United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 08-1901**
	)	**Issued: September 8, 2009**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Cumberland, MD, Employer	)	

Appearances:
Robert S. Brierton, Esq., for the appellant
Office of the Solicitor, for the Director

Oral Argument January 6, 2009

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 27, 2008 appellant filed for review from an April 9, 2008 merit decision of the Office of Workers' Compensation Programs which denied modification of his wage-earning capacity. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUE

The issue is whether appellant established that the Office's 2005 wage-earning capacity determination should be modified.

FACTUAL HISTORY

On April 4, 2003 appellant, then a 47-year-old maintenance supervisor, sustained injury to his left wrist while attempting to restrain an inmate. He stopped work on April 18, 2003. Appellant's claim was accepted by the Office for a fracture of the distal ulna and carpal tunnel

syndrome of the left wrist.[1] He underwent surgery on July 16, 2003 for arthroscopy with debridement of the left wrist, repair of the torn fibrocartilage and left carpal tunnel decompression.[2] Appellant was released to full-time light-duty work on September 22, 2003 with restrictions on the use of his left hand and arm.[3] He was referred to Dr. Dean S. Sotoreanos, an orthopedic surgeon, who reviewed appellant's history of injury and noted complaints of continuing left wrist pain. Dr. Sotoreanos advised that further ulnar shortening osteotomy surgery was warranted and reiterated appellant's capacity for light duty. Appellant underwent occupational therapy for his left wrist and continued at light-duty work with restrictions.[4]

The Office referred appellant to Dr. Selim El-Attrache, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a February 17, 2004 report, Dr. El-Attrache reviewed appellant's history of injury and medical treatment, noting that his left wrist had been pushed into a brick wall. Appellant was listed as right hand dominant. Dr. El-Attrache reviewed the diagnostic studies and found that there was no evidence of aseptic necrosis to the left wrist joint. He reported findings on physical examination, including normal ranges of motion of the cervical and lumbar spines without complaint. Dr. El-Attrache noted moderate atrophy of the thenar and hypothenar muscles and reported grip strength test results. He diagnosed osteoarthritis, chondromalacia and cystic changes of the left wrist preexisting the April 4, 2003 injury. Dr. El-Attrache advised that the risks of ulnar shortening surgery outweighed the benefit. He advised that appellant could return to his regular position as a maintenance supervisor with a 15-pound lifting limitation on the use of his left wrist.

The Office found a conflict in medical opinion arising between Dr. Sotoreanos and Dr. El-Attrache as to whether appellant could return to work as a maintenance supervisor and the nature and extent of any limitations due to his left wrist condition.[5] It referred appellant, together with a statement of accepted facts, to Dr. Mary M. Haus, a Board-certified orthopedic surgeon.

In a September 23, 2004 report, Dr. Haus reviewed the history of injury, noting that appellant's left wrist struck a brick wall while wrestling with an inmate. She noted that he was right hand dominant. Dr. Haus addressed appellant's left wrist carpal tunnel release, TFC repair and additional joint debridement. Appellant's past medical history included left carpal tunnel syndrome and he otherwise denied any hospitalizations. Dr. Haus noted that appellant's records indicated a history of back discomfort but he did not elaborate on how much time was lost from work due to low back injuries. On physical examination, there was no swelling of the left wrist

[1] Appellant was initially treated by Dr. Frederick W. Munzer, an osteopath, who referred him to Dr. Brian E. Gunnlaugson, an orthopedic surgeon. Appellant underwent a magnetic resonance imaging (MRI) scan on May 12, 2003 that diagnosed degenerative tear of the triangular fibrocartilage with effusion of the distal radial ulnar joint associated with an ulnar styloid fracture.

[2] Surgery was performed by Dr. Ian Katz, a Board-certified surgeon.

[3] Appellant was assigned to work at the message center at the agency prison complex.

[4] On January 27, 2004 Dr. Katz advised that he had no further left wrist treatment to recommend and continued appellant on light duty.

[5] The Office noted that appellant stopped work on March 20, 2004 as the employing establishment could not accommodate his work restrictions. He received wage-loss compensation.

joint with gross musculature normal and no muscle wasting. Appellant was able to make a full fist with marked lack of strength when compared to the right. Dr. Haus advised that appellant had limited use of his left wrist and doubted that further physical therapy would be of value. She noted that the prognosis of any additional surgery was only fair, noting that the employment injury had exacerbated preexisting degenerative changes in the wrist. Dr. Haus noted that, at 260 pounds, appellant was obese with a remote history of a low back injury. She provided work restrictions, noting that appellant was able to work for eight hours a day subject to limitations on pushing, pulling and lifting with his left hand not to exceed 20 pounds.

Appellant was referred for vocational rehabilitation and provided with job placement services.

