

**United States Department of Labor
Employees' Compensation Appeals Board**

VINCENT AVILES, Appellant)
and) Docket No. 05-560
U.S. POSTAL SERVICE, FORT GEORGE) Issued: May 18, 2005
STATION, New York, NY, Employer)
)

Appearances:

Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 6, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated October 22, 2004, denying his recurrence of total disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the October 22, 2004 decision.

ISSUE

The issue is whether appellant sustained a recurrence of total disability on June 24, 2003 causally related to his June 1, 1993 employment injury.

FACTUAL HISTORY

On December 8, 1995 appellant, then a 39-year-old manual distribution clerk, filed a claim for an occupational injury alleging that the repetitive motion involved in boxing mail

injured his wrists beginning in June 1993. The Office accepted appellant's claim for bilateral carpal tunnel syndrome.¹ He returned to work in a light-duty capacity on December 20, 1995.

In medical reports dated between 1996 and 2000, Dr. Greenbaum diagnosed cervical radiculopathy, cervical osteoarthritis with myofascitis, a cervical sprain with myofascitis and wrist osteoarthritis, in addition to appellant's accepted condition of bilateral carpal tunnel syndrome. However, he provided no explanation as to how the cervical spine conditions and wrist osteoarthritis were causally related to the accepted condition.

In a report dated March 6, 2002, Dr. Thomas Teyibo, an internist, stated that he treated appellant for wrist pain caused by a work-related "accident" that occurred on June 1, 1993. He requested authorization for physical therapy and indicated that appellant could not perform his regular work.

On August 11, 2003 appellant submitted a claim for a recurrence of total disability on June 24, 2003 causally related to his June 1, 1993 employment injury. He stated that he had performed light-duty work since his employment injury but on June 24, 2003 the pain in his hands had increased and rendered him totally disabled. Appellant noted that he had sustained back injuries in a nonwork-related automobile accident in 1998.

By letter dated September 24, 2003, the Office asked appellant to provide additional information in support of his recurrence claim, including a comprehensive medical report explaining how his recurrence of total disability on June 24, 2003 was causally related to his June 1, 1993 employment injury.

By decision dated October 28, 2003, the Office denied appellant's claim on the grounds that the evidence did not establish that his claimed recurrence of total disability on June 24, 2003 was causally related to his June 1, 1993 employment injury.

On August 10, 2004 appellant requested reconsideration and submitted additional medical evidence. He requested compensation for his claimed recurrence of total disability on June 24, 2003 and asked that the Office also accept certain diagnosed injuries to his cervical and thoracic spine as causally related to his June 1, 1993 employment injury.

In a report dated December 15, 2003, Dr. Teyibo provided findings from his physical examination of appellant on May 1, 2002. He diagnosed cervical and thoracic myofascitis, cervical radiculopathy and carpal tunnel syndrome. Dr. Teyibo indicated that appellant's conditions were sustained "four years ago" and had worsened. He noted that he saw appellant in

¹ Appellant's treating physician, Dr. Mark Greenbaum, diagnosed bilateral carpal tunnel syndrome caused by repetitive strain from sorting mail.

2003 on February 13, May 28, July 16,² August 28, September 17 and October 29. Dr. Teyibo stated:

“[Appellant] has had a medical history of a persistent pain disorder, which has been slow to improve. Due the intense effects of the accident [his] life is complicated by an extreme degree of personal difficulties and medical problems....”

“In order to demonstrate a causally-related permanent problem we must clinically correlate the history of [appellant’s] accident causing permanent structural damage, which then causes ensuing functional disabilities, which will affect [him] for the rest of his life....”

* * *

“Due to the mechanism of these traumatically-induced injuries, there was moderate trauma and weakening of the supportive soft tissue structures. These types of injuries to the cartilaginous and ligamentous tissue place extra stress on the supportive soft tissue causing early muscle fatigue and excessive joint loading during repetitive or medium/higher physical demand activities. This causes vertebrae to now be more easily misaligned with aberrant mechanics of the affected unit causing pain/discomfort via the nerve ending....”

