United States Department of Labor
Employees' Compensation Appeals Board

R.T., Appellant	)	
and	)	**Docket No. 06-2125**
	)	**Issued: April 16, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Denver, CO, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 18, 2006 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated August 9, 2006 denying his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a recurrence of disability in December 2003 causally related to his August 31, 1996 accepted work injury.

FACTUAL HISTORY

The Office accepted that appellant, then a 32-year-old mail handler, sustained a bilateral hand strain/sprain on August 31, 1996 while opening letter trays in the performance of his duties. This case was assigned file number A120163658. Appellant worked limited duty from August 31, 1996 and returned to regular duty on September 26, 1996. He claimed a recurrence

of disability for this injury arising July 19, 1999, which the Office denied in a decision dated December 21, 1999. Appellant was directed to file an occupational disease claim.

On January 11, 2000 appellant filed an occupational disease claim for pain in both hands which the Office accepted for bilateral tendinitis of the hand and wrist. This case was assigned file number A120187925 with a date of injury of July 19, 1999. The Office paid appropriate benefits. On November 2, 2000 Dr. Bruce Cazden, a family practitioner, approved the employing establishment's permanent job offer for limited duty.

In a December 27, 2000 report, Dr. Richard Talbott, a Board-certified orthopedic surgeon and second opinion physician, found no objective or abnormal findings to support a diagnosis. He advised that appellant's condition had resolved and he no longer needed any work restrictions for his accepted condition of bilateral tendinitis of the hands and wrists.

In a July 2, 2001 report, Dr. David Price, a Board-certified family practitioner, noted that appellant had been evaluated for the last two years for chronic intermittent pain, swelling and crepitus in both hands. He noted that appellant had intermittent work limitations and a course of physical therapy. Dr. Price reported normal readings for electromyogram (EMG) and nerve conduction velocity studies as well as a bilateral hand x-ray. He stated that appellant's history of intermittent swelling and crepitus and objective physical findings of the same were consistent with a bilateral repetitive motion tendinitis of the flexor tendons of the hand. Anti-inflammatory medication, decreased weight requirements and restrictions on repetitive motion were recommended for appellant's chronic recurring condition.

On July 14, 2001 the Office found a conflict in medical opinion between Dr. Talbott, the second opinion physician, and Dr. Price as to whether appellant continued to have objective findings of the accepted condition. Appellant was referred, along with a statement of accepted facts, a list of questions and the medical record, to Dr. Herbert H. Maruyama, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In an August 3, 2001 report, Dr. Maruyama noted the history of work injury and medical treatment. No objective abnormalities were noted on examination. He advised that, if appellant had a tendinitis condition in his wrists and hands in the past, it had subsided as there was no evidence of any inflammatory condition in his wrists and hands. Dr. Maruyama opined that appellant had no abnormal orthopedic diagnosis and there was no reason to impose any restrictions on activities involving appellant's upper extremities.

On December 16, 2002 Dr. Cazden advised that appellant's work-related tendinitis of the upper extremities had resolved and maximum medical improvement was reached on October 17, 2002. He further indicated that appellant had no restrictions.

On December 30, 2003 appellant claimed a recurrence of disability alleging that his condition on or about July 19, 1999 continued to be related to the original work injury and his occupational disease. He noted that he worked limited duty and believed his condition was caused by repetitive motion.[1]

[1] The employing establishment confirmed that appellant worked light duty.

In a January 7, 2004 letter, the employing establishment challenged the claim. It stated that appellant applied for permanent light duty for an off-the-job injury in October 2002 related to his upper extremities. The employing establishment stated that appellant worked modified duty until December 19, 2003, when he was sent home because it was unable to accommodate his nonjob-related restrictions.[2] The record reflects that appellant was provided with a permanent light-duty assignment similar to that of his job-related restrictions.

In a letter dated March 15, 2004, the Office advised appellant that additional factual and medical information was needed. In an April 7, 2004 statement, appellant stated that the problems with his hands started in 1999 and he continued to have the same problems. He indicated that he was put on permanent weight restrictions with a diagnosis of tendinitis in both hands and wrists.

In an April 2, 2004 report, Dr. Dianne Glenn, a Board-certified family practitioner, advised that appellant had been treated since July 1999 for hand pain and diagnosed with repetitive motion injury and/or tendinitis of the hands and wrists. She indicated that a January 2004 electromyogram (EMG) showed mild carpal tunnel of the right hand. Dr. Glenn stated that appellant had been on work restrictions for approximately five years and she did not anticipate significant improvement. A March 27, 2004 note from Anthony Caliendo, a certified physician's assistant, was also provided.

By decision dated April 26, 2004, the Office denied appellant's claim for recurrence of disability on the grounds that the medical evidence failed to establish that the claimed disability was causally related to the accepted work injuries.

On April 30, 2004 appellant disagreed with this decision and requested an oral hearing, which was held February 24, 2005. He stated that he never returned to his regular duty and had continued to work with restrictions following Dr. Maruyama's August 2001 impartial examination. Dr. Maruyama stated that, since 2001, he performed "coding mail" and "call mail" which required him to grab mail, cut it open, bundle it and put it in a tray. Appellant further stated that he stopped work on or about December 5, 2003 as the employing establishment no longer had any light duty available for him. Dr. Maruyama indicated that appellant had no other injuries (work or nonwork related) between December 2002 and December 2003. Appellant further indicated that his December 12, 2003 restrictions from Dr. Glenn were updated restrictions on his work-related injuries.

In a June 12, 2004 report, Dr. Glenn reiterated that appellant was first seen in July 1999 with complaints of dorsal and palmar hand pain, which were worse with repetitive lifting and opening and was diagnosed with repetitive strain injury. She indicated that appellant was next seen in July 2001 and again for several times over the last several years for his bilateral wrist and hand pain. All examinations and x-rays were reported as normal and/or unremarkable even though appellant still had complaints of intermittent bilateral hand pain, worse with certain activities/movements. Dr. Glenn noted that the January 7, 2004 EMG study showed mild right carpal tunnel while the other testing done in December 2003 was unremarkable. She also noted

[2] The employing establishment stated that it sent appellant a letter on July 3, 2002 notifying him that his workers' compensation claim was closed based on Dr. Maruyama's August 2001 impartial examination.

that appellant had been on work restrictions for the last several years. Dr. Glenn opined that appellant could work with minor restrictions and advised that she did not see a surgically treatable problem. Treatment notes of June 21, 2004 indicated normal grip strength, sensory and motor function within normal limits, no point tenderness, full range of motion and no evidence of synovitis. Dr. Glenn's treatment notes from November 4 and December 12, 2003 and January 20, 2004 were also submitted. In her November 4, 2003 treatment note, she assessed hand pain and repetitive strain injury and imposed a 40-pound lifting restriction. In her December 12, 2003 treatment note, Dr. Glenn reported that appellant had numbness in the right long and ring finger which was worse with grasping at work. A decreased sensation was noted along the right long and ring finger and paresthesia was assessed. Appellant was referred to neurology and provided restrictions for grasping. In her January 20, 2004 treatment note, Dr. Glenn advised that appellant's restrictions were provided in accordance to his complaints.

In a January 7, 2004 treatment note, Dr. Jack Sylman, a Board-certified neurologist, advised that EMG and nerve conduction studies showed mild right carpal tunnel syndrome.

In an April 22, 2005 report, Dr. Glenn reiterated that appellant had been seen for hand strain/repetitive motion injury since July 19, 1999 with no reported specific injury other than pain after repeated "lifting and opening." She noted that appellant was seen two to three times a year for the same symptoms and medicine for flare-ups were occasionally needed. Dr. Glenn opined that, after six years, she did not think his symptoms would resolve as long as he maintained his current job. She advised that appellant's symptoms were controlled with the current work restrictions and reported that his examination was unremarkable. Dr. Glenn opined that she believed appellant had the same problem from 1999 and might even go back to 1996, although she did not have such data available.

After review of the hearing transcript, the employing establishment submitted comments dated March 29, 2005. The employing establishment noted that, based on Dr. Maruyama's impartial examination, it had sent appellant a letter on July 3, 2002 notifying him that his workers' compensation claim was closed and he was being returned to full duty. It further noted that, since appellant had permanent light-duty restrictions, it had provided him light-duty assignments similar to the limited-duty assignments he had for his July 19, 1999 job-related injury.[3] The employing establishment further stated that appellant had worked the same light-duty assignment since October 2002 and that he was currently working a permanent light-duty assignment, which he had accepted on July 10, 2004.

