United States Department of Labor
Employees' Compensation Appeals Board

T.M., Appellant	)	
and	)	**Docket No. 08-975**
	)	**Issued: February 6, 2009**
DEPARTMENT OF THE ARMY,	)	
Fort Riley, KS, Employer	)	

Appearances:
Edward L. Daniel, for the appellant
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 February 19, 2008 appellant, through his representative, filed a timely appeal from a February 1, 2008 merit decision of the Office of Workers' Compensation Programs denying modification of a loss of wage-earning capacity determination. 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 has established that his wage-earning capacity should be modified.

FACTUAL HISTORY

On January 20, 1995 appellant, then a 44-year-old target device worker, filed a claim alleging that he sustained neck pain, headaches and shooting pain down his arms on that date when he hit his head on the top of his tractor when it went over a bump. He stopped work on January 23, 1995 and returned to work on January 26, 1995. The Office accepted his claim for cervical strain and bilateral carpal tunnel syndrome. It also accepted that appellant sustained

recurrences of disability on April 1, 1997 and February 23, 1998. On June 4, 2000 appellant returned to work as a telecommunications equipment operator. By decision dated August 8, 2000, the Office reduced his compensation to zero based on its finding that his actual earnings as a telecommunications operator fairly and reasonably represented his wage-earning capacity.

On February 25, 2002 the Office accepted that appellant sustained a recurrence of disability on November 9 and 10, 2001. It found that the evidence did not show disability for employment after November 10, 2001.

On July 22, 2003 appellant filed a recurrence of disability claim, for which he stopped work on May 2, 2003, causally related to his January 20, 1995 work injury. On May 7, 2003 Dr. Scott A. Coonrod, a Board-certified internist, diagnosed cervical radiculopathy and noted that appellant's symptoms were worsening. He stated, "It may be that [appellant] will not be able to work any further and we will just have to see. If there is nothing that we can treat, then it may be worth his time and effort to seek disability, as that may diminish his symptoms if he is not working."[1] A magnetic resonance imaging (MRI) scan study of the cervical spine obtained May 7, 2003 revealed disc space narrowing and a loss of hydration at all levels and uncinate process hypertrophy at C5-6 and C6-7 compromising the nerve root canals. In a report dated August 22, 2003, Dr. Coonrod noted that appellant sustained a 1995 head and neck injury and discussed the findings on the May 2003 MRI scan study. He noted that he experienced "intermittent neck and arm pain with acute exacerbations." Dr. Coonrod recommended that appellant stop work to see if his condition improved and noted that he was applying for disability.

By decision dated September 16, 2003, the Office found that appellant failed to establish an employment-related recurrence of disability. Appellant requested an oral hearing. In a report dated October 21, 2003, Dr. Coonrod noted that he had reviewed all of appellant's employment records and could "see no other cause for his symptoms … than his work[-]related injury of 1995."[2] In a report dated November 5, 2004, he related that appellant's neck pain and paresthesias persisted and that his condition had not improved since he "stopped work at our recommendation in May 2003." Dr. Coonrod attributed the arthritic changes in the neck on an MRI scan study to the work injury and concluded, "I do believe he has considerable disability from a cervical strain most likely due to the injury in 1995."

By decision dated March 4, 2005, the hearing representative affirmed the September 16, 2003 decision.

[1] On May 23, 2003 Dr. Coonrod referred appellant for a neurological evaluation. In a report dated June 10, 2003, Dr. David P. Fritz, a Board-certified neurosurgeon, discussed appellant's history of hitting the top of his head on the cab of a tractor eight years before. He diagnosed neck pain and recommended a repeat electromyogram.

[2] On November 19, 2003 Dr. Coonrod diagnosed a flare of cervical radiculopathy. In progress reports dated January 4 and March 5, 2004, he listed findings on examination and recommendations for treatment. On March 5, 2004 he diagnosed an exacerbation of cervical radiculopathy related to appellant's 1994 work injury.

In a report dated February 7, 2006, Dr. Coonrod related that appellant continued to experience chronic pain due to his cervical strain and carpal tunnel condition. He stated:

> "[Appellant's] initial symptoms date back to 1995. This condition has chronically worsened since that time. [Appellant] has required more medications to control his symptoms. He got to the point where in May 2003 I recommended he stop work as working aggravated his symptoms and we were having to give him more and more narcotics. I advised therefore [appellant] stop work in May 2003 which he did. Since that time he continues to have chronic pain secondary to the cervical strain and the carpal tunnel syndrome; however, it is better controlled. [Appellant's] requirement of narcotics did go down after he ceased working. Therefore, it is my best medical opinion that he should remain off work and that his work environment and duties cause exacerbation of these chronic conditions."