On November 9, 2004 Dr. Munzer reported that appellant had discomfort in his left shoulder for approximately two to three weeks, with pain in the bicipital groove and on abduction past 70 degrees. He diagnosed tendinitis and bursitis of the left shoulder and administered a steroid injection. Dr. Munzer also advised that appellant had experienced numbness in the area of his left knee for two months. He stated that appellant had a history of a remote serious back injury in 1994, but this was a new finding. Dr. Munzer diagnosed paresthesias/hypoesthesia of the left leg. On December 16, 2004 he stated that appellant's left shoulder pain had decreased since he administered the steroid injection. Appellant underwent an electromyelogram (EMG) which was consistent with nerve damage.

In an April 2005 report, a vocational rehabilitation counselor noted that appellant had the physical, educational and vocational capacity to work as a meter reader, as described in the Department of Labor's *Dictionary of Occupational Titles*.[6] Appellant received additional job placement assistance. On October 20, 2005 the Office proposed to reduce appellant's wage-loss compensation to reflect his capacity to earn wages as a meter reader. It noted that appellant had a 48 percent wage-earning capacity based on his ability to earn $541.20 a week.

Appellant, through his attorney, responded on November 10, 2005 contending that he was totally disabled from performing the duties of a meter reader. He noted prior injury to his left wrist and shoulder and a work-related low back injury of February 28, 2000.[7] Counsel contended that the cumulative residuals of these injuries rendered appellant disabled from gainful employment.

[6] The DOT describes the position of meter reader, No. 209.567.010 as follows: "Reads electric, gas, water or steam consumption meters and records volume used by residential and commercial consumers. Walks or drives truck over established route and takes readings of meter dials. Inspects meters and connections for defects, damage, and unauthorized connections. Indicates irregularities on forms for necessary action by servicing department. Verifies readings to locate abnormal consumption and records reasons for fluctuations. Turns service off for nonpayment of charges, in vacant premises, or on for new occupants. Collects bills in arrears. Returns route book to business office for billing purposes." The position description indicated that the meter reader position fell within the "light" category of physical demand. It required occasional stooping, kneeling, crouching, fingering, taste/smelling, depth perception, color vision with accommodation, and exposure to environmental conditions, including cold weather. It also required frequent reaching, handling, near acuity, including field of vision.

[7] Counsel related a history of a low back injury in December 1985 or January 1986 and that prolonged walking caused appellant's left knee to become painful in 1994 or 1995. He also alleged a right thumb injury during the course of appellant's federal employment.

In a November 1, 2005 report, Dr. Katz reviewed appellant's history of injury and the surgery performed on his left wrist in 2003. He noted that, at the time of injury, appellant tried to restrain an inmate and was forced into a wall with his left upper extremity and had since complained of left shoulder pain. Dr. Katz advised that appellant was presently retired on compensation. Physical examination of the left shoulder showed a decreased range of motion when compared to the right with some pain on cross chest adduction but no significant tenderness over the acromioclavicular (AC) joint. X-rays obtained that day showed moderate glenohumeral degenerative joint disease and early AC joint degenerative joint disease. Dr. Katz also reviewed an MRI scan. He noted that, as appellant did not have any significant mechanical symptoms, he did not believe that arthroscopic treatment would provide any long-term relief. Dr. Katz recommended home exercises and medication, noting that appellant's left shoulder arthritic changes predated the 2003 injury but were made symptomatic by it.

In a November 28, 2005 decision, the Office reduced appellant's wage-loss compensation effective November 27, 2005 to reflect his capacity to earn wages as a meter reader. It found that he was no longer totally disabled due to residuals of his April 4, 2003 employment injury. The weight of medical opinion was represented by Dr. Haus, the impartial medical specialist. The Office noted that Dr. Katz, who attributed appellant's left shoulder condition to the 2003 injury, was in opposition to the opinion of Dr. Munzer, who first reported a two- to three-week history of left shoulder pain in November 2004. It determined that the medical evidence was not sufficient to establish a preexisting left shoulder or right thumb condition due to the accepted injury or that such conditions disabled appellant from performing the duties of a meter reader.

On June 23, 2006 appellant, through his attorney, requested reconsideration. Counsel contended that appellant had additional medical conditions which rendered him unable to perform the duties of a meter reader. Appellant had a history of significant back pain, bilateral knee pain and left shoulder discomfort in addition to the limitations in his left hand and wrist, all arising from his work as a correctional officer and automotive mechanic supervisor from November 24, 1985 through March 20, 2004.[8] Counsel argued that Dr. Haus did not examine or make findings regarding appellant's low back, knees or left shoulder and her opinion was not probative on whether the meter reader job was medically suitable.

Appellant submitted a November 16, 2004 report from Dr. John Seeber, Board-certified in physical medicine and rehabilitation, who noted that appellant complained of low back and lower extremity pain with numbness into the left leg and foot. Dr. Seeber described the symptoms as intermittent for about one year, noting that appellant had previously injured his low back 10-years prior and was told he had a bulging L5 disc. He noted that he saw appellant in 2002 for left carpal tunnel syndrome from which appellant had surgery with a good result. Dr. Seeber advised that diagnostic studies of the low back showed evidence of denervation reinnervation in the left anterior tibial, gastrocnemius, semitendinosis and biceps femoris muