United States Department of Labor
Employees' Compensation Appeals Board

E.W., Appellant	)	
and	)	**Docket No. 07-1808**
	)	**Issued: March 18, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 27, 2007 appellant, through his attorney, filed an appeal from a July 25, 2006 decision of the Office of Workers' Compensation Programs denying his claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.[1]

ISSUE

The issue is whether appellant has established that he sustained a recurrence of disability from November 1, 2005 to April 1, 2006 in the performance of duty.

[1] Appellant submitted additional evidence following issuance of the July 25, 2006 decision. The Board may not review evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant did not appeal a December 6, 2006 decision approving an attorney's fee request. He approved the requested fee.

FACTUAL HISTORY

The Office accepted that on or before December 2, 1996 appellant, then a 32-year-old city letter carrier, sustained an overuse syndrome of both wrists and a sprained ligament in his left wrist. It later accepted triangular fibrocartilage complex of the left wrist, left ulnar neuropathy and bilateral wrist tenosynovitis.[2]

Appellant performed light-duty work intermittently through October 2000. The Office accepted a recurrence of disability beginning November 4, 2000. Appellant returned to work on June 27, 2001 in a full-time, limited-duty position as a modified letter carrier. He performed sedentary clerical duties with lifting limited to 10 pounds. The Office obtained a February 26, 2003 second opinion report from Dr. Donald F. Leatherwood, II, a Board-certified orthopedic surgeon, who opined that appellant could perform the duties of the modified letter carrier position.

By decision dated March 27, 2002, the Office determined that the modified letter carrier position appellant had performed since June 27, 2001 properly represented his wage-earning capacity. The Office reduced appellant's wage-loss compensation to zero as his actual wages met or exceeded the wages of the job he held when injured.

In a May 22, 2002 report, Dr. Scott M. Fried, an attending osteopath and Board-certified orthopedic surgeon, opined that the accepted wrist conditions prevented appellant from working full time. On examination, he found bilaterally positive ulnar, medial and radial nerve tests and a markedly positive right ulnar grind test. Dr. Fried diagnosed bilateral ulnar abutment syndrome with involvement of the triangular fibrocartilage complex, median neuropathy of both wrists, radial neuropathy of the forearms and a bilateral repetitive strain injury secondary to work factors. He stated that appellant could drive up to one hour. Dr. Fried renewed work restrictions in reports through September 17, 2003.[3]

Appellant stopped work on January 3, 2003. He asserted that the employing establishment assigned him substantial driving which aggravated his wrists.

In a November 7, 2003 report, Dr. Fried noted permanent restrictions against repetitive gripping with either hand and lifting over 12 pounds. He obtained a February 5, 2004 evaluation demonstrating that appellant could perform light work, with lifting up to 20 pounds and no firm grasping, pushing or pulling with either hand. Dr. Fried submitted periodic reports through May 11, 2005 noting worsening median, ulnar and radial neuropathies and left shoulder

[2] In an August 5, 2004 report, Dr. Michael M. Cohen, an attending Board-certified neurologist, diagnosed bilateral brachial plexitis attributable to work factors. On March 4, 2005 the Office denied brachial plexitis as there was no medical evidence prior to August 2004 that this condition was related to work factors occurring on or before December 2, 1996.

[3] April 26 and October 23, 2003 functional capacity evaluations reviewed by Dr. Fried showed that appellant could perform light-duty work. Electromyography (EMG) and nerve conduction velocity (NCV) studies performed for Dr. Fried on June 17, 2003 and May 3, 2004 showed bilateral brachial plexus neuropathy, bilateral ulnar nerve segment neuropathy and left radial nerve segmental neuropathy at the elbow.

tendinitis. He found appellant disabled for work from October 2003 onward due to the accepted upper extremity conditions.

Appellant filed claims for compensation (Form CA-7) for the period January 3, 2003 to May 20, 2005.[4] In a May 13, 2005 letter, the Office advised appellant of the additional medical and factual evidence needed to support his claim. The Office instructed appellant to file a formal claim for recurrence of disability.

On June 9, 2005 the Office obtained a second opinion report from Dr. Robert A. Smith, a Board-certified orthopedic surgeon. He diagnosed chronic bilateral wrist sprains caused by work factors. Dr. Smith opined that appellant could perform full-time sedentary duty with no repetitive upper extremity motions.

Dr. Fried submitted periodic reports holding appellant off work from June 22 through September 21, 2005, when he released appellant to light duty.[5]

The Office then found a conflict of medical opinion between Dr. Fried, for appellant and Dr. Smith, for the government, regarding appellant's work capacity. In an October 4, 2005 letter, the Office referred appellant, the medical record and a statement of accepted facts to Dr. Edward J. Resnick, a Board-certified orthopedic surgeon, for an impartial medical examination. Dr. Resnick submitted a November 1, 2005 report finding no neurologic or orthopedic abnormalities of the hands or upper extremities. He observed a full range of motion of the fingers, wrists, shoulders and elbows. Dr. Resnick opined that appellant could work eight hours a day in a limited-duty position with no repetitive upper extremity motion and lifting and carrying limited to 30 pounds. He did not discuss whether appellant sustained a recurrence of disability beginning on January 3, 2003 or indicate if he was disabled for work for any period.

By decision dated February 2, 2006, the Office denied appellant's claim for a recurrence of disability commencing January 3, 2003 on the grounds that the medical record did not establish that he could not perform his light-duty job on and after January 3, 2003. The Office found that the weight of the medical evidence rested with Dr. Resnick who found appellant capable of full-time, light-duty work.

