United States Department of Labor
Employees' Compensation Appeals Board

GRANT R. HICKMAN, Appellant	)	
and	)	**Docket No. 06-376**
	)	**Issued: June 2, 2006**
DEPARTMENT OF THE AIR FORCE, HILL AIR FORCE BASE, UT, Employer	)	

Appearances:
Grant R. Hickman, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 5, 2005 appellant filed a timely appeal of the November 9, 2005 nonmerit decision of the Office of Workers' Compensation Programs denying his request for reconsideration and the August 19 and February 4, 2005 merit decisions denying his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of the claim and the nonmerit issue.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he sustained a recurrence of disability on and after November 2001 causally related to the accepted employment injury; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On December 4, 1996 appellant, then a 43-year-old electronics integrated systems mechanic, filed an occupational disease claim alleging that on November 6, 1994 he became

aware that his carpal tunnel syndrome was due to his federal employment. He attributed his condition to work requirements which included: assembling and disassembling, soldering work under a microscope, and working on a maverick missile system where there was constant "torquing and untorquing" of circuit cards for extended periods of time. The Office accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral carpal tunnel releases, which appellant underwent in September and October 1997. Appellant returned to light duty following each surgery and eventually resumed his regular duties in December 1997.

By decision dated June 11, 1999, the Office granted appellant a schedule award for a 13 percent permanent impairment to the left arm and a 16 percent permanent impairment to the right arm.

The claim was essentially dormant until the Office received documents in March 2003. The record reflects that in June 2002 appellant had permanent work restrictions based on his symptoms and his history of bilateral carpal tunnel syndrome which led him to be disqualified from his date-of-injury position and placed in a physically disqualified/light-duty program. After an unsuccessful attempt in a temporary light-duty position inventorying mobility bags on June 24, 2003, the employing establishment separated appellant from employment because he was no longer physically capable of performing the duties of his assigned position and because they were unable to accommodate him.

On March 18, 2003 the Office received a March 5, 2003 request to authorize bilateral electrodiagnostics studies to determine carpal tunnel syndrome and to rule out peripheral nerve entrapment from Dr. James H. Rhee, a physiatrist. In an accompanying report, he noted appellant's history of work injury and that the bilateral releases in 1997 offered full resolution of symptoms. Appellant developed pain in the palms and wrists with occasional spasms several years prior and Dr. Sally Tan treated him with Motrin with some relief. He further noted that after appellant failed a soldering certification at work, he went to the dispensary where Dr. Loren Lewis placed him on permanent work restrictions. Dr. Rhee presented his examination findings and provided an impression of recurrence of bilateral wrist pain with slight recent numbness and occasional spasms, status post bilateral carpal tunnel release and mild weakness in both hands. He advised that appellant's presentation seemed consistent with a recurrence of bilateral carpal tunnel syndrome with a smaller consideration for forearm tendinitis. An impression on appellant's right leg symptoms was also provided.

On June 5, 2002 permanent work restrictions were provided by Dr. Loren L. Lewis, medical director, Occupational Medicine Services at the employing establishment. Appellant was found to have medical conditions which may affect his work or could be aggravated by work activity. Dr. Lewis requested that the employing establishment determine whether it could provide appellant with reasonable accommodations.

In a March 21, 2003 letter, the Office advised appellant that the evidence was insufficient to establish that a recurrence of disability related to his original work injury or to employment factors. The Office requested that he complete a Form CA-2a claim of recurrence and provide additional factual and medical information.

On February 24, 2003 appellant filed a Form CA-2a, notice of recurrence of disability commencing on or about "November 2001" due to a "November 1994" injury. Appellant reported increased pain and decreased functioning of his hands. The employing establishment stated that appellant stopped work on August 5, 2002. On April 3, 2003 appellant filed a Form CA-2 occupational disease claim advising that his carpal tunnel condition had worsened and resulted in his disability for work in February 2003. He worked assembling and disassembling and soldering parts and that those duties aggravated his wrists and hands. Appellant was first aware of his condition and its causal relationship to his employment on November 6, 1994.

