

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID A. GREENIDGE and U.S. POSTAL SERVICE,
POST OFFICE, Palm Bay, FL

*Docket No. 03-2025; Submitted on the Record;
Issued October 29, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a recurrence of partial disability from February 23 to April 10, 2002.

Appellant, a 41-year-old distribution clerk, filed a notice of occupational disease alleging that on December 14, 1998 he realized that his bilateral carpal tunnel syndrome was due to factors of his federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel on February 23, 1999. Appellant underwent authorized surgeries on March 23 and June 29, 1999. The Office granted appellant a schedule award for 10 percent permanent impairment of his left upper extremity on October 28, 1999. He returned to full duty in December 1999. The Office also granted appellant a schedule award for four percent of his right upper extremity on April 10, 2000.

The Office authorized additional hand surgeries on July 19, 2001. Appellant underwent a left carpal tunnel release on May 3, 2001 and a right carpal tunnel release on June 28, 2001. The Office authorized compensation for total disability through August 26, 2001. Appellant returned to regular duty on August 27, 2001. The Office denied appellant's request for an additional schedule award by decision dated January 10, 2002.¹

On March 29, 2002 appellant alleged that he sustained a recurrence of disability on February 23, 2002 causally related to his December 14, 1998 employment injury. By letter decision dated April 10, 2002, the Office accepted that appellant sustained a recurrence of symptoms of his carpal tunnel syndrome, but found that he had not yet submitted sufficient medical evidence to establish partial disability of two hours a day for the period claimed from February 23 to April 13, 2002. By decision dated May 21, 2002, the Office denied appellant's claim for two hours of partial disability from February 23 to April 13, 2002. Appellant requested

¹ Appellant requested an oral hearing of this decision on January 15, 2002 and withdrew this request on February 15, 2002.

an oral hearing on this issue on May 28, 2002. By decision dated May 2, 2003, the hearing representative denied appellant's claim finding that he had not submitted sufficient medical evidence to support his claim for partial disability for the period in question.

Appellant requested reconsideration on May 21, 2003 and submitted additional medical evidence. By decision dated July 23, 2003, the Office denied modification of its prior decision.

The Board finds that appellant has not met his burden of proof in establishing a recurrence of disability for the period February 23 to April 10, 2002.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing February 23, 2002 and his December 14, 1998 employment injury.² 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 employment factors and supports that conclusion with sound medical reasoning.³

Appellant alleged that his attending physician, Dr. Shekar S. Desai, a Board-certified orthopedic surgeon, completed a report on February 4, 2002 providing the work restriction of six hours a day. Appellant submitted this evidence to the employing establishment and further alleged that the employing establishment provided him with a verbal offer of limited duty from February 23 to April 10, 2002. He stated that the employing establishment altered this job offer without his knowledge.

The medical evidence of record consists of a report dated February 4, 2002 from Dr. Desai stating that a functional capacity evaluation established that appellant could work 8 hours a day with only 45 minutes per hour of using his hands. Dr. Desai noted that appellant could sit, stand and walk for eight hours a day. On February 11, 2002 Dr. Desai stated that appellant was working 6 hours a day with a break every 45 minutes and would continue.

The employing establishment stated that appellant requested to work only six hours a day and that work was available for appellant for eight hours. Appellant stated that the employing establishment did not offer him a position working eight hours a day from February 23 to April 13, 2002.

Appellant has submitted no medical evidence establishing that he was unable to work eight hours a day. Dr. Desai noted in his February 4, 2002 report, appellant could work eight hours a day with restrictions. In the February 11, 2002 report, Dr. Desai stated that appellant was only working six hours a day, but he did not offer any opinion that this limited duty was the extent of appellant's work restrictions. There is no medical evidence establishing that appellant was restricted to six hours of work a day during the period in question. Although appellant interpreted Dr. Desai's report to limit his duty to six hours a day, this interpretation is not supported by the record. Furthermore, there is no evidence in the record that the employing

² *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

³ *See Nicolea Brusio*, 33 ECAB 1138, 1140 (1982).

establishment limited appellant to working six hours a day. As appellant noted, his limited-duty position was a verbal offer. The employing establishment informed the Office that appellant had requested limited working hours and that such limitations were not in keeping with the medical restrictions. The employing establishment stated that eight hours of work a day was available for appellant.

As there is no medical evidence supporting appellant's claim for restricted work hours of six hours a day from February 23 to April 13, 2002 and as there is no factual evidence substantiating appellant's allegation that the employing establishment refused to provide him with an eight-hour workday, appellant has failed to establish that he sustained a recurrence of disability for the period in question and the Office properly denied his claim.

The July 23 and May 2, 2003 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 29, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member