United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 06-2033**
	)	**Issued: August 6, 2007**
DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA, Employer	)	

Appearances:
John E. Goodwin, Esq., for the appellant
Office of Solicitor, for the Director

Oral Argument June 12, 2007

DECISION AND ORDER

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

JURISDICTION

On August 22, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' August 30, 2006 merit decision denying his claim for wage-loss benefits. Under 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 the Office properly adjudicated appellant's claim for wage-loss compensation for the period March 24 through April 21, 2006.

FACTUAL HISTORY

On May 16, 2005 appellant, a 50-year-old marine machinery mechanic, filed an occupational disease claim alleging that he had developed carpal tunnel syndrome as a result of duties related to his federal employment. His claim was accepted for right carpal tunnel syndrome. On February 3, 2006 appellant underwent approved surgery for carpal tunnel release, right volar wrist ganglion excision and right elbow surgery related to a previously accepted

condition. Appellant filed a claim for wage-loss compensation, alleging that he was disabled from February 27 through March 10, 2006. The Office paid appellant compensation benefits for this period.[1]

On March 13, 2006 appellant's treating physician, Dr. Brian P. Wicks, a Board-certified orthopedic surgeon, released appellant to work light duty with restrictions, including lifting no more than five pounds with his right hand occasionally; very limited repetitive twisting or gripping with his right hand; and limited squatting and kneeling occasionally. The record reflects that a copy of Dr. Wicks' March 13, 2006 report, which contained his restrictions, was sent by facsimile to the employing establishment at 6:11 p.m. that day.

Appellant filed claims for wage-loss compensation, alleging that he was disabled from March 11 through 24, 2006; from March 27 through April 7, 2006; and from April 10 through 21, 2006. In the employing establishment section of the claim forms, Sonia Farris stated that, after reporting to the injured workers' program on March 13, 2006, appellant was sent to the clinic to be cleared for duty, but never returned. She indicated that work was available on that date and continued to be available.

By letter dated April 11, 2006, the Office informed appellant that the evidence submitted was insufficient to establish his claim. The Office noted that he returned to work on March 13, 2006 and there was no medical evidence of record showing that he was disabled during the relevant period of time. The Office stated that the employing establishment was able to provide work within his restrictions and had tried repeatedly to reach him by telephone. Appellant was advised to submit medical evidence showing that his condition had materially worsened after March 13, 2006.

In a letter dated April 12, 2006, the employing establishment directed appellant to return to work on April 17, 2006. He was advised that he would be sent to the Shipyard Dispensary for a fitness-for-duty recommendation and was asked to provide a medical report explaining why his current medical condition prevented him from working from March 13, 2006 until his return to duty.

The record contains a copy of a letter to appellant from the employing establishment, bearing the date of March 13, 2006. The letter was received by the Office *via* facsimile on April 19, 2006. The letter proposed to offer appellant a limited-duty job assignment as a traffic controller. The duties of the position consisted of monitoring traffic on a pier while construction work was completed nearby. He would be permitted to sit or stand. The duties of the job would not require repetitive twisting or gripping, squatting or kneeling. He was asked to accept or reject the offer within 10 days.

By letter dated April 26, 2006, appellant's representative informed the Office that appellant had accepted the limited-duty job of traffic controller. He stated that within ten minutes of his return to work, he was told that he would be required to perform additional tasks that would keep him walking and standing for more than eight hours. Appellant was also told

[1] Appellant actually received compensation benefits through March 24, 2006.

that, since he went back to work without a suitability letter from the Office, the employing establishment could assign him to any tasks they wished and that he had no recourse.

By letter dated April 26, 2006, the Office informed appellant that it found the position offered to him by the employing establishment on March 13, 2006 to be medically suitable to the work restrictions provided by his physician on March 13, 2006. The Office stated its understanding that appellant had reported for duty on March 13, 2006 and that the limited-duty job was available to him when he left the premises that day. The Office further indicated that appellant's claim would be treated as a claim for recurrence of disability.