Appellant submitted records pertaining to a fitness-for-duty examination in 2002. On June 29, 2003 the employing establishment placed appellant on restricted duty with permanent restrictions. As specified by Dr. Lewis, appellant was disqualified from his regular position and could not be placed in a temporary light-duty position. Copies of appellant's work history and position description were provided, which noted that he soldered approximately 50 percent of the time and engaged in assembly, disassembly and other activities the remainder of the time.

In an April 9, 2002 report, Dr. Sally S. Tan, a Board-certified family medicine physician, noted that appellant had bilateral carpal tunnel release surgery bilaterally and complained of residual pain and numbness if he overengaged in such activities as writing, wrenching, using the computer and golfing. She diagnosed pain leg, arm, fingers or toes, insomnia, sleep apnea, morbid obesity and benign hypertension. Wrist supports were recommended to be worn during work and repetitive activity and appellant was advised to avoid golf and other activities which would cause his condition to flare.

In a form report received April 7, 2003, Dr. Rhee noted a description of his work duties, which appellant's official supervisor concurred. Appellant golfed two times a week and fished two times a month. Dr. Rhee diagnosed bilateral wrist pain but opined it was unknown whether appellant's work duties contributed to the condition and advised that it was a possible recurrence of carpal tunnel syndrome.

In a June 13, 2003 letter, the Office advised appellant that the evidence was insufficient to establish his claim and requested further medical and factual information. No further information was received.

By decision dated August 5, 2003, the Office denied appellant's recurrence of disability claim. The Office found that the factual and medical evidence of record did not establish that the claimed recurrence resulted from the accepted work injury. The Office further found that there was no medical evidence which established a definitive diagnosis of appellant's condition.

On May 25, 2004 appellant requested reconsideration of the Office's August 5, 2003 decision. In a separate letter, he stated that he was notified in February 2004 that the Office had combined his occupational claim and his recurrence claims. He stated that the base doctor put him on restrictions which led to being disqualified from his position and placed in a handicap program and his termination on June 2003. He asserted that he was terminated because of a work-related injury and contended that he was entitled to compensation benefits. Additional evidence pertaining to the employing establishment's accommodations and medical chart notes

from 1997, 1998, 2000 through 2002 were received. These records describe appellant's complaints of pain in his hands and wrists and his past medical history. A May 30, 2002 chart note by Dr. Lewis indicated that appellant was seen for pain in the hands and wrist. He noted that appellant had a history of carpal tunnel syndrome, status post surgery, history of a right lower leg fracture, history of left shoulder surgery, history of hand myositis, tendinitis. On May 31, 2002 Dr. Lewis indicated that x-rays showed no significant degenerative changes or bony abnormality. In a November 8, 2002 report, Dr. Lewis reviewed the job requirements of appellant's position and indicated that he had permanent restrictions on moderate lifting and use of fingers, if it involved repetitive gripping and grasping. Dr. Lewis also limited appellant to no ladder climbing. Ultimately, management was unable to provide reasonable accommodations and recommended disqualification of appellant from his position.

In a January 29, 2003 report, Dr. Richard B. Villata, a staff physician at the employing establishment, noted that appellant was on permanent restrictions to his hands as recommended by Dr. Lewis. Appellant was unable to perform the limited-duty job of opening zip lock bags due to pain in his hands. Chart review indicated carpal tunnel syndrome, shoulder pain and sleep apnea. Examination findings were provided and Dr. Villata assessed bilateral hand pain and paresthesias. He opined that appellant was unable to perform the repetitive hand motion involved in opening zip lock bags but was able to answer telephones and drive vehicles (forklift).