By decision dated May 19, 2005, the Office's hearing representative affirmed the April 26, 2004 decision, finding that appellant did not establish that he sustained a recurrence of disability after December 30, 2003 as alleged.

In a May 11, 2006 letter, appellant requested reconsideration and asserted that this was the same condition and injury which was diagnosed in June 1999. Duplicative medical reports,

[3] It noted that the District Reasonable Accommodation Committee (DRAC) found appellant's December 12, 2003 restrictions almost identical to his previous restrictions and determined that he was not qualified within the meaning of the Rehabilitation Act.

previously of record, were submitted along with Family Medical Leave Act (FMLA) documentation.

In a March 6, 2006 report, Dr. Jorge O. Klajnbart, a Board-certified orthopedic surgeon, examined appellant for purposes under the FMLA. He provided an assessment of bilateral wrist arthralgia, right greater than left, secondary to overuse syndrome. Dr. Klajnbart opined that appellant's condition was chronic and indefinite while employed in his current capacity.

By decision dated August 9, 2006, the Office denied modification of its prior decisions denying recurrence.

LEGAL PRECEDENT

A recurrence of disability means the inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or a new exposure to the work environment. This term also means an inability to work that takes place 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[4]

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence establishes that he can perform the limited-duty position, the employee has the burden of proof to establish a recurrence of total disability and that he cannot perform such limited-duty work. As part of this burden of proof, the employee must show a change in the nature or extent of the injury-related condition or a change in nature and extent of the light-duty job requirements.[5] This includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[6] An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.[7]

ANALYSIS

The Office accepted that appellant sustained a bilateral hand strain/sprain on August 31, 1996 and bilateral tendinitis of the hands and wrists on July 19, 1999. In October 2002, appellant was placed on permanent limited-duty assignments. On December 30, 2003 he claimed a recurrence of disability alleging that his hand and wrist conditions were attributed to his work injuries. Appellant stopped work in December 2003 because the employing

[4] 20 C.F.R. § 10.5(x). *See also Philip L. Barnes*, 55 ECAB 426 (2004).

[5] *See John I. Echols*, 53 ECAB 481 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

[6] *Ronald A. Eldridge*, 53 ECAB 218 (2001); *see Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[7] *Patricia J. Glenn*, 53 ECAB 159 (2001).

establishment no longer had light-duty work available for him. He subsequently returned to a permanent light-duty assignment, which the employing establishment stated was not related to his accepted work injuries, but similar in nature to his light-duty assignments for his work-related injury.

The Board initially notes that the record contains an August 3, 2001 report from Dr. Maruyama, an impartial medical specialist, who opined that appellant's work-related residuals had resolved. The Office, however, never issued a decision finding that appellant's work-related residuals had resolved. As such, the employing establishment's reliance on Dr. Maruyama's August 3, 2001 report to find appellant's light-duty assignments on and after October 2002 were based on "nonwork-related" restrictions is not sufficiently supported. Furthermore, as noted above, such light-duty assignments were similar in nature to appellant's light-duty assignments previously provided for his work-related injuries and the subsequent medical evidence indicated a need for continuing work restrictions.

Appellant alleged, and the record establishes that his limited-duty assignment, necessitated by his employment injury, was withdrawn on or about December 19, 2003. Thus, by definition, appellant sustained a recurrence of disability on or about December 19, 2003 when the employing establishment was unable to accommodate his restrictions.[8] While the record reflects that appellant was working a permanent light-duty assignment since July 10, 2004, the record does not contain any information pertaining to how long appellant remained off work due to the employing establishment's inability to accommodate his job restrictions from December 19, 2003 onwards. Thus, the case will be remanded for the development of evidence relevant to the period of disability, if any. After such development as it deems necessary, the Office should issue an appropriate decision in this matter.[9]

CONCLUSION

The Board finds that, although appellant established a recurrence of disability from December 19, 2003 onward, the case is remanded for a determination on the length of disability.

[8] 20 C.F.R. § 10.5(x) (1999). *See Jackie B. Wilson*, 39 ECAB 915, 919 (1988).

[9] Given the disposition of this case, it is not necessary for the Board to evaluate whether the medical evidence showed appellant suffered a worsening of his employment-related condition such that he was no longer able to perform light duty.

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: April 16, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board