United States Department of Labor
Employees' Compensation Appeals Board

GREGORY J. BUSHUR, Appellant	)	
and	)	**Docket No. 05-1798**
	)	**Issued: March 3, 2006**
DEPARTMENT OF DEFENSE, DEFENSE MAPPING AGENCY, AEROSPACE CENTER, St. Louis, MO, Employer	)	

Appearances:
Gregory J. Bushur, 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 August 30, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated July 26, 2005, finding that he had not established a recurrence of carpal tunnel syndrome on April 23, 2004. 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 appellant sustained a recurrence of a medical condition commencing April 23, 2004 as alleged.

FACTUAL HISTORY

On June 29, 1992 appellant, then a 41-year-old cartographer, filed a claim for an occupational disease, alleging that his carpal tunnel syndrome was caused by factors of his employment. Appellant was initially aware of his condition on April 2, 1992 and that it was

caused by his employment on May 7, 1992. Appellant reported his condition to his supervisor on May 2, 1992 and was last exposed on June 29, 1992.

On June 1, 1992 Dr. Mary E. Fox, an attending physician Board-certified in family medicine, stated that appellant had mild carpal tunnel syndrome on the left and mild left lateral epicondylitis. She noted that appellant was left handed.

On August 27, 1992 the Office accepted appellant's claim for bilateral carpal tunnel syndrome and left lateral epicondylitis.

In a treatment note dated March 2, 1995, appellant described right elbow, forearm and hand pain along the ulnar distribution caused by all day computer use. He had a full range of motion and no numbness. Appellant was diagnosed with right ulnar nerve and elbow tendinitis.[1] In a treatment note dated April 5, 1995, appellant no longer wore a left wrist brace, but had left thenar eminence atrophy from carpal tunnel syndrome.

On August 16, 1996 appellant filed a claim for a recurrence of disability from April 1995, noting that his condition had been continuous since 1992 with changes in severity and pain only. Appellant noted a loss of strength and partial use of left hand, advising the Office that he was left handed but now relied on his right hand for most activities. In a report dated September 5, 1996, Dr. Fox stated that she treated appellant that day for bilateral carpal tunnel syndrome as a result of repetitive movements at work and that she prescribed splints for both wrists. On January 21, 1997 the employing establishment advised the Office that, based on information from the claims examiner on January 13, 1997, it was not necessary for appellant to have submitted the August 16, 1996 Form CA-2a claim and that he needed to submit only the medical bills for payment.

On June 3, 2004 appellant filed a claim for a recurrence for medical treatment from April 23, 2004 noting that he received medical treatment from Dr. John Emmons, a family practitioner, on April 27, 2004.

In support of his claim, appellant submitted a narrative dated February 25, 2004, stating that he could no longer use his left hand for mouse control because of pain after 5 to 10 minutes. Appellant noted continuous use caused pain and required use of splints at night to get uninterrupted sleep. Appellant also submitted employing establishment treatment notes dated April 23 and May 20, 2004, listing continuing symptoms of bilateral carpal tunnel syndrome. In a report dated April 27, 2004, Dr. Emmons[2] noted appellant's complaints of bilateral carpal tunnel syndrome with pain and numbness in the wrists and palms. Appellant had a good range of motion and was advised to not use a computer at home and to take frequent breaks.

On June 3, 2004 appellant stated that he had experienced loss of strength and mobility in both hands intermittently since 1992, more severe in left and that he could no longer use the standard mouse with his left hand due to pain. Appellant noted that since 1992, he worked with

[1] The doctor's signature, which appears on the April 5, 1995 report, is illegible.

[2] Dr. Emmons is apparently an employing establishment physician.

different computer equipment than that which caused his initial condition, but that computers were now standard equipment and the pain in his left hand was greater than at any previous time. Appellant noted that the recent onset began in December 2003, when he worked at different workstations which were not equipped with trackballs which he had used for 10 years. By January 2004, the pain prevented use of the keyboards without discomfort.