On April 26, 2006 appellant's representative disputed the Office's treatment of the claim as a recurrence, contending that entering onto the employing establishment premises for purposes of visiting the dispensary doctor did not constitute a return to work.

By decision dated August 30, 2006, the Office denied appellant's claim for lost wages for the period March 24 through April 21, 2006. The Office found that the evidence was insufficient to establish that appellant was disabled from work or that the employing establishment did not have work available to accommodate his restrictions.

LEGAL PRECEDENT

Office regulations provide:

> "Upon authorizing medical care, the employer should advise the employee in writing as soon as possible of his or her obligation to return to work.… The term 'return to work' as used in this subpart is not limited to returning to work at the employee's normal worksite or usual position, but my include returning to work at other locations and in other positions. In general, the employer should make all reasonable efforts to place the employee in his or her former or an equivalent position….
>
> "(a) Where the employer has specific alternative positions available for partially disabled employees, the employer should advise the employee in writing of the specific duties and physical requirements of those positions." [2]

ANALYSIS

The Board finds that the Office improperly adjudicated appellant's claim for wage-loss compensation for the period March 24 through April 21, 2006. Appellant was paid compensation benefits for disability related to his accepted right carpal tunnel syndrome and approved surgery, which occurred on February 3, 2006. However, the Office's decision was not consistent with the implementing federal regulations in finding that appellant was not entitled to compensation during the time period in question because light duty was available, which appellant refused.

[2] 20 C.F.R. § 10.505.

Once notified by appellant's physician that appellant was able to return to light duty with restrictions, the employing establishment should have provided to appellant, in writing, the physical requirements and duties of the proposed light duty position. The employing establishment contends that it presented a light work offer to appellant on March 13, 2006, which he refused. However, the evidence of record reflects that appellant did not receive a written job offer as required until April 19, 2006.

There is no evidence that, as of March 13, 2006, appellant was given a written light work description in compliance with section 10.505 of the regulations. By letter dated March 13, 2006 appellant's treating physician released appellant to work light duty on that date with restrictions. At 6:11 p.m., on that date, the employing establishment received, by facsimile, a copy of Dr. Wicks' March 13, 2006 report, which contained his restrictions. As the record supports that the employing establishment received Dr. Wicks' letter after the close of business on March 13, 2006, it was not possible for appellant to have received a an oral or written job offer earlier that same day based upon his physician's restrictions.

On April 11, 2006 the Office informed appellant that the evidence submitted was insufficient to establish a recurrence of disability, indicating that the employing establishment was able to provide work within his restrictions and the employer had tried repeatedly to reach him by telephone. By letter dated April 12, 2006 the employing establishment directed appellant to return to work on April 17, 2006, advising him that he would be sent to the Shipyard Dispensary for a fitness-for-duty evaluation. The Board notes that no reference was made by the Office or the employing establishment to any written work description. Not until April 26, 2006 was appellant notified by the Office that it had received a copy of a "March 13, 2006" work description. The only logical conclusion that can be drawn from this record is that, although this work description is dated March 13, 2006, it may have been prepared at a later date. In its April 26, 2006 letter, the Office did not state that appellant had been provided with a work description, but rather indicated that it considered that limited-duty work was available to him on March 13, 2006. As noted above, to be consistent with the regulations, the light duty description should be in writing.

In this case, the record establishes that appellant did not receive a written description of the light duty position until he received the Office's letter dated April 26, 2006. Accordingly, neither he nor his physician could have determined whether the job was within his medical restrictions prior to that time. In this case the fails to show that a written light work description was made available to appellant prior to April 26, 2006.

CONCLUSION

The Board finds that the Office improperly adjudicated appellant's claim for wage-loss compensation for the period from March 24 through April 21, 2006.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2006 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 6, 2007
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