

due to his federal duties.¹ On December 17, 1990 the Office accepted appellant's claim for right lateral epicondylitis. On October 23, 1989 appellant filed a claim alleging a recurrence of this injury on October 20, 1989. This claim was accepted for bilateral epicondylitis.² Appellant returned to work light duty in June 1991. The record reveals that the Office found that as appellant held this light-duty position for more than 60 days it represented his wage-earning capacity.

Appellant retired from federal employment in May 1993. Several months later he began employment as a school bus driver. In a November 6, 1995 letter from the division manager at Laidlaw Transit, he stated that appellant was employed as a substitute trip driver and drives school buses and MCI coach type busses. He noted that appellant worked approximately 25 to 35 hours per week and that while on a trip he would drive about 3 hours and have a 3 to 8 hour break before the return trip to Coos Bay. The division manager also noted that most of the busses appellant drives have automatic/air door on them.

In a report dated January 31, 1996, Dr. Jeffrey K. Bert, an attending Board-certified orthopedic surgeon, stated that appellant would be greatly relieved by a carpal tunnel release and that he had suffered for a long time with carpal tunnel syndrome. On February 29, 1996 appellant had surgery -- an extensor erasure. He received wage-loss compensation for the period February 28 to April 5, 1996.

In a March 13, 1996 progress note, Dr. Bert indicated that the incision was healing and all sutures were out. He further noted that appellant wanted to return to driving at the end of one month and that this was fine with him. In an April 4, 1996 attending physician's report, Dr. Bert listed his diagnosis as bilateral chronic epicondylitis and carpal tunnel which he believed was caused by two decades of exposure to sheet metal working with rivet. He listed appellant as totally disabled from February 28 through April 5, 1995 and partially disabled from April 8 through May 1, 1996. Dr. Bert released appellant to intermittent driving.

In an April 27, 1996 unsigned report, Dr. Alan L. Whitney noted that appellant was a patient of Dr. Bert's who was status post right elbow exploration for lateral epicondylitis of the left elbow. He noted that appellant would like to get back to sheet metal work. Dr. Whitney noted that appellant was presently driving a school bus and said he was tolerating that well. He noted that appellant's pain in his right elbow had changed and that he did have a palpable defect on the right from his previous operation. Dr. Whitney noted a full range of motion of elbow but that strength was somewhat reduced and that this seemed to cause him pain.

¹ Appellant worked as a sheet metal worker with the employing establishment from August 1967 through May 1993. As a sheet metal worker, his employment required them to carry, lift and set up sheet metal equipment weighing up to 50 pounds. Appellant also operated hand and power driven brakes, saws, punches, rivet guns, shears, toggle-presses, nibblers, rolls, tube-benders and spot welders. He has several other accepted claims for elbow and wrist conditions arising out of his federal employment.

² Appellant also filed a claim for an injury on October 8, 1976 that was accepted for right epicondylitis. A claim for an injury on October 20, 1989 was accepted for bilateral epicondylitis and a schedule award was paid for a two percent impairment of the left upper extremity. Appellant filed a claim with a date of injury of November 28, 1991 that was accepted for bilateral epicondylitis. Finally, he filed a claim for a date of injury on October 22, 1994 which was accepted for left carpal tunnel syndrome.

In a May 28, 1996 note, Dr. Bert indicated that appellant had full range of motion to both elbows. He noted that appellant was taking no pain medicine. Dr. Bert recommended more physical therapy, noting that appellant had not been able to complete his course of physical therapy due to his bus driving schedule. He believed appellant needed a carpal tunnel release. In a June 26, 1996 note, Dr. Bert indicated that appellant's therapy aggravated his elbow and that he now has pain over the lateral aspect, although grip strength was good. He noted that they will stop formal therapy. Dr. Bert further noted that appellant was not working as a school bus driver as it was summer and that "we will simply have him rest the arm, apply local heat and cold." In an August 7, 1996 note, he indicated that he was still awaiting authorization for carpal tunnel and that he thought carpal tunnel syndrome was directly related to appellant's work as a sheet metal worker. Dr. Bert noted that appellant was in urgent need of this surgery.

On December 12, 1996 appellant underwent a right carpal tunnel release. The Office paid compensation for wage loss from December 12, 1996 through January 5, 1997. Appellant claimed disability compensation commencing January 6, 1997.

In an attending physician's report form completed on March 26, 1997, Dr. Bert diagnosed status post right elbow extensor erasure, carpal tunnel syndrome and extensor erasure right elbow. He noted that he first treated appellant on August 1, 1995, that he treated him for right carpal tunnel syndrome and extensor erasure right elbow, that he was totally disabled from February 28 through April 5, 1996 and partially disabled from April 8 through May 1996. Dr. Bert further noted that appellant requested light-duty release, which was given with a restriction of intermittent driving. In a medical note dated April 28, 1997, Dr. Bert noted that appellant had improved and that he was medically stationary. He noted significant permanent impairment based upon pain about his elbow and weakness of grip on the right and continued pain symptoms about the carpal tunnel incision. Dr. Bert noted that appellant's left elbow continued to hurt him and this limited him as well. He believed that these conditions were permanent and will restrict him from doing "certainly the work he has done in the past as a sheet metal worker and would restrict him to what I feel is a light-duty work capacity."

