United States Department of Labor
Employees' Compensation Appeals Board

G.F., Appellant	)	
and	)	**Docket No. 08-616**
	)	**Issued: June 17, 2008**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 26, 2007 appellant filed a timely appeal from the July 23 and October 12, 2007 decisions of the Office of Workers' Compensation Programs which denied his recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant sustained a recurrence of disability commencing January 30, 2007 causally related to his accepted bilateral carpal tunnel condition.

FACTUAL HISTORY

On March 19, 2001 the Office accepted appellant's November 16, 2000 occupational disease claim for bilateral carpal tunnel syndrome, for which he underwent surgical correction on

April 12, 2001.[1] Appellant returned to limited-duty work on April 30, 2001 and received appropriate benefits. He was released to return to regular duty as a part-time distribution clerk on May 21, 2001. In a May 25, 2001 report, Dr. Robert E. Tucker, an attending orthopedic surgeon, noted that appellant experienced discomfort with his right thumb following the surgical release surgery and also reported numbness in his right long finger. He found full range of motion of the fingers and thumb, noting that appellant had a right trigger thumb often associated with carpal tunnel syndrome. Dr. Tucker injected the right thumb flexor tendon sheath and advised that appellant could continue with regular duty.

On July 11, 2001 Dr. Tucker reviewed the history of appellant's carpal tunnel condition from 1989, stating that by November 13, 2000 diagnostic studies showed unobtainable sensory and motor latencies on the right side. Bilateral carpal tunnel releases were performed from which appellant improved with some numbness on the right side and findings consistent with a right trigger thumb. Following treatment with a steroid injection, appellant had resolution of the triggering. Dr. Tucker advised that appellant had returned to regular duty. Appellant did not report pain on either side and exhibited a full range of motion of both wrists. There was no thenar atrophy but some decreased sensation in the median nerve distribution on the right side. Phalen's tests were negative bilaterally but a Tinel's sign was present in the right carpal tunnel. Dr. Tucker rated appellant's impairment as 10 percent of the right wrist and 5 percent of the left wrist and he had reached maximum medical improvement.[2]

On February 14, 2002 appellant came under the treatment of Dr. David B. Fagan, an orthopedic surgeon, for continuing discomfort to the right hand. Dr. Fagan obtained a history that, several weeks prior, appellant's right thumb started triggering again and became painful. He noted that there was obvious triggering, for which he provided a cortisone injection. Dr. Fagan stated that the diagnostic tests prior to surgery revealed severe nerve damage and that appellant still had residual problems with his right hand.

On March 23, 2007 appellant filed a claim for a recurrence of disability commencing January 30, 2007. He indicated that his right hand had not fully recovered following surgery. Appellant submitted a February 26, 2007 treatment note from Dr. Stephen M. Benz, an orthopedic surgeon in practice with Dr. Fagan. Dr. Benz noted that he had referred appellant for diagnostic studies of the right upper extremity, due to numbness in his thumb, index and middle fingers. He noted that appellant equated "this with a lot of increased work that he is doing." Dr. Benz reported that diagnostic testing showed severe right carpal tunnel syndrome as well as

[1] With his claim, appellant submitted medical evidence which first diagnosed carpal tunnel syndrome in March, 1989. He was placed on physical restrictions and limited part-time work. The record documents that appellant's right hand has an amputation of the right index finger at the proximal interphalangeal joint arising from a childhood injury. He had a prior appeal to the Board in Docket No. 06-1638. In an October 17, 2006 decision, the Board affirmed the denial of his claim for leave buyback for intermittent days between April 5 and June 14, 2005.

[2] On February 6, 2002 appellant filed a claim for a schedule award. Following development of the medical evidence, the Office granted schedule awards on June 28, 2002 for six percent impairment of the right upper extremity and two percent impairment of the left upper extremity. Following appellant's request for reconsideration, the Office denied modification of the schedule award decision on November 21, 2002. Appellant again sought reconsideration on November 23, 2003, which was denied by the Office in a December 29, 2003 decision. No appeal was taken from these decisions.

acute denervation potential in the right abductor pollicus brevis. On examination, a positive Tinel's sign was found. Dr. Benz provided a cortisone injection. He advised that appellant's work activities had a major role in the development of this carpal tunnel syndrome "and I do think we are dealing with a new process." Dr. Benz returned appellant to work with a restriction of no use of the right hand and no lifting greater than five pounds.

