

January 31, 2001, the Office accepted appellant's claim for aggravation of bilateral carpal tunnel/metacarpal joint arthritis.

The Office received a March 14, 2001 attending physician's report from Dr. Roland Reyes, an attending Board-certified surgeon, who found that appellant had bilateral carpal tunnel/metacarpal arthritis. Dr. Reyes opined that appellant's condition was not caused by an employment activity. He stated that appellant had not been advised that he could return to work and noted his treatment plan. Dr. Reyes indicated that appellant could resume only light-duty work that did not involve repetitive movements.

On March 30, 2001 appellant filed a claim for compensation (Form CA-7) for the period January 14 through March 31, 2001. Appellant indicated that he was using sick leave during the claimed period. He filed another CA-7 form on June 7, 2001 for disability beginning April 1, 2001 and indicated that he was using sick leave. By letter dated June 13, 2001, the Office advised appellant that he was not entitled to compensation for the claimed periods. The Office stated that his claims had been closed as "no time lost" because he had been on sick leave and lost no time from work. The Office advised appellant that he could repurchase sick leave if he submitted medical evidence establishing that he was totally disabled for work. The Office noted that the medical evidence of record indicated that he could work with restrictions.

Appellant submitted a June 11, 2001 attending physician's report from Dr. Reyes who provided a history that appellant sustained a thumb injury while performing strip work. Dr. Reyes diagnosed bilateral carpal/metacarpal joint arthritis of the thumbs and indicated with an affirmative mark that this condition was caused by the employment activity. Dr. Reyes further indicated that appellant was totally disabled beginning April 1, 2001 and noted his physical restrictions. Additional reports dated May 21 and December 17, 2001 were received from Dr. Reyes.

On December 5, 2001 appellant filed a Form CA-7 for wage-loss compensation. He indicated that he was retiring from the employing establishment.¹ By letter dated January 3, 2002, the Office informed appellant that a second opinion medical evaluation was necessary to determine whether he was totally disabled for work.²

In a September 13, 2002 letter, the employing establishment submitted information regarding appellant's use of sick leave from January 1, 2001 through January 3, 2002. The employing establishment indicated that appellant's attending physician restricted his work duties and prescribed narcotic analgesic medication for the treatment of his employment-related arthritis condition. Appellant's medication disqualified him from air traffic controller duties. The employing establishment noted that appellant was assigned to light-duty work based on his

¹ Appellant retired from the employing establishment effective April 1, 2002.

² The record reveals that the claim was developed concerning permanent impairment to appellant's upper extremities. The Board notes that the case record does not contain a final decision regarding appellant's entitlement to a schedule award for his upper extremities. This issue is not before the Board in the present appeal. *See* 20 C.F.R. § 501.2(c).

physician's restrictions, but complained of pain and the duties were discontinued. Following the discontinuation of his work duties, appellant was placed on extended sick leave.

By letter dated July 2, 2003, the Office referred appellant, together with a statement of accepted facts and medical records, to Dr. Alan H. Wilde, a Board-certified orthopedic surgeon, for a second opinion medical examination. The Office requested that Dr. Wilde respond to a list of questions, including whether appellant was able to perform the limited-duty position that he was assigned prior to using sick leave.

In a July 29, 2003 report, Dr. Wilde reviewed appellant's medical records. He provided a history that appellant first noticed bumps on both of his thumbs approximately 10 years prior. Appellant had a thorn in his hand and went to see a hand surgeon who diagnosed arthritis. Dr. Wilde noted that appellant experienced pain in his thumbs but could not remember any specific injury to them. On physical examination, Dr. Wilde reported enlargement of the basal joints of both thumbs and distal joints of the index and long fingers. Regarding the right thumb, he found no reflex changes, sensory loss and loss of pinch strength or instability. Dr. Wilde reported his range of motion findings with regard to appellant's right and left thumbs. He diagnosed severe basal joint arthritis of both thumbs and opined that it was not caused by appellant's work activities. Dr. Wilde stated that there was no relationship between appellant's work duties and the diagnosed condition. As to whether appellant had any continuing residuals of his accepted employment injury, Dr. Wilde stated that there was no causal relationship between his work-related activities and the diagnosis. He noted that repetitive activities could aggravate the condition and the aggravation could be permanent. Dr. Wilde indicated that he could not respond to the Office's question as to whether appellant could perform the duties of a limited-duty position because the statement of accepted facts described the activities of an air traffic controller and not the limited-duty position. Dr. Wilde stated that he could not respond to the Office's question regarding the period of appellant's total disability because the records did not indicate when the period began or that the period was justified. He concluded that appellant might require basal joint arthroplasty to relieve his pain.

On October 2, 2003 the Office requested a supplemental report from Dr. Wilde. The Office requested that he review an accompanying statement of accepted facts and respond to its original questions.

In an undated response, Dr. Wilde reviewed the statement of accepted facts and his original report. He stated that the history he provided was related to him by appellant. Dr. Wilde noted that appellant described his work duties as an air traffic controller. He stated, however, that carpal/metacarpal arthritis of the thumbs was a degenerative condition and not the result of a specific traumatic injury sustained by appellant. Dr. Wilde indicated that appellant's job required him to use his hands on a repeated basis but opined that his degenerative condition was not work related. He reviewed his prior answers to the questions posed by the Office and stated no changes were necessary.

