

**United States Department of Labor
Employees' Compensation Appeals Board**

L.P., Appellant)
and) Docket No. 08-507
DEPARTMENT OF THE ARMY, PUBLIC) Issued: August 12, 2008
WORKS, OPERATIONS & MAINTENANCE)
DIVISION, FORT DRUM, NY, 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 December 10, 2007 appellant filed an appeal from a November 26, 2007 merit decision of the Office of Workers' Compensation Programs. 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 established that he had any employment-related disability beginning January 26, 2007.

FACTUAL HISTORY

On March 14, 2006 appellant, then a 63-year-old seasonal motor vehicle operator, sustained a right hand crush injury and right metacarpal fracture of the ring finger when a dump truck door fell.¹ He stopped work that day and underwent surgical repair by Dr. Arthur C.

¹ Appellant's appointment was not to exceed March 26, 2006.

Peckham, a Board-certified orthopedic surgeon. Appellant received continuation of pay and wage-loss compensation.

By report dated May 17, 2006, Dr. Peckham advised that appellant could return to work eight hours a day with a 10-pound lifting restriction. He referred appellant to Dr. Walter Short, Board-certified in orthopedic hand surgery. In a July 13, 2006 report, Dr. Short noted the history of injury and appellant's complaint that he had incomplete mobility and stiffness of the right hand with strenuous use. Examination of the right hand revealed mild soft tissue swelling and a flexion contracture of the ring finger with some shortening of the fourth metacarpal and a slight flexion contracture of the index, middle and little fingers. Dr. Peckham diagnosed crush injury of the hand. In a July 26, 2006 treatment note, he had noted appellant's flexion contracture. Dr. Peckham opined, "I see no reason why [appellant] cannot return to full activities where he can use the hand for anything and everything that he wants to. I do not think he is going to do harm. If anything, vigorous work might actually improve his range of motion."

On August 24, 2006 the Office informed appellant that it proposed to terminate his wage-loss compensation on the grounds that Dr. Peckham found that he was no longer disabled from work. The case would remain open for medical treatment. In an October 2, 2006 treatment note, Dr. Peckham advised that appellant had no increase in range of motion with a fixed deformity, noting that his ring and little finger stopped 0.5 centimeters from his palm and that, because of this, he did not have a good solid grip. He stated that appellant did not have any pain although he had noticed when painting with a roller, his decreased grip put extra stress on the wrist. Dr. Peckham stated that appellant would like to return to work driving heavy equipment, advising that, "if he feels that he can continue to get along with the hand as it is, then he probably will just live with it. On the other hand, if he feels that he has significant difficulty doing his job ... then he may wish to proceed with surgery."

By decision dated November 8, 2006, the Office finalized the termination, effective that day. The cover letter indicated that wage-loss benefits alone were terminated, but the attached decision indicated that both medical and wage-loss compensation were terminated. On November 13, 2006 appellant returned to a seasonal position as a motor vehicle operator. The appointment was not to exceed March 17, 2007. On November 20, 2006 appellant requested a hearing.

The employing establishment submitted an accident report dated January 19, 2007, indicating that appellant backed a truck snowplow into two vehicles and was cited for backing without a ground guide. An employing establishment memorandum dated January 23, 2007 recommended that he be terminated.

On January 25, 2007 appellant called the Office and was informed that his case remained open for medical benefits only. He resigned from the employing establishment that day, declaring that he was resigning due to the March 14, 2006 crush injury. Appellant stated, "I find it difficult to perform my duties as I am in constant pain when using my right hand. I am having a great deal of difficulty compensating for the pain and stiffness in my hand."