The Office issued a schedule award for compensation for 20 percent permanent impairment of the right arm on May 14, 1999. The period of the schedule award was May 11, 1998 to July 21, 1999.

By decision dated April 18, 2005, the Office denied appellant's claims for compensation for the following periods: May 1, 1993 through February 27, 1996; April 6 through December 11, 1996; January 6, 1997 through May 10, 1998 and July 22, 1999 through August 24, 2000.³

Appellant requested an oral hearing before an Office hearing representative, which was held on December 5, 2006. He testified that he had filed multiple claims resulting from his employment as a sheet metal mechanic for the employing establishment. Appellant contended that he did not voluntarily retire from the employing establishment because he took an incentive payment and that there was no voluntary retirement if an incentive is offered. Furthermore, he

³ Appellant informed this Board, in letters to the Board and at oral argument, that he was not appealing the denial of compensation for the period from May 1, 1993 through February 22, 1996.

stated that the real reason he left the employing establishment was that a false sexual harassment claim had been filed against him. Appellant noted that, shortly after leaving the employing establishment he began to work as a school bus driver, a position that was less physically strenuous than his position with the employing establishment. However, he testified that he left this position when a woman threatened to file a sexual harassment claim against him. Appellant noted that he has not worked since he drove the bus.

By decision dated February 20, 2007, the hearing representative affirmed the Office's April 18, 2005 decision.

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴ This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his established physical limitations.⁵ Moreover, when the claimed recurrence of disability follows a return to light-duty work, the employee may satisfy his burden of proof by showing a change in the nature and extent of the injury-related condition such that he was no longer able to perform the light-duty assignment.⁶

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing that the recurrence of disability is causally related to the original injury.⁷ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁸ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁹

ANALYSIS

In the instant case, the Office accepted appellant's claim for bilateral epicondylitis. Appellant returned to a light-duty position for the employing establishment in June 1991 and

⁴ 20 C.F.R. § 10.5(x).

⁵ *Id.*

⁶ *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

⁷ 20 C.F.R. § 10.104(b); *Carmen Gould*, 50 ECAB 504 (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁸ *See Helen K. Holt*, *supra* note 7.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

continued in this position until he retired on May 1, 1993. Subsequent to his retirement, appellant was employed as a school bus driver.

On February 29, 1996 appellant underwent surgery for an extensor erasure. The Office paid appellant wage-loss compensation for the period February 28 through April 5, 1996. The Office denied appellant compensation for the period commencing April 6, 1996. Dr. Bert, appellant's treating physician, indicated that he was totally disabled from February 28 through April 5, 1996. However, he only found appellant partially disabled commencing April 8, 1996. In an April 27, 1996 report, Dr. Whitney noted that appellant was driving a school bus and tolerating that well. He noted that appellant had a full range of motion in the elbow but that his strength was somewhat reduced and seemed to cause him pain. In a May 28, 1996 report, Dr. Bert noted that appellant had full range of motion to both elbows and was taking no medicine. He did note that appellant needed a carpal tunnel release. No physician during the time period April 6 through December 11, 1996 stated that appellant is totally disabled due to his accepted work-related condition, nor does any physician indicate that appellant could not perform the duties of the light-duty position he was performing until he voluntarily retired in 1993. There is no indication that appellant was forced to retire due to his accepted work condition. Accordingly, he has not established that he was totally disabled for this time period.

On December 12, 1996 appellant underwent a right carpal tunnel release. The Office paid compensation for wage loss from December 12, 1996 through January 5, 1997. Furthermore, the Office issued a schedule award for a 20 percent impairment of the right arm. The period of the schedule award was from May 11, 1998 to July 21, 1999. Appellant claimed compensation for the periods January 6, 1997 through May 10, 1998 and July 22, 1999 through August 24, 2000.

Appellant has not submitted medical evidence to establish that he was totally disabled during these time periods. In a March 26, 1997 report, Dr. Bert diagnosed appellant with status post right elbow extensor erasure, carpal tunnel syndrome and extensor erasure right elbow. He noted that appellant had a restriction of intermittent driving. In an April 28, 1997 note, Dr. Bert noted that appellant had improved and was medically stationary. He noted permanent impairment based upon pain about his elbow, weakness of grip and continued pain symptoms. Dr. Bert opined that, although these symptoms would restrict appellant from doing the work of a sheet metal worker, he could work in a light-duty work capacity. Accordingly, his opinions are insufficient to establish a recurrence of disability in that they do not establish that appellant could not perform his light-duty work.

Appellant has not established that he sustained a recurrence of total disability for the time periods April 6 through December 11, 1996; January 6, 1997 through May 10, 1998; and July 22, 1999 through August 24, 2000. Accordingly, the Office properly denied compensation for total disability during these time periods.

CONCLUSION

The Board finds that the Office properly denied compensation for the periods April 6 through December 11, 1996; January 6, 1997 through May 10, 1998; and July 22, 1999 through August 24, 2000.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 20, 2007 is affirmed.

Issued: May 13, 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