In a March 12, 2003 letter, Dr. Lewis noted that appellant had been seen in the clinic for several issues, but primarily for carpal tunnel syndrome, physical limitations and medical sequelae from a 1983 injury to his right leg. Dr. Lewis recommended that appellant's treating physicians be contacted. Physical examinations consistently documented persistent physical limitations related to his hand/arm motions and walking/standing. Dr. Lewis recommended permanent restrictions and disqualification from appellant's current position. He also recommended that appellant be placed in the base's Physically Disqualified Program for the consideration of alternate employment options.

In a July 21, 2004 decision, the Office denied modification of the August 5, 2003 decision. The medical records documented that appellant was disqualified because of his history of bilateral carpal tunnel syndrome and carpal tunnel releases. The Office noted that Dr. Lewis, had prescribed permanent work restrictions for appellant which resulted in his termination from federal service. The Office found, however, that the medical evidence addressing appellant's history of bilateral carpal tunnel syndrome and bilateral carpal tunnel releases and work restrictions was not supported by any objective medical findings or diagnostic testing. The evidence failed to provide an acceptable medical diagnosis to explain appellant's complaints of pain and numbness in his hands and provide an objective basis for the work restrictions provided.

On November 4, 2004 appellant requested reconsideration of the July 21, 2004 Office decision. In a September 13, 2004 report, Dr. Gavin S. West, an internist, noted that appellant had a long history of sleep apnea and carpal tunnel. He stated that a recent nerve conduction study of appellant's carpal tunnel was done, which indicated both normal and abnormal findings. Dr. West advised that this condition caused appellant rather significant morbidity.

By decision dated February 4, 2005, the Office denied modification of the July 21, 2004 decision.

On April 13, 2005 appellant requested reconsideration. In an April 6, 2005 report, Dr. West noted that appellant had a history of carpal tunnel syndrome and that a recent electromyogram showed evidence of bilateral carpal tunnel syndrome, moderate on the right and mild on the left. He advised that appellant continued to have difficulty with both of his hands consistent with his examination.

By decision dated August 19, 2005, the Office denied modification of the February 4, 2005 decision.

On November 3, 2005 appellant requested reconsideration but did not submit any additional evidence.

By decision dated November 9, 2005, the Office denied appellant's request for reconsideration finding that his letter neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability is defined as the 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.[1] This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[2]

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[3] This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is

[1] 20 C.F.R. § 10.5(x) (1999); *see also Bryant F. Blackmon*, 56 ECAB ___ (Docket No. 04-564, issued September 23, 2005); *Cecelia M. Corley*, 56 ECAB ___ (Docket No. 05-324, issued August 16, 2005).

[2] 20 C.F.R. § 10.5(x).

[3] *Robert H. St. Onge*, 43 ECAB 1169 (1992).

causally related to the employment injury.[4] Moreover, the physician's conclusion must be supported by sound medical reasoning.[5]

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.[6] In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.[7] While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[8]

ANALYSIS -- ISSUE 1

The Office accepted appellant's December 4, 1996 claim for bilateral carpal tunnel syndrome with bilateral carpal tunnel release surgery. Appellant returned to regular duties following his accepted 1997 surgeries. He alleged a recurrence of disability commencing November 2001 due to the bilateral carpal tunnel syndrome that was accepted in his December 4, 1996 claim.

However, none of the medical records submitted most contemporaneously with the date of the alleged recurrence of disability commencing November 2001 specifically mention that appellant sustained a recurrence of disability on or about November 2001 causally related to the accepted employment injury of December 4, 1996.[9] Dr. Lewis listed permanent work restrictions based on appellant's complaints involving his hands and leg and his history of bilateral carpal tunnel syndrome and carpal tunnel releases. He did explain why appellant's increase in restrictions or disability, beginning on or around November 2001, was related to his accepted employment injury. Dr. Lewis did not distinguish between a spontaneous change of the accepted condition or whether appellant's symptoms were related to new occupational exposure

[4] Section 10.104(a)-(b) of the Code of Federal Regulations provides that when an employee has received medical care as a result of the recurrence, he or she should arrange for the attending physician to submit a detailed medical report. The physicians report should include the physician's opinion with medical reasons regarding the causal relationship between the employee's condition and the original injury, any work limitations or restrictions and the prognosis. 20 C.F.R. § 10.104.

