



## **FACTUAL HISTORY**

On August 9, 2004 appellant, then a 57-year-old security screener filed a traumatic injury claim (Form CA-1), alleging that on July 19, 2004 he was screening luggage and lifting bags onto an airline belt and injured his right wrist and hand. Appellant did not stop work.<sup>1</sup>

Appellant came under the treatment of Dr. R. Tim Morris, Board-certified in occupational medicine, who treated him from July 16 to September 20, 2004 for bilateral wrist tendinitis. Dr. Morris noted complaints of decreased strength of the right arm and diagnosed bilateral arm tendinitis. On September 20, 2004 he advised that appellant was off work from September 18 to 20, 2004 and placed on full-time modified duty from September 21 to 27, 2004 with no lifting greater than one pound, limited use of both hands as tolerated and use of a wrist splint. Nerve conduction studies dated September 14, 2004 revealed “very mild sensory polyneuropathy, mildly reduced sensory amplitudes in bilaterally upper extremities, normal motor responses, no electrophysiologic evidence of median and ulnar neuropathies on either side or right brachial plexopathy and no evidence of right cervical radiculopathy or motor axon loss by needle EMG [electromyogram] of the right upper extremity.”

The Office denied appellant’s claim on November 12, 2004. He requested an oral hearing which was held on October 27, 2005. Appellant submitted a report from Dr. Michael G. Dulske, a Board-certified orthopedic surgeon, dated September 27, 2004, who noted a history of injury and diagnosed right cubital tunnel syndrome. Findings on physical examination included a full range of motion of the wrists for flexion, extension, supination and pronation, negative ulnar grind test, positive Tinel’s sign at the cubital tunnel and slightly diminished grip strength and abduction strength. Dr. Dulske noted that x-rays revealed no significant acute abnormality. On September 27, 2004 he advised that appellant could return to work full-time modified duty with restrictions of no repetitive activity or lifting greater than one pound. In a report dated October 4, 2004, Dr. Dulske noted a history of injury and diagnosed right cubital tunnel syndrome. He noted with a checkmark “yes” that appellant’s condition was caused or aggravated by an employment activity. Dr. Dulske returned appellant to full-time modified duty with no repetitive activity and no lifting over one pound. Appellant also submitted a report from Dr. Morris dated March 2, 2005, who returned him to regular duty without restriction.

In a decision dated December 5, 2005, the hearing representative set aside the November 12, 2004 decision and accepted appellant’s claim for right cubital tunnel syndrome and bilateral tendinitis of the wrists. He advised appellant to submit a claim for compensation (Form CA-7) to establish any resulting disability from work causally related to his employment injury.

The employing establishment approved appellant’s request for limited duty and advised that he could continue to work 32 hours per week with restrictions on lifting no more than one pound. It noted that appellant requested a change in work schedule to part time, 64 hours biweekly, effective August 22, 2004. In a letter dated April 26, 2005, the employing

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<sup>1</sup> Appellant filed a separate claim for a back injury which occurred on May 13, 2006, File No. 06-216548. The Office accepted the claim for a lumbar sprain. This claim is not before the Board at this time.

establishment advised that appellant's work schedule was changed effective August 22, 2004 to part time at his request. Appellant noted that he volunteered to convert from a part-time screener position to a full-time screener position. In a Form 50 dated June 15, 2005, he requested a change in work schedule to full-time effective June 26, 2005.

On January 17, 2006 appellant filed a CA-7, claim for compensation for intermittent disability for the period July 20, 2004 to March 5, 2005. He requested four hours of leave without pay for the period July 20, 2004 to March 2, 2005.<sup>2</sup> Appellant noted that, during this period, he worked part time four hours per day and was partially disabled for four hours per day due to his work-related injury. He indicated on a time analysis form that the employing establishment reduced his work hours due to his traumatic injury.

In a letter dated May 5, 2006, the Office requested that appellant submit medical evidence establishing his disability for the claimed period.

In an August 16, 2004 report, Dr. Morris noted appellant's complaints of decreased grip strength, numbness and poor control of his right arm. Dr. Morris diagnosed bilateral arm symptoms, possible tendinitis and advised that appellant was off work August 14 to 20, 2004 with a tentative return to regular-duty scheduled on August 21, 2004. In a work status report dated August 24, 2004, he noted that appellant could work eight hours per day subject to restrictions of no driving a vehicle, no grasping or manipulation and lifting limited to five pounds. In reports dated March 1 to May 3, 2006, Dr. Dulske treated appellant for persistent pain in the ulnar aspect of the wrist with difficulty grasping objects. He diagnosed right wrist probable triangular fibrocartilage complex tear (TFCC) with cubital tunnel syndrome. In an operative report dated May 23, 2006, he performed a right wrist arthroscopy, debridement of the TFCC tear and diagnosed right wrist TFCC tear and right cubital tunnel syndrome.<sup>3</sup>

By decision dated June 14, 2006, the Office denied appellant's claim for compensation for partial disability, four hours per day, for the period September 26, 2004 to March 2, 2005.<sup>4</sup> It found that the medical evidence was not sufficient to establish that appellant's partial disability was due to his accepted work injury. The Office noted that the evidence did not establish the medical necessity for appellant to work only four hours per day. Rather, appellant's treating physician returned him to work full time with driving and lifting restrictions and that appellant requested part-time work as of August 24, 2004.

Appellant submitted statements dated November 30, 2004 and June 27, 2006. He requested part-time work on August 24, 2004 because of his medical condition and returned to a

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<sup>2</sup> Documentation submitted with the January 17, 2006 CA-7 does not indicate that appellant had wage loss from March 3 to 5, 2005.

<sup>3</sup> The Office authorized this surgery on June 14, 2006.

<sup>4</sup> The record reflects that the Office has not issued a final decision on appellant's request for compensation for the period July 20 to September 25, 2004. Therefore, the Board does not have jurisdiction over the matter. *See* 20 C.F.R. § 501.2(c).

full-time position on March 5, 2005 due to financial difficulties. On June 19, 2006 appellant requested an oral hearing which was held on October 6, 2006.

A March 29, 2006 magnetic resonance imaging (MRI) scan of the right wrist revealed bone marrow edema along the radial margin of the distal ulnar and a defect within the central portion of the triangle fibrocartilage which represent a focal tear. An August 1, 2006 MRI scan of the lumbar spine revealed minimal degenerative changes demonstrated at L5-S1 level with a small annular ligament tear. Appellant submitted reports dated September 11 and October 25, 2006, from Dr. D.K. Donohoe, a Board-certified orthopedic surgeon, who saw him for degenerative disc disease at L5-S1. Reports from Dr. Ronald B. Williams, a Board-certified anesthesiologist, dated October 25 and November 8, 2006, noted a history of injury and diagnosed lumbar facet arthropathy and S1 joint arthropathy.

In a decision dated December 14, 2006, the hearing representative affirmed the June 14, 2006 decision.

### **LEGAL PRECEDENT**

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.<sup>5</sup> Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.<sup>6</sup> The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.<sup>7</sup>

### **ANALYSIS**

The Office accepted appellant's claim for bilateral wrist tendinitis and right cubital tunnel syndrome. The Board finds that the medical evidence submitted in support of his wage-loss compensation claim for partial disability, four hours per day, for the period September 26, 2004 to March 2, 2005, is insufficient to establish that appellant's disability was caused by the accepted employment injury.

On August 24, 2004 Dr. Morris noted that appellant could work eight hours per day with no driving a vehicle or grasping and manipulation and lifting restricted to five pounds. On September 20, 2004 he advised that appellant was placed on full-time modified duty from September 21 to 27, 2004 with no lifting greater than one pound, limited use of both hands as tolerated and use of a splint. Dr. Morris noted that appellant was experiencing symptoms of bilateral tendinitis. However, he did not support that he was restricted to part-time work for four hours a day from September 26, 2004 to March 2, 2005 due to the July 19, 2004 employment injury. Rather, he advised that appellant could return to work full time subject to restrictions.

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<sup>5</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>6</sup> *Id.*

<sup>7</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

The medical evidence from Dr. Morris does not support appellant's claim of partial disability. Therefore, these reports are insufficient to meet appellant's burden of proof.<sup>8</sup>

In reports dated September 27 to October 4, 2004, Dr. Dulske noted that appellant experienced symptoms of right wrist and hand pain. He diagnosed right cubital tunnel syndrome and possible triangular fibrocartilage complex tear. However, Dr. Dulske did not address whether appellant had any employment-related disability from September 26, 2004 to March 2, 2005 due to the July 19, 2004 employment injury.<sup>9</sup> He advised that appellant could return to work full time subject to restrictions on no repetitive activity or lifting greater than one pound. This medical evidence does not support appellant's claim of partial disability.

The record indicates that on August 24, 2004 appellant requested a part-time limited duty position for 32 hours per week. He requested a change in work schedule to part time effective August 22, 2004, although appellant's treating physician found that he could return to work full-time subject to restrictions. The medical evidence of record fails to establish that it was the residuals of appellant's employment injury which prevented him from working full time for the period September 26, 2004 to March 2, 2005.

The remainder of the medical evidence, including reports from Dr. Dulske, Dr. Donohoe and Dr. Williams failed to provide an opinion on the causal relationship between the claimed period of partial disability and the accepted employment injury. Consequently, this medical evidence does not establish partial disability due to appellant's employment injury of July 19, 2004.

Furthermore, the evidence does not establish that the employing establishment removed appellant's full-time light-duty position or that his full-time light-duty requirements changed. On August 24, 2004 appellant voluntarily requested a change to a part-time limited-duty position subject to restrictions which became effective August 22, 2004. The record supports that appellant voluntarily changed his full-time light-duty position with the employing establishment to a part-time light-duty position although full-time light duty remained available to him.

### **CONCLUSION**

The Board finds that appellant has failed to establish that his condition during the claimed period of disability is causally related to the accepted employment injury of July 19, 2004.

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<sup>8</sup> The evidence also does not show that there was any wage loss for the period claimed that was incidental to treatment for an accepted injury. See 5 U.S.C. § 8103(a); *Daniel Hollars*, 51ECAB 355 (2000).

<sup>9</sup> See *Jimmie H. Duckett*, *supra* note 8.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 14 and June 14, 2006 are affirmed.

Issued: November 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