United States Department of Labor
Employees' Compensation Appeals Board

PEDRO NAVEIRAS, JR., Appellant	)	
and	)	**Docket No. 04-613**
	)	**Issued: July 12, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Bakersfield, CA, Employer	)	

Appearances:
Pedro Naveiras, Jr., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On December 31, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated September 26, 2003, in which an Office hearing representative affirmed the denial of appellant's claim for wage-loss compensation as of January 2, 2002. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly denied appellant's claim for compensation for the period commencing January 2, 2002.

FACTUAL HISTORY

On October 22, 2001 appellant, then a 45-year-old mail handler, filed a claim for a traumatic injury, Form CA-1, alleging that he injured his left arm and shoulder while throwing second class magazine bundles. The Office accepted appellant's claim for left shoulder impingement, left rotator cuff tear and left biceps partial tear. Appellant returned to light-duty

work with restrictions on his left shoulder on October 22, 2001. Appellant continued to work light duty until December 13, 2001, when he sustained a right elbow fracture in a nonwork-related automobile accident.

The record reflects that appellant initially sought medical attention for his left arm condition on October 22, 2001 from Dr. Larry M. Cho, a physician from the Industrial Medical Group Bakersfield, who diagnosed appellant with a left upper arm strain. Appellant was released to temporary light duty the same day with restrictions of no climbing, no left hand grasping, no left hand motion, no pushing or pulling and no reaching above the left shoulder. Dr. Don Charoen, a Board-certified family practitioner, also examined appellant and released him to light duty from October 25 to November 7, 2001, with restrictions of no pushing/pulling, no climbing, no hand motions with left hand, no reaching above shoulders with left arm and no grasping with left hand.

In a November 6, 2001 report, Dr. Abid Haq, appellant's treating physician from Kaiser Permanente, diagnosed left biceps spasm and tendinitis and left shoulder impingement. Appellant was released to light duty from October 29 through November 11, 2001, with restrictions of no repetitive left hand motions, no reaching above shoulders with left arm, no lifting over five pounds, and no repetitive grasping with left hand. In a December 5, 2001 form report, Dr. Haq noted the findings from a November 11, 2002 magnetic resonance imaging (MRI) scan and diagnosed a left shoulder rotator cuff tear. He advised that appellant could return to modified duty with restrictions on December 5 to 19, 2001.[1] The physician also referred appellant to Dr. P.R. Chandrasekaran, a Board-certified orthopedic surgeon, for treatment.

On December 13, 2001 appellant sustained a right elbow fracture in a nonwork-related automobile accident and was hospitalized from December 13 through 16, 2001.

In a December 28, 2001 report, Dr. Chandrasekaran diagnosed a left shoulder impingement and partial tear of the rotator cuff, as evidenced by the MRI scan of the left shoulder. He noted that appellant had not worked since December 13, 2001 due to the automobile accident involving the right elbow. He advised that appellant was capable of light-duty work on January 2, 2002 with restrictions of no lifting over five pounds, no excessive use of left hand/arm and no lifting or working with arms above left shoulder level. Dr. Chandrasekaran also noted that appellant had an external fixator on his right arm.

Dr. Vahdatyar Amirpour, an orthopedic surgeon, treated appellant for the nonwork-related right elbow injury. On a form report dated December 31, 2001, Dr. Amirpour released appellant to light-duty work on January 2, 2002 with a restriction of left hand work only. In a January 7, 2002 form report, Dr. Amirpour noted work restrictions as being "limited use of left arm, five pounds; no use of right arm; limited use of left hand, five pounds.; no push/pull over five pounds and lifting not to exceed five pounds." He further advised that appellant was not to use his right arm for four months.

[1] As no new restrictions were noted, it is assumed that Dr. Haq was referring to his November 6, 2001 restrictions.

On January 8, 2002 appellant filed a Form CA-7 for wage-loss compensation from January 2, 2002. The employing establishment noted that "[a]gency did not provide work after employee attempted to return to work following a nonwork-related motor vehicle accident. Employee has restrictions for both medical conditions."

By decision dated January 22, 2002, the Office denied appellant's claim for wage-loss benefits stating that appellant had failed to establish that his temporary total disability was due to the injury of October 22, 2001 or that his condition had worsened after December 5, 2001 warranting temporary total disability.

On February 20, 2002 appellant requested an oral hearing before an Office hearing representative, which was held on July 24, 2003. At the hearing he stated that he was unable to use his right arm on January 2, 2002 as it was in a sling, but he was able to use his left arm and the employing establishment refused him work. The Office hearing representative requested that appellant submit a report from Dr. Amirpour clarifying his restrictions as of January 2, 2002 as he had argued that the physician's handwriting was not clear.

In a December 31, 2001 form report, Carole Cousineau, an employing establishment occupational health nurse, advised that appellant had been cleared to return to work on January 2, 2002 for left hand work only with restrictions of no lifting over five pounds, no excessive use of right hand/arm and no lifting above shoulder level or working with arms above right shoulder level. An extract from the U.S. Postal Service/Mail Handlers Union Contract Interpretation Manual, Version I, July 2003 and a copy of a June 2001 Collective Bargaining Report, which contained an Equal Employment Opportunity Commission decision regarding lack of accommodation was also submitted.

By decision dated September 26, 2003, the Office hearing representative affirmed the Office's January 22, 2002 decision.

LEGAL PRECEDENT

A claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury.[2] As part of this burden, he or she must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between his or her disability and the federal employment.[3] The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[4] Under the Federal Employees' Compensation Act, the term disability is defined as the incapacity because of an injury in employment to earn the wages the employee

[2] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[3] *Gary J. Watling*, 52 ECAB 278 (2001).