[5] *See Robert H. St. Onge, supra* note 3.

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.2 (June 1995).

[7] For the importance of bridging information in establishing a claim for a recurrence of disability, *see Robert H. St. Onge, supra* note 3; *Shirloyn J. Holmes,* 39 ECAB 938 (1988); *Richard McBride,* 37 ECAB 748 (1986).

[8] *See Ricky S. Storms,* 52 ECAB 349 (2001).

[9] The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence; *see Katherine A. Williamson,* 33 ECAB 1696 (1982); *Arthur N. Meyers,* 23 ECAB 111 (1971).

to work duties. A medical opinion not addressing the cause of an employee's condition is of diminished probative value on the issue of causal relationship.[10]

In a March 4, 2003 report, Dr. Rhee stated that appellant presented with symptoms that were most consistent with recurrence of bilateral carpal tunnel syndrome and forearm tendinitis and noted a proper history of the previous work injury and appellant's current employment situation. However, Dr. Rhee did not provide sufficient medical rationale[11] explaining how the accepted condition caused disability for work beginning November 2001. Furthermore, there is no "bridging evidence" which would relate appellant's diagnosed bilateral carpal tunnel syndrome and forearm tendinitis to the accepted bilateral carpal tunnel syndrome. Therefore, these reports are insufficient to meet appellant's burden of proof.

Although Dr. West noted appellant's history of carpal tunnel syndrome and presented objective evidence indicating the presence of bilateral carpal tunnel syndrome, he failed to provide sufficient explanation as to why the current condition or disability beginning around November 1, 2001 was due to the accepted carpal tunnel syndrome. He did not distinguish between the prior accepted claim and any new occupational exposures. Therefore, Dr. West's reports are insufficient to meet appellant's burden of proof.

Other reports from Drs. Tan, Lewis and Villata, while noting appellant's history, fail to provide medical rationale specifically relating any period of recurrent disability beginning around November 2001 to appellant's accepted condition of bilateral carpal tunnel syndrome.

Consequently, the medical evidence is insufficient to establish that appellant sustained a recurrence of disability beginning November 2001.

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[12] Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[13]

[10] *Conard Hightower*, 54 ECAB 796 (2003).

[11] *Robert S. Winchester*, 54 ECAB 191 (2002).

[12] 20 C.F.R. § 10.606(b)(2).

[13] 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

Appellant's November 3, 2005 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).[14]

With respect to the third element, the submission of relevant and pertinent new evidence not previously considered by the Office, the Board notes that, on appeal, appellant indicated that he had submitted new evidence, in the form of an October 3, 2005 report from Dr. West. He additionally submitted a copy of Dr. West's October 3, 2005 report. The record before the Board does not establish that appellant submitted any additional evidence with his November 3, 2005 reconsideration request. Additionally, new evidence that is submitted on appeal cannot be considered by the Board, as its jurisdiction is limited to evidence that was before the Office at the time of its final decision.[15] Inasmuch as appellant did not submit any "relevant and pertinent new evidence," he is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).[16]

As appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability or a medical condition beginning November 2001 causally related to his accepted employment-related bilateral carpal tunnel syndrome. The Board further finds that the Office properly denied appellant's request for reconsideration as appellant failed to raise substantive legal questions or to submit new relevant and pertinent evidence not previously reviewed by the Office.

[14] 20 C.F.R. § 10.608(b)(2)(i) and (ii).

[15] 20 C.F.R. § 501.2(c). Appellant may submit this evidence and any other evidence he may have to the Office together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).

[16] 20 C.F.R. § 10.608(b)(2)(iii).

ORDER

IT IS HEREBY ORDERED THAT the November 9, August 19 and February 4, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 2, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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