By decisions dated February 14, 2006, the Office denied appellant's claim for wage-loss compensation for the period January 3, 2003 to May 20, 2005 as his recurrence claim had been denied.

In February 6 and 22, 2006 letters, appellant requested an oral hearing, held on June 12, 2006. At the hearing, appellant testified that, in October 2002, he was assigned to drive three to four hours a day, in violation of Dr. Fried's November 20, 2002 restrictions against driving more than one hour a day. He returned to work at the employing establishment on April 1, 2006. Appellant submitted additional evidence.

[4] Appellant was removed from federal employment effective May 22, 2005.

[5] Appellant underwent a functional capacity evaluation on May 27, 2005 which demonstrated that he could perform sedentary level work.

On January 10, 2005 appellant claimed recurrence of disability commencing January 3, 2003 when management changed his position to include several hours of driving a day.

In reports dated from January 30 to June 28, 2006, Dr. Fried noted appellant's condition was unchanged. He returned to work on April 2, 2006 in a full-time, modified-duty position and his symptoms remained stable.[6]

In a June 22, 2006 letter, appellant contended that Dr. Resnick's opinion could not represent the weight of the medical evidence as he did not discuss the claimed recurrence of disability.

By decision dated and finalized July 25, 2006, the Office hearing representative affirmed the February 2 and 14, 2006 decisions, as modified. The hearing representative found that appellant established that he sustained a recurrence of disability from January 3, 2003 to November 1, 2005. The hearing representative further found that appellant did not establish that his condition as of November 1, 2005, the date of Dr. Resnick's examination, was related to the accepted bilateral wrist conditions.

LEGAL PRECEDENT

The Office's implementing 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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[7] The Office's procedure manual provides that a recurrence of disability includes a work stoppage caused by an objective, spontaneous, material change in the accepted condition, a recurrence or worsening of disability due to an accepted consequential injury; or withdrawal of a light-duty assignment made to accommodate the work-related condition, for reasons other than misconduct or nonperformance.[8]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[9] This includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate

[6] On March 31, 2006 appellant accepted a light-duty job offer to begin April 1, 2006 as a modified letter carrier. Six hours a day clerical duties, one hour delivering express and missent mail, lifting no more than 10 pounds with the right hand or 7.5 pounds with the left.

[7] 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). *See also Philip L. Barnes*, 55 ECAB 426 (2004).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *See also Steven A. Andersen*, 53 ECAB 367 (2002).

[9] *Albert C. Brown*, 52 ECAB 152 (2000); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[10] An award of compensation may not be made on the basis of surmise, conjecture, speculation or on appellant's unsupported belief of causal relation.[11]

Section 8123 of the Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.[12] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[13] However, in a situation where the Office secures an opinion from an impartial medical examiner for the purpose of resolving a conflict in the medical evidence and the opinion from such examiner requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the examiner for the purpose of correcting the defect in the original opinion.[14]

ANALYSIS

The Office accepted that appellant sustained overuse syndrome of both wrists, bilateral tenosynovitis of the wrists, a sprained ligament in his left wrist, triangular fibrocartilage complex of the left wrist and left ulnar neuropathy. He claimed a recurrence of disability commencing January 3, 2003 causally related to the accepted wrist conditions. Appellant returned to work in a light-duty position on April 2, 2006. The Office accepted that he sustained a recurrence of disability from January 3, 2003 to November 1, 2005 due to a change in his light-duty job assignment. The Board finds that appellant is entitled to compensation for this period. The Office further found that he did not establish entitlement to compensation from November 1, 2005 to April 1, 2006, based on the report of Dr. Resnick, a Board-certified orthopedic surgeon and impartial medical examiner.

Dr. Resnick examined appellant on November 1, 2005 and did not find any objective condition related to work factors. However, he did not address whether appellant sustained a recurrence of disability beginning on January 3, 2003 causally related to the accepted wrist conditions. Dr. Resnick did not state whether or not appellant was disabled for work at any time on or after January 3, 2003. Thus, he failed to address the critical issue in the claim. Dr. Resnick's opinion thus requires clarification.

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

[11] *Patricia J. Glenn*, 53 ECAB 159 (2001); *Ausberto Guzman*, 25 ECAB 362 (1974).

[12] 5 U.S.C. § 8123; *see Charles S. Hamilton*, 52 ECAB 110 (2000).

[13] *Jacqueline Brasch (Ronald Brasch)*, 52 ECAB 252 (2001).

[14] *Margaret M. Gilmore*, 47 ECAB 718 (1996).

The Board finds that, since the Office undertook to obtain an impartial medical specialist's opinion, it is now obligated to obtain a sufficiently reasoned report as to whether appellant was disabled for work from November 1, 2005 to April 1, 2006 due to a worsening of the accepted conditions or the change in his light-duty job.[15] The Board directs the Office to request a supplemental, clarifying report from Dr. Resnick on this issue. Following this and all other development deemed necessary, the Office shall issue an appropriate decision in the case.

CONCLUSION

The Board finds that the case is not in posture for a decision regarding whether appellant was disabled for work from November 1, 2005 to April 1, 2006 causally related to the accepted wrist conditions.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 25, 2006 is remanded for further development regarding the cause of appellant's claimed disability from November 1, 2005 to April 1, 2006.

Issued: March 18, 2008
Washington, DC

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

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

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

[15] *See, e.g., Elmer K. Kroggel*, 47 ECAB 557 (1996) (the Board remanded the case for the Office to obtain a supplemental report from the impartial medical specialist).