“It is my opinion, that the above objective and quantitative findings ... have caused permanent and consequential limitations, which are a direct result of the injury [appellant] has sustained.”

By decision dated October 22, 2004, the Office denied modification of its October 28, 2003 decision.

LEGAL PRECEDENT

Where an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he 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 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.³

The Board notes that the term “disability,” as used in the Federal Employees’ Compensation Act⁴ means incapacity, because of an employment injury, to earn the wages that

² Dr. Teyibo indicated that appellant was only partially disabled between May 28 and July 16, 2003.

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ 5 U.S.C. §§ 8101-8193.

the employee was receiving at the time of injury.⁵ Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.⁶ 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 the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁷ “Recurrence of disability” means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁸

ANALYSIS

Appellant sustained bilateral carpal tunnel syndrome on June 1, 1993 and returned to work in a light-duty capacity. He subsequently filed a claim for a recurrence of total disability on June 24, 2003. As noted, to be entitled to compensation for total disability beginning on June 24, 2003, appellant has to provide medical evidence establishing that he was totally disabled due to a worsening of his accepted work-related injury, bilateral carpal tunnel syndrome, or a change in his job duties such that he was unable to perform his light-duty work.

In a report dated March 6, 2002, Dr. Teyibo stated that he treated appellant for wrist pain caused by a work-related “accident” that occurred on June 1, 1993. However, appellant alleged, and the Office accepted, that his carpal tunnel syndrome sustained on June 1, 1993 was an occupational disease caused by the repetitive motions in his task of sorting mail. No “accident” was alleged to have occurred on June 1, 1993. Therefore, this report is not based on a complete and accurate factual background. Additionally, Dr. Teyibo indicated that appellant could not perform his regular work. He did not indicate that appellant was totally disabled. Due to these deficiencies, this report is not sufficient to establish that appellant sustained a work-related recurrence of total disability on or before June 24, 2003.

In a report dated December 15, 2003, Dr. Teyibo diagnosed cervical and thoracic myofascitis and cervical radiculopathy, in addition to appellant’s accepted condition of bilateral carpal tunnel syndrome. Dr. Teyibo indicated that appellant’s conditions were sustained “four years ago” and had worsened. He noted that he saw appellant on May 28, 2003 and the next visit was on July 16, 2003. Dr. Teyibo indicated that appellant had a history of a persistent pain disorder caused by “the intense effects of the accident” and, “due to the mechanism of these traumatically-induced injuries,” there was trauma and weakening of the supportive soft tissue structures. As noted above, the June 1, 1993 employment injury was a repetitive motion injury related to appellant’s mail-sorting task, not a traumatic injury claim. Therefore, Dr. Teyibo’s report does not contain an accurate and complete factual background of the June 1, 1993

⁵ *Patricia A. Keller*, 45 ECAB 278 (1993).

⁶ *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

⁷ *Clement Jay After Buffalo*, 45 ECAB 707 (1994).

⁸ 20 C.F.R. § 10.5(x).

occupational injury.⁹ There is no explanation from Dr. Teyibo as to why appellant did not seek treatment between May 28 and July 16, 2003 for the recurrence of total disability alleged to have occurred on June 24, 2003. He indicated that appellant was only partially disabled during this period, the period that includes the time of the alleged recurrence of total disability, June 24, 2003. Dr. Teyibo did not show a change in the nature and extent of appellant's accepted injury-related condition, bilateral carpal tunnel syndrome, or a change in the nature and extent of his light-duty job requirements, such that he was rendered totally disabled. As noted above, these are the elements required to establish a recurrence of total disability. Detailed, well-rationalized medical evidence, based on a complete and accurate factual background, is critical in light of the 10-year span between appellant's original injury and the claimed recurrence of total disability. Due to these deficiencies, Dr. Teyibo's December 15, 2003 report is not sufficient to establish that appellant sustained a recurrence of total disability on June 24, 2003 causally related to his June 1, 1993 employment injury.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a recurrence of total disability on June 24, 2003 causally related to his June 1, 1993 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 22, 2004 is affirmed.

Issued: May 18, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁹ There is no indication that Dr. Teyibo reviewed any of the medical records in this case.