By letter dated January 7, 2004, the Office requested that Dr. Reyes state whether appellant's accepted condition had ceased since his retirement in April 2002 and whether his current thumb problems were solely due to the degenerative condition. The Office advised Dr. Reyes that, if he believed appellant continued to have residuals of the accepted employment

injury, he should provide medical rationale supportive of his opinion, noting that appellant worked at the employing establishment for almost two years. In addition, the Office requested that Dr. Reyes state whether the aggravation was temporary or permanent.

On January 8, 2004 following review of Dr. Wilde's reports, an Office claims examiner requested that the physician clarify his opinion that repetitive activities could aggravate appellant's diagnosed condition and the aggravation could be permanent. The claims examiner noted that Dr. Wilde was unequivocal in his opinion that the degenerative joint disease of both thumbs was not work related. The claims examiner requested that Dr. Wilde review an accompanying statement of accepted facts and address whether appellant had any continuing residuals of his employment-related injury since he retired from the employing establishment in early 2002 or whether his current thumb problems were solely due to the degenerative condition. Dr. Wilde was asked to address whether any aggravation was temporary or permanent and to determine whether the accepted injury caused any permanent impairment of the thumbs based on the fifth edition of the A.M.A., *Guides*.

In a decision dated January 8, 2004, the Office denied appellant's claim for wage-loss compensation. The Office found that he failed to submit sufficient medical evidence to establish that he was totally disabled from January 14, 2001 through January 2, 2002 due to his accepted employment injury.

In response to the Office's January 8, 2004 request, Dr. Wilde submitted a January 27, 2004 report in which he stated that appellant's condition was due to nonwork-related degeneration and there were no residuals of any work-related aggravation. Dr. Wilde stated that the employment-related condition caused permanent impairment of one or both of appellant's thumbs and that he would contact the Office to schedule an appointment to determine the extent of impairment to appellant's thumbs.

Appellant requested an oral hearing before an Office hearing representative by letter dated February 1, 2004.

On February 24, 2004 the Office requested that Dr. Wilde address whether the impairment of appellant's thumbs was solely due to the degenerative condition or due to the accepted work-related aggravation.

Following the July 27, 2004 oral hearing, appellant submitted a July 29, 2004 narrative medical report from Dr. Reyes, who he provided range of motion measurements for appellant's right and left thumbs. Utilizing the A.M.A., *Guides*, he determined that appellant had a 49 percent impairment of the right thumb and a 47 percent impairment of the left thumb. Dr. Reyes converted the impairment values of the thumbs and hands to find an 18 percent impairment of the right upper extremity and a 17 percent impairment of the left upper extremity which he related to the repetitive duties appellant performed.

Dr. Reyes' July 29, 2004 attending physician's report found that appellant had bilateral carpal tunnel/metacarpal joint arthritis of the thumb and noted his physical limitations. His May 21 and October 13, 1999 disability certificates indicated that appellant could return to regular work with restrictions.

By decision dated November 23, 2004, an Office hearing representative affirmed the January 8, 2004 decision. The hearing representative found that appellant failed to submit sufficient medical evidence establishing that he was totally disabled during the period January 14, 2001 to January 2, 2002 due to his accepted employment injury. The hearing representative noted that Dr. Reyes' reports indicated that appellant experienced residuals of the accepted employment injury but failed to support total disability during the claimed period.

LEGAL PRECEDENT

The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.³

Appellant has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he was disabled for work as the result of an employment injury.⁴ Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.⁵ Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.⁶

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature and the Office is not a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁷ It has the obligation to see that justice is done.⁸ Once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner.

ANALYSIS

In this case, the Office accepted appellant's claim for aggravation of bilateral carpal tunnel and metacarpal joint arthritis of both thumbs. The record establishes that he returned to work in a limited-duty capacity. Appellant contends that his accepted condition rendered him totally disabled for work during the period January 14, 2001 through January 2, 2002. The Board finds that the case is not in posture for decision.

³ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁴ *Thomas M. Petroski*, 53 ECAB 484 (2002).

⁵ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁶ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *See Allen C. Hundley*, 53 ECAB 551 (2002).

⁸ *Lourdes Davila*, 45 ECAB 139 (1993).

Dr. Reyes, appellant's attending physician, reported that appellant had residuals of his accepted employment injury but he could perform limited-duty work with restrictions. On three occasions, the Office requested that Dr. Wilde, a second opinion physician, address the issue of whether appellant was totally disabled by his employment-related thumb condition and precluded from performing limited-duty work. The Board notes, however, that Dr. Wilde did not adequately answer the Office's questions. He noted that he could not respond to whether arthritis of the thumbs rendered appellant totally disabled for work. When asked for clarification, Dr. Wilde noted that no changes to his prior answers were necessary. Following a third request, the Office issued the January 8, 2004 decision before obtaining any reply from the physician.

Dr. Wilde failed to adequately address the Office's questions regarding appellant's ability to perform limited-duty work. The Office should refer appellant to another physician for the purpose of determining whether appellant was able to perform limited-duty work.⁹ The Board will remand the case to the Office for further development on this issue. The case should be referred to an appropriate specialist to obtain a rationalized opinion as to whether appellant was totally disabled during the period January 14, 2001 through January 2, 2002 due to the accepted aggravation of bilateral carpal tunnel/metacarpal joint arthritis of both thumbs. Following this and any other development deemed necessary, the Office shall issue an appropriate decision on the claim.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant was totally disabled for the period January 14, 2001 through January 2, 2002 due to his accepted employment injury.

⁹ See *Mae Z. Hackett*, 34 ECAB 1421 (1983).

ORDER

IT IS HEREBY ORDERED THAT the November 23, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further consideration consistent with this decision of the Board.

Issued: December 12, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board