In an undated report received by the Office on June 10, 2004, the employing establishment stated that appellant's assignment as a Geospatial-Intelligence Analyst Instructor required using a keyboard and mouse up to 7.5 hours a day and that between December 2003 and June 2004, appellant worked 13 weeks as an instructor or instructor observer and another 5 weeks using a workstation in preparation for classes.

On July 8, 2004 the Office advised appellant regarding the evidence he needed to submit to support his claim. The Office requested that appellant's doctor address the causal relationship between his current condition and the original injury, whether appellant had recovered from the original injury, whether there were any lingering symptoms and what factors produced the recurrence. It also asked whether the diagnosis for the recurring condition was the same as the original injury and whether it was prone to a recurrence.

In an attending physician's report dated June 23, 2004, Dr. Fox noted appellant's history of left carpal tunnel syndrome reported in April 1992 and stated by checking a box "yes" that it was caused by the employment. Dr. Fox stated that appellant had long-standing bilateral carpal tunnel syndrome greater on left with recent exacerbation. In a report dated June 30, 2004, Dr. Fox stated that she had treated appellant on April 2, May 8 and July 31, 1992, for bilateral carpal tunnel syndrome greater on left and that left wrist and elbow appliances were approved after August 3, 1992, which improved appellant's symptoms. She related that, on September 5, 1996, appellant complained of increased symptoms from using new equipment and was fitted with new appliances for both wrists that reduced symptoms. Appellant was again treated on May 25, 2004 for increased symptoms of bilateral carpal tunnel syndrome of several months duration. Dr. Fox then referred him to an orthopedic surgeon.

In a report dated July 26, 2004, appellant noted that his original carpal tunnel syndrome was caused by use of an analytical stereo-plotter, which included a standard keyboard and specialized pointing devise (mouse) and that his symptoms over the years increased and decreased depending on the ergonomic arrangements of each workstation. He also noted his history of treatment dates and stated that his condition was continuous.

By decision dated August 9, 2004, the Office denied appellant's claim for a recurrence of a medical condition.

On March 1, 2005 appellant requested reconsideration and submitted medical records to support his request. In a report dated September 14, 2004, Dr. David C. Haueisen, a Board-certified orthopedic surgeon, reviewed the history of injury and symptoms beginning in March 1992 and continuing intermittently, exacerbated by computer use, driving and writing. Appellant noted increased numbness, greater on the left. Examination showed positive Tinel's sign and Phalen's test bilaterally and definite diminution to touch in the left and slight diminution to touch in the right, with no thenar weakness or atrophy bilaterally. Dr. Haueisen

recommended nerve conduction studies to evaluate the severity of nerve compression. He referred to issues addressed in appellant's letter in which it appeared that appellant had recovered from his original disability as his symptoms have been intermittent, that he was working at a regular-duty job and has had "lingering symptoms of numbness on and off." Dr. Haueisen stated that keyboard use and the passage of time may be the cause of appellant's condition. He added that the diagnosis of bilateral carpal tunnel syndrome was the same as the original working diagnosis, which can be prone to recurrence.

In reports dated November 11 and December 2, 2004, Dr. Haueisen stated that he performed left and right carpal tunnel release on those dates, respectively.

In a report dated September 16, 2004, Dr. Ashok Kumar, a physiatrist to whom Dr. Haueisen referred appellant, diagnosed bilateral carpal tunnel syndrome based on nerve conduction studies and electromyogram evaluation conducted that day. The condition was worse on the left, with mild left cubital tunnel syndrome, normal bilateral superficial radial nerve conditions and incidental anastomosis.