By letter dated February 22, 2006, appellant's representative contended that he was no longer capable of performing the position for which he was rated. The representative argued that the August 8, 2000 wage-earning capacity determination should be modified.[3]

In a December 14, 2005 letter, received by the Office on November 13, 2006, appellant described his workday. He stated, "Even though my job was described as sedentary in nature I had to use my arms, hands and upper body to complete all of my job tasks." Appellant noted that he had stopped work on May 2, 2003. By letter dated December 29, 2005, received on March 1, 2006, appellant's supervisor indicated that his condition worsened during his period of employment such that he could not perform his modified duties.[4]

In a report dated April 5, 2005, received by the Office on November 21, 2007, Dr. Coonrod opined that appellant's continued neck and arm symptoms were related to his 1995 work injury. He stated:

> "In May 2003 I recommended he stop working because his symptoms were worsening. The symptoms were related back to the chronic neck problems of 1995. He had been doing some light-duty work. I told him to stop that type of work because I felt that was exacerbating his symptoms. Again, there was not a new injury. I think it was a chronic worsening of the previous injury. [He] never

[3] On May 11, 2006 appellant's representative advised that he was not appealing the Office's denial of the recurrence of disability but instead arguing that his condition had deteriorated such that he could no longer perform the duties of a telecommunications equipment operator.

[4] On May 11 and June 23, 2006 appellant, through his representative, argued that his position had worsened such that he was no longer capable of performing his work duties in his position as telecommunications equipment operator. The Office informed the representative that it had previously adjudicated the question of whether he was disabled from performing his modified duties. On August 1, 2006 appellant's representative requested a final decision. On November 9, 2006 appellant filed a recurrence of disability claim, for which he stopped work on December 14, 2005, causally related to his January 20, 1995 work injury. On November 21, 2007 the Office informed appellant's representative that it was developing the issue of whether he had established modification of its determination of his wage-earning capacity.

did substantially improve and then regress, he just slowly worsened throughout the years to the point of my recommending that he stop work in May 2003."

On November 27, 2007 the Office requested that appellant submit medical evidence addressing whether his condition materially changed such that he could not perform the duties of a telecommunications equipment officer. In a report dated December 13, 2007, Dr. Coonrod related, "In May of 2003 [appellant's] condition was worsening. He was requiring more narcotics to remain pain free. His MRI [scan study] did show degenerative changes in his cervical spine. Clinically, he was worsening. The working environment was causing his exacerbations of the pain syndrome. Therefore, we asked him to quit work…." He noted that an April 2005 MRI scan study showed no change. Dr. Coonrod asserted that movements exacerbated appellant's symptoms and that he required narcotics to control the pain. When appellant stopped work his narcotic use decreased. Dr. Coonrod opined that appellant should not work or drive while taking the narcotic medication. He concluded that he "should not work" and opined that "this all stems back to his original injury." In an accompanying work restriction evaluation dated December 13, 2007, Dr. Coonrod asserted that appellant was disabled from work due to cervical strain and carpal tunnel syndrome.

By decision dated February 1, 2008, the Office denied modification of its August 8, 2000 wage-earning capacity determination.

LEGAL PRECEDENT

A wage-earning capacity decision is a determination that a specific amount of earnings, either actual earnings or earnings from a selected position, represents a claimant's ability to earn wages.[5] Compensation payments are based on the wage-earning capacity determination and it remains undisturbed until properly modified.[6]

Once the wage-earning capacity of an injured employee is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was, in fact, erroneous.[7] The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.[8]

ANALYSIS

The Office accepted that on January 20, 1995 appellant sustained cervical strain and bilateral carpal tunnel syndrome when he struck his head on the top of his tractor when it went over a bump. On August 8, 2000 the Office determined that his actual earnings as a telecommunications operator fairly and reasonably represented his wage-earning capacity.

[5] *See* 5 U.S.C. § 8115 (determination of wage-earning capacity).

[6] *Sharon C. Clement*, 55 ECAB 552 (2004).

[7] *Tamra McCauley*, 51 ECAB 375, 377 (2000).

[8] *Id*.

On July 22, 2003 appellant claimed a recurrence of disability for which he stopped work on May 2, 2003 due to his work injury. The Office, in decisions dated September 16, 2003 and March 4, 2005, found that the medical evidence was insufficient to show an employment-related recurrence of disability.

On February 22, 2006 appellant, through his attorney, sought modification of the established wage-earning capacity determination. He did not allege that the original determination was erroneous but instead alleged that there was a material change in the nature and extent of his employment-related condition. The issue, consequently, is whether appellant has established a material change in the nature and extent of his injury-related condition warranting modification of the August 8, 2000 wage-earning capacity determination.