In a January 29, 2007 treatment note, Dr. Peckham advised that appellant reported that he could not work because it was cold, that he could not lubricate his gear and had trouble getting

up in and out of vehicles because of hand pain. He noted that appellant continued to have decreased range of motion with a flexion contracture and opined that he was not sure his condition could be improved. Dr. Peckham concluded, "as such, because of the amount of discomfort [appellant] has at this time, I think he should remain off work" and recommended that he return to see Dr. Short. In an attending physician's report dated January 31, 2007, he diagnosed open fracture of the metacarpal shaft, checked the yes box, indicating that the condition was employment related and advised that appellant was totally disabled from January 29 until March 1, 2007. On a duty status report, Dr. Peckham advised that appellant was totally disabled.

By letter dated February 1, 2007, the employing establishment controverted the claim, advised that appellant was facing a disciplinary removal when he resigned. In statements dated January 29 and 30, 2007 statement, supervisors Donald Paige, Jr., Keith Philo, and David J. Gerrish advised that appellant had not complained about his hand prior to the January 19, 2007 motor vehicle accident.

On March 8, 2007 appellant filed a Form CA-2a recurrence of disability claim, alleging that he sustained a recurrence of disability on January 26, 2007 because he had difficulty entering and exiting large runway sweepers and plows due to constant pain and stiffness in the ring and little finger of his right hand. He stated that he had difficulty gripping the handrail when getting into large snow plow equipment, had pain and difficulty manipulating controls, that the grip on his right hand was limited due to pain and he could not make a grip with his right hand. The employing establishment noted that appellant had never notified a supervisor of any problems with his hand.

By letter dated April 9, 2007, the Office informed appellant that his eligibility for wage-loss and medical benefits had been terminated and his recurrence claim would not be adjudicated. In a May 24, 2007 treatment note, Dr. Peckham noted that appellant, who is right-hand dominant, continued to have difficulty gripping objects such as hammers due to the flexion contracture of his right ring and little fingers, causing diminished grip strength. He advised that appellant had 5+ strength of the two fingers but only 4+ grip and concluded that he had a "significant degree" of permanent loss of use of the right hand but through surgery might improve his condition and referred him to a hand surgery.

A telephonic hearing was held on May 31, 2007. Appellant testified that it was hard climbing in the truck because of loss of grip strength and that the cold bothered him. He advised that he had not worked since January 2007 but was retired from the State of New York and had not seen a hand surgeon because he was told that his case was closed. In a statement received on June 25, 2007, Mr. Gerrish reiterated that appellant's dismissal was going forward when he resigned and that he had not reported any complaints regarding his hand injury to a supervisor. The employing establishment also submitted appellant's preemployment physical dated October 11, 2006 in which he noted that he did not have a physical impairment that would interfere with the full performance of his duties and Captain Paul T. Ciechoski, a physician's assistant, advised that appellant passed his preemployment physical.

By decision dated August 23, 2007, an Office hearing representative remanded the case to the Office. He noted that, in his July 26, 2006 report, Dr. Peckham only released appellant to

work conditionally and it was therefore inappropriate for the Office to terminate appellant's wage-loss benefits on a permanent basis on November 8, 2006. The Office hearing representative further found that the Office properly found that appellant was not entitled to wage-loss compensation for the period November 13, 2006 through January 26, 2007 when he worked but that the Office had improperly informed him that he was barred from future wage-loss compensation. The case was remanded to the Office to determine if appellant sustained a recurrence of disability on January 26, 2007 that would entitle him to wage-loss benefits and to reinstate his medical benefits.²

On October 23, 2007 the Office informed appellant of the evidence needed to support his recurrence claim. This was to include his detailed description of the specific activities he was engaged in when he sustained the recurrence on January 26, 2007. Appellant was to provide a physician's report with detailed medical findings before and after the recurrence and a firm diagnosis. In reports dated November 7, 2007, Dr. Peckham advised that all appellant's physical findings were directly related to his original injury, that he had not had a recurrence and that he had a permanent partial impairment of a "fairly severe degree." He concluded that extensor tendon surgery might provide some improvement.

By decision dated November 26, 2007, the Office found that appellant did not sustain a recurrence of disability on January 26, 2007.