On May 25, 2007 the Office advised appellant of the definition of a recurrence of disability. It noted that it was his responsibility to submit sufficient medical evidence to establish that the treatment of his right thumb was due to his accepted condition. If appellant had a new injury or exposure, he was advised to file a notice of new injury. In response, he submitted a listing of medications he had been prescribed and advised the Office that he underwent a carpal tunnel release surgery on his right wrist on April 20, 2007. Following surgery in 2001, appellant stated that his left hand had been fine but that weakness soon returned to his right hand. During the next several years, he used anti-inflammatory medications to relieve discomfort. Appellant addressed his duties at the post office, noting that during the prior year there was a reduction in staff which increased his workload. He also underwent surgery for a left shoulder condition.

In a July 23, 2007 decision, the Office denied appellant's recurrence of disability claim. It found that the medical evidence was not sufficient to establish that his disability for work or current right hand condition was causally related to his accepted carpal tunnel condition. The Office noted that the record was largely devoid of medical evidence for the period October 2002 through February 2007.

Appellant requested reconsideration and submitted a February 15, 2007 treatment note from Dr. Benz who addressed appellant's right-sided hand pain, noting that appellant attributed his condition to work which required more lifting and pushing with his right side. On examination, Dr. Benz found an essentially negative Phalen's sign with intact two-point discrimination but noted that appellant complained of carpal tunnel symptoms. He advised that diagnostic studies would be obtained. An attached prescription note referred appellant for diagnostic tests to rule out carpal tunnel. Copies of diagnostic tests obtained on February 21 and April 13, 2007 were also submitted together with the April 20, 2007 operative report pertaining to the right carpal tunnel release. The postsurgical treatment records of Dr. Benz noted that sutures were removed and there was some tingling sensation in the right hand.

In an October 12, 2007 decision, the Office denied modification of the July 23, 2007 denial of appellant's claim.

LEGAL PRECEDENT

The Office's implementing federal regulations define a recurrence of disability as 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] To establish a

[3] 20 C.F.R. § 10.5(x). *See Cecelia M Corley*, 56 ECAB 662 (2005).

recurrence of disability, a claimant must establish that he experienced a spontaneous material change in the employment-related condition without an intervening cause.[4]

A claimant's burden 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 condition is causally related to the employment injury.[5] Whether a particular injury causes an employee to be disabled for work and the duration of any disability are medical issues to be established by probative and substantial medical evidence.[6]

ANALYSIS

Appellant's claim was accepted by the Office for bilateral carpal tunnel syndrome for which he underwent surgery on April 12, 2001. He was subsequently released to return to his regular part-time duties as a distribution clerk. On March 23, 2007 appellant filed a claim for a recurrence of disability commencing January 30, 2007. He has the burden of proof to establish that he experienced a spontaneous change in his accepted condition caused by his accepted condition. The Board finds that the evidence of record does not establish that appellant's disability commencing January 30, 2007 and need for surgery on April 20, 2007 was due to a recurrence of his accepted bilateral carpal tunnel condition.

The medical evidence submitted in support of appellant's claim was provided by Dr. Benz, an attending physician, who noted that appellant returned for treatment in 2007, complaining of numbness and discomfort in the right thumb, index and middle fingers. However, rather than noting a spontaneous change in appellant's accepted condition, Dr. Benz stated that appellant attributed his condition to "a lot of increased work that he is doing." He noted that appellant described more lifting and pushing with his right side. Additional diagnostic studies were obtained which revealed severe right carpal tunnel syndrome with denervation in the right abductor pollicus brevis. Dr. Benz advised that appellant's work activities had a major role in the development of this carpal tunnel syndrome, which he believed was a new process. In response to an Office inquiry, appellant noted that he had done well following surgery in 2001, but noted that his right hand numbness and weakness had returned. He stated that, due to staff reductions at work, his workload had increased and that he was required to do additional lifting and moving mail as a distribution clerk.

The evidence of record does not establish that appellant's right carpal condition in 2007 is a recurrence of his accepted employment injury. Rather than noting a spontaneous change in his medical condition, appellant pointed to increased work duties after his return to work in 2001 as the cause of his medical condition. His increased duties in 2005 and 2006 constitute new exposures to the work environment as the cause of his medical condition, a fact also noted by Dr. Benz. Rather than a recurrence of disability, the Office advised appellant that he could

[4] *See Phillip L. Barnes*, 55 ECAB 426 (2004).

[5] *See Mary A. Ceglia*, 55 ECAB 626 (2004).

[6] *See Tammy L. Medley*, 55 ECAB 182 (2003).

submit a claim of new injury.[7] For this reason, the Office properly denied his claim for a recurrence of disability commencing January 30, 2007.

CONCLUSION

The Board finds that appellant has not established that he sustained a recurrence of disability causally related to his accepted bilateral carpal tunnel syndrome.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 12 and July 23, 2007 be affirmed.

Issued: June 17, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[7] The Board notes that the holding in this case does not preclude appellant from going forward with a new injury claim.