In reports dated May 7 and August 22, 2003, Dr. Coonrod diagnosed cervical radiculopathy. He indicated that appellant's symptoms were increasing and that he may need to seek disability retirement. Dr. Coonrod did not, however, specifically relate the increase in symptoms, to the accepted employment injury and thus his report is of diminished probative value.

On October 21, 2003 Dr. Coonrod related that he could find no cause for appellant's symptoms other than his 1994 employment injury and noted that the symptoms were "temporally related to that injury." A medical opinion, however, that states that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after is insufficient, without supporting rationale, to establish causal relationship.[9] Additionally, Dr. Coonrod did not discuss whether he was capable of performing the duties of the position of telecommunications equipment operator and thus his report is of diminished probative value.

On November 5, 2004 Dr. Coonrod attributed arthritic changes on an MRI scan study to appellant's work injury. He stated, "I do believe he has considerable disability from a cervical strain most likely due to the injury in 1995." Dr. Coonrod's finding that appellant had disability "most likely" due to his 1995 injury is speculative in nature. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.[10]

In a report dated April 5, 2005, Dr. Coonrod attributed appellant's continued neck and arm symptoms to his 1995 work injury. He noted that he did not have any complaints of arthritis in other areas of the body or complaints prior to his work injury. Dr. Coonrod related that he told appellant in May 2003 to stop work because his work exacerbated his symptoms. He asserted that his condition "just slowly worsened throughout the years to the point of my recommending that he stop work in May 2003." As noted, a medical opinion that a condition is causally related to an employment injury because the employee had no symptoms prior to the injury is not sufficient, without a reasoned explanation, to establish causal relationship.[11]

[9] *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

[10] *L.R. (E.R.)*, 58 ECAB ___ (Docket No. 06-1942, issued February 20, 2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

[11] *See Cleopatra McDougal-Saddler*, *supra* note 9.

Further, the Office has not accepted an arthritic neck condition as employment related. Where appellant claims that a condition not accepted or approved by the Office was due to his employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.[12] Dr. Coonrod did not explain how the diagnosed condition of arthritis was caused by his accepted employment injury and thus his report is of diminished probative value.[13]

In a report dated February 7, 2006, Dr. Coonrod related that appellant continued to experience chronic pain due to his cervical strain and carpal tunnel condition. He noted that his condition worsened such that he required additional medication to manage his symptoms. Dr. Coonrod recommended that he stop work in May 2003. He stated, "His requirement of narcotics did go down after he ceased working. Therefore, it is my best medical opinion that he should remain off work and that his work environment and duties cause exacerbation of these chronic conditions." Dr. Coonrod did not find that appellant was unable to perform his work duties but instead advised that he might experience exacerbations with continued work. The Board has consistently held that the possibility of a future injury does not form a basis for the payment of compensation under the Federal Employees' Compensation Act.[14]

In a report dated December 13, 2007, Dr. Coonrod related that appellant required increased narcotics in May 2003 to control his pain. His condition clinically worsened and he experienced exacerbations of pain when performing his work duties. Dr. Coonrod did not believe appellant should work or drive while taking narcotics. He advised him to stop work and attributed his disability to his work injury. In an accompanying work restriction evaluation dated December 13, 2007, Dr. Coonrod asserted that appellant was disabled from work due to cervical strain and carpal tunnel syndrome. He did not provide a reasoned explanation as to why appellant's cervical strain and carpal tunnel syndrome from his January 20, 1995 work injury worsened such that he was unable to perform the duties of his modified employment. A physician's opinion on causal relationship between a claimant's disability and an employment injury is not conclusive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.[15]

Appellant has the burden of proof to show a modification of his wage-earning capacity. He has not submitted sufficient medical evidence to establish a material change in the nature and extent of his injury-related conditions. Dr. Coonrod did not explain how appellant's accepted conditions of cervical strain and carpal tunnel syndrome caused him to be totally disabled for

[12] *See JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

[13] *See Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[14] *Manuel Gill*, 52 ECAB 282 (2001).

[15] *Thaddeus J. Specvack*, 53 ECAB 474 (2002); *Jean Culliton*, 37 ECAB 728 (1996).

work as a telecommunications equipment operator. Appellant, consequently, has not shown that the Office's determination of his loss of wage-earning capacity should be modified.[16]

CONCLUSION

The Board finds that appellant has not established that his wage-earning capacity should be modified.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 1, 2008 is affirmed.

Issued: February 6, 2009
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

[16] *See Elbert Hicks*, 55 ECAB 151 (2003).