U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH D. DUNCAN and DEPARTMENT OF THE NAVY, NAVAL SURFACE WARFARE CENTER, Crane, IN

Docket No. 02-1115; Submitted on the Record;
Issued March 4, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether appellant is entitled to compensation for total disability beginning June 1, 2001.

On June 23, 2000 appellant, then a 51-year-old engineering equipment operator, sustained an injury in the performance of duty when the bulldozer he was driving came to an abrupt stop. The Office of Workers' Compensation Programs accepted his claim for the condition of neck sprain.

Appellant continued to work limited duty until his term/temporary appointment expired on May 31, 2001 and he was terminated. He was one of approximately 15 employees who were hired under term/temporary appointments that could not be extended due to the results of a commercial activity study and downsizing within the Public Works Directorate.

Appellant claimed total disability beginning June 1, 2001.

In a decision dated August 7, 2001, the Office accepted that appellant was entitled to compensation for loss of hazard pay beginning June 23, 2000 because his assignment to light duty following the employment injury did not allow payment of the hazard pay he was previously receiving. The Office denied appellant's claim for total disability beginning June 1, 2001, however, because his work stoppage was not related to a material change in his injury-related residuals, nor did his duties change such that he was no longer able to perform them. The Office noted that appellant stopped work because his term/temporary appointment was not extended beyond May 31, 2001.

In a decision dated February 22, 2002, an Office hearing representative affirmed the denial of appellant's claim for total disability beginning June 1, 2001. The hearing representative found no documented change in the nature or extent of appellant's injury-related medical condition such that he could no longer perform his light-duty position. He also found no change in the requirements of the light-duty position.

The Board finds that appellant is not entitled to compensation for total disability beginning June 1, 2001.

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-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 cannot perform such limited-duty work. 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 limited-duty job requirements.[1]

Appellant did not stop work on May 31, 2001 because of a change in the nature and extent of his injury-related condition. He stopped work because of an administrative downsizing affecting some 15 term/temporary employees. Appellant has submitted no medical opinion evidence establishing that the injury he sustained on June 23, 2000 worsened to the point that he could no longer perform the limited duty that he had successfully performed prior to June 1, 2001.

Appellant did not stop work on May 31, 2001 because of a change in the nature and extent of his limited-duty job requirements, such that he could no longer perform the limited-duty job under his existing medical restrictions. He stopped work because of a general layoff that had nothing to do with his June 23, 2000 employment injury, his injury-related condition or the medical restrictions resulting therefrom.

As used in the Federal Employees' Compensation Act,[2] the term "disability" means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.[3] A reduction-in-force or termination of employment following a temporary appointment does not, of itself, rise to a compensable disability.[4] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[5] The record in this case fails to establish that it was the residuals of appellant's employment injury that prevented him from

[1] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[2] 5 U.S.C. §§ 8101-8193.

[3] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f) (1999).

[4] *See Brenda L. Frazier,* Docket No. 00-660 (issued February 6, 2001); *Jerome R. Wise,* Docket No. 93-2112 (issued January 10, 1995).

[5] *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

continuing in his employment beyond May 31, 2001. Appellant is not entitled to compensation for total disability beginning June 1, 2001.[6]

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

Dated, Washington, DC
March 4, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[6] *See Don J. Mazurek*, 46 ECAB 447 (1995) (where the employee alleged that he sustained a loss of wage-earning capacity when he was terminated due to a reduction-in-force, the Board found no showing that the employee's physical disability contributed to his discharge under the reduction-in-force). In *Mazurek*, the Board observed that, if the impaired worker becomes unemployed as a result of a general layoff at the completion of a project or closing of a plant, the suggested formula would not support a finding of compensable disability. *Cf. Jackie B. Wilson*, 39 ECAB 915 (1988) (finding that an employee working limited duty established total disability when he was terminated from his federal employment on the grounds that his employing establishment no longer had any work within his physical limitations). In cases such as *Wilson*, the employee's injury-related physical disability contributes to the work stoppage. No such contribution appears in the present case.