LEGAL PRECEDENT

A recurrence of disability means an 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.³ A recurrence of medical condition means 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.⁴

Section 10.5(f) of Office regulations defines the term "disability" as the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Federal Employees' Compensation Act.⁶ When however the medical evidence establishes that the

² The hearing representative further found that a one-time visit to Dr. Short should be approved.

³ 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

⁴ *Id.* at § 10.5(y); *see Mary A. Ceglia*, 55 ECAB 626 (2004).

⁵ *Id.* at § 10.5(f); *see W.P.*, 59 ECAB ____ (Docket No. 08-202, May 8, 2008).

⁶ *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, the employee is entitled to compensation for any loss of wage-earning capacity resulting from the employment injury.⁷ Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁸

The employee 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 and should submit a detailed medical report.⁹ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.¹⁰ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹¹ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹³

ANALYSIS

The Board finds that appellant has not established that his claimed disability beginning January 26, 2007 was caused by the accepted right hand condition. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that

⁷ *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

⁸ *Tammy L. Medley*, 55 ECAB 182 (2003).

⁹ 20 C.F.R. § 10.404(b).

¹⁰ *Jennifer Atkerson*, 55 ECAB 317 (2004).

¹¹ *Id.*

¹² *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹³ *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

conclusion with sound medical reasoning.¹⁴ Medical opinion evidence must be of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁵

In reports dated May 24 and November 7, 2007, Dr. Peckham advised that appellant continued to have a flexion contracture with loss of use of the right hand with a significant permanent partial impairment and surgery might be helpful, but he did not provide an opinion regarding the origin of the diagnosed condition. The Board has long held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁶ These reports are therefore insufficient to meet appellant's burden of proof. While in reports dated January 29 and 31, 2007, Dr. Peckham concluded that appellant could not work, these reports also are of diminished probative value. In his January 29, 2007 report, he noted appellant's complaints that he could not work due to the cold, could not lubricate his gear and had trouble getting in and out of vehicles and provided physical findings of decreased range of motion with a flexion contracture. Dr. Peckham concluded that, because of the discomfort appellant had, he should remain off work. In a January 31, 2007 report, he advised that appellant was totally disabled from January 29 to approximately March 1, 2007. In these reports, there is no indication that Dr. Peckham was aware of the physical requirements of appellant's job or the actual duties he performed as a motor vehicle operator and he did not explain why the physical findings of decreased range of motion and flexion contracture kept appellant from working. The Board therefore finds that his opinion that appellant should remain off work is of insufficient rationale to establish that appellant was totally disabled from his seasonal position as a motor vehicle operator beginning January 26, 2007.¹⁷ As appellant did not submit medical evidence sufficient to establish his claim, he did not meet his burden of proof to establish that he sustained a recurrence of total disability on January 26, 2007 and the Office properly denied his claim.¹⁸ The case remains open for medical benefits.

The Board however notes that, by decision dated August 23, 2007, an Office hearing representative reversed the Office's termination of wage-loss compensation effective November 8, 2006. Appellant did not return to work until November 13, 2006. He would therefore be entitled to wage-loss compensation for this brief period. Furthermore, on appeal

¹⁴ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁵ *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹⁶ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁷ *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹⁸ *Tammy L. Medley*, *supra* note 8.

appellant contends and the record supports, that he has a permanent partial impairment of the right hand, although further surgery may be contemplated.¹⁹ The record before the Board does not contain a schedule award claim.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a recurrence of total disability on January 26, 2006. Appellant is entitled to wage-loss compensation for the period November 8 to 12, 2006, his claim remains open for medical benefits and he has the right to file a schedule award claim.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs November 26, 2007 be affirmed.

Issued: August 12, 2008
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

¹⁹ Under 5 U.S.C. § 8107(a) a compensation schedule was enacted, providing that, if there is permanent disability involving the loss or loss of use of a member or function of the body or involving disfigurement, the employee is entitled to basic compensation for the disability. As interpreted by the Office and Board, the "permanent disability" described under this section is known as "permanent impairment." *Carol T. Collins (Harold Turner)*, 54 ECAB 417 (2003).