[4] *Manuel Garcia*, 37 ECAB 767 (1986).

was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.[5]

ANALYSIS

In this case, appellant worked limited duty, following his accepted left arm condition, from October 22 until December 13, 2001, when he suffered a right elbow fracture in a nonwork-related motor vehicle accident. Appellant was off work from December 13, 2001 until January 1, 2002 due to the nonwork-related motor vehicle accident. He was released to return to limited-duty work on January 2, 2002, but the employing establishment did not offer him work.

This presents a question of whether appellant has established a recurrence of disability on or after January 2, 2002 causally related to his October 22, 2001 accepted left arm conditions. Although appellant did not file a claim for a recurrence of disability, Office regulation defining a recurrence of disability may be applicable to the present situation.[6] These regulations state that a recurrence of disability includes a work stoppage caused by withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury.[7] However, this withdrawal must have occurred for reasons other than misconduct or nonperformance of job duties.[8] Appellant's light-duty assignment effective October 22, 2001 accommodated his work-related left arm condition and the record reflects that appellant worked in his light-duty assignment full time until December 13, 2001, when he stopped work due to a nonwork-related motor vehicle accident.

When an employee, who is disabled from the job he or she held when injured on the 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.[9]

The medical evidence of record fails to establish that appellant was disabled due to his employment-related left arm condition on or after January 2, 2002 or that his left arm condition had worsened after December 5, 2001 such that temporary total disability was warranted.

In his December 5, 2001 report, Dr. Haq advised that appellant could return to modified duty from December 5 to 19, 2001 with restrictions of no pushing/pulling, no climbing, no hand

[5] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[6] 20 C.F.R. § 10.5(x). *See also John T. Ratliff*, 8 ECAB 223 (1955) (limiting consideration of the claim on the grounds that the employee failed to conform to the niceties of technical pleading tends to mitigate against the remedial purpose of the Act).

[7] *Id. See also Terry R. Hedman*, 38 ECAB 222 (1986).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(1)(b) (May 1997).

[9] *Albert C. Brown*, 52 ECAB 152 (2000).

motions with left hand, no reaching above the shoulders with the left arm and no grasping with the left hand.[10] These restrictions were consistent with appellant's earlier restrictions set forth from Drs. Cho and Charoen. Appellant performed successfully under those restrictions until his nonwork-related motor vehicle accident of December 13, 2001. Thereafter, Dr. Chandrasekaran examined appellant for his left arm condition and released him to light-duty work on January 2, 2002 with restrictions of no lifting over five pounds, no excessive use of left hand/arm, and no lifting or working with arms above the left shoulder level. Dr. Chandrasekaran's left hand/arm restrictions are consistent with Dr. Haq's December 5, 2001 restrictions and are supported by Dr. Amirpour's restrictions pertaining to limited use of the left arm and hand. Thus, the evidence demonstrates that the restrictions for appellant's accepted left arm condition had not changed nor had appellant's left arm condition worsened to the point of total disability on or after December 5, 2001.

Appellant also did not show that his light-duty work requirements changed on or after January 2, 2002 for his accepted left arm condition. As previously discussed, the evidence does not indicate that appellant was totally disabled due to his accepted left arm condition on or after December 5, 2001.[11] The evidence, however, reflects that appellant was totally disabled from using his right arm on January 2, 2002 as Dr. Amirpour had opined he could not use his right arm for approximately four months. Appellant's right arm condition, however, is not an accepted work-related condition. Accordingly, appellant has failed to meet his burden of proof that his injury-related condition had changed or that there was a change in the nature and extent of the light-duty job requirements for his accepted left arm condition.

Additionally, a review of the record indicates that the employing establishment's refusal to provide light duty was due to the nonemployment-related right arm condition. On appellant's Form CA-7, the employing establishment noted that light duty was not provided after appellant attempted to return to work after his nonwork-related motor vehicle accident and that there were restrictions for both the accepted and nonaccepted conditions. The medical record indicates that the additional restrictions for nonwork-related right arm condition were beyond anything in place for the left arm injury. On January 22, 2002 the employing establishment reiterated that appellant was provided with modified work due to his work injury until his nonwork-related automobile accident occurred on December 13, 2001. On January 29, 2002 the employing establishment indicated that they had limited duty for appellant due to his accepted left shoulder

[10] As no new restrictions were noted, Dr. Haq's previous restrictions, as noted on his November 6, 2001 report, were likely enforced by the employing establishment.

[11] Appellant submitted a December 21, 2001 report from Carole Cousineau, an employing establishment occupational health nurse, which noted that he could return to work on January 2, 2002 with restrictions for left hand work only. However, an occupational health nurse or a registered nurse is not a physician as defined by the Act. Thus, her report and opinions contained therein are of no probative value. 5 U.S.C. § 8101(2); *see Sheila A. Johnson*, 46 ECAB 323 (1994). Appellant additionally submitted an excerpt from the Contract Interpretation Manual and noted an article from the June 2001 Collective Bargaining Report. These excerpts and articles do not refer directly to the employee or to the employing establishment. The Board has held that excerpts from publications and medical literature are not of probative value in establishing causal relationship as they do not specifically address the individual claimant's medical situation and work factors. Therefore, such materials do not aid in determining causal relationship as they are of general application. *Gloria J. McPherson*, 51 ECAB 441 (2000).

injury but that, with his nonwork-related injury to his right elbow and his inability to use his right arm, they had no work for him. Accordingly, but for appellant's nonwork-related accident, appellant would have been able to continue with the limited duty that accommodated his prior accepted injury.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for wage-loss compensation for the period commencing January 2, 2002.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 26, 2003 is affirmed.

Issued: July 12, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member