On December 6, 2004 Dr. Haueisen stated that appellant's current symptoms of carpal tunnel syndrome were consistent with the original diagnosis in 1992. Appellant underwent surgery for a left carpal tunnel release and left subcutaneous ulnar nerve transposition on November 11, 2004 and right carpal tunnel release on December 2, 2004. Dr. Haueisen stated that appellant had not recovered from his original condition as he remained symptomatic over 12 years and his continuing symptoms were attributable to keyboard use, which was a risk factor in developing carpal tunnel syndrome. He added that appellant's "current symptoms of carpal tunnel syndrome are consistent with the original diagnosis of 1992 and the recurrence in 1995-96." He added that "In the absence of any acute trauma precipitating these conditions, it is therefore likely that the syndromes have developed gradually over the intervening period from 1995-96 to present." Dr. Haueisen stated that appellant's carpal tunnel syndrome would appear to be a clear recurrence of the prior carpal tunnel syndrome, for which he had been treated.

By decision dated July 26, 2005, the Office found that the medical evidence did not establish that appellant's current bilateral carpal tunnel syndrome was causally related to the April 2, 1992 work-related injury.

LEGAL PRECEDENT

Section 10.5(y) of the Office's regulations[3] defines recurrence of medical condition as a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a need for further medical treatment after release from treatment, nor is an examination without treatment. Appellant has the burden of establishing that the need for further medical treatment is causally related to the employment injury.[4]

[3] 20 C.F.R. § 10.5(y).

[4] *Joan R. Donovan*, 55 ECAB ___ (Docket No. 04-113, issued July 22, 2004).

Proceedings under the Federal Employees' Compensation Act[5] are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation benefits, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[6]

ANALYSIS

The Office accepted appellant's claims for bilateral carpal tunnel syndrome and left lateral epicondylitis on August 27, 1992. The record reflects that appellant submitted medical evidence from Dr. Fox on September 5, 1996, for bilateral carpal tunnel syndrome. The record indicates treatment on April 27, 2004 from Dr. Emmons, who stated that appellant was symptomatic with bilateral carpal tunnel syndrome with pain and numbness of the wrists and palms. Appellant has the burden of proving that his treatment beginning on April 23, 2004 was causally related to the April 2, 1992 employment injury.[7]

The Board finds that the case is not in posture for a decision on the question of whether appellant's need for medical treatment beginning April 23, 2004 was causally related to his April 2, 1992 employment injury. The Board finds that further development of the evidence is needed to determine if appellant's bilateral carpal tunnel syndrome beginning in 2004 is causally related to his April 2, 1992 employment injury, accepted for bilateral carpal tunnel syndrome and left lateral epicondylitis.

Dr. Fox and Dr. Haueisen, attending physician, indicated that appellant's bilateral carpal tunnel syndrome was related to his accepted employment injury. Dr. Fox stated that appellant's bilateral carpal tunnel syndrome was caused by his employment. Dr. Haueisen reviewed appellant's history of injury and recent diagnostic tests and advised that appellant's current symptoms of carpal tunnel syndrome were consistent with the original diagnosis in 1992. He opined that appellant had not recovered from his original condition but remained symptomatic over 12 years and that his continuing symptoms were attributable to keyboard use. He stated that appellant's carpal tunnel syndrome would appear to be a clear recurrence of the prior carpal tunnel syndrome, for which he had been treated.

While these medical reports lack sufficient medical rationale to meet appellant's burden of proof, they are sufficient to require further development of the case record by the Office.[8] Dr. Haueisen, in particular, has demonstrated a knowledge of appellant's history and provided general support for the causal relationship between appellant's employment and his condition beginning in 2004 which resulted in surgery. His reports raise an uncontroverted inference of causal relationship. On return of the case record the Office should further develop the medical evidence regarding causal relationship between appellant's condition and his accepted conditions

[5] 5 U.S.C. §§ 8101-8193.

[6] *Isidore J. Gennino*, 35 ECAB 442 (1983).

[7] The record does not indicate that appellant has claimed any disability due to his accepted conditions.

[8] *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

from 1992. Following this and such other development as deemed necessary, the Office shall issue an appropriate merit decision.

CONCLUSION

The case is not in posture for a decision on whether appellant's recurrence of the need for medical treatment on April 23, 2004 and continuing is causally related to his April 2, 1992 injury and is remanded to the Office for further development of the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 26, 2005 be set aside and the case remanded to the Office for further development consistent with this decision.

Issued: March 3, 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