*, 43 ECAB 1034, 1038 (1992).

The January 14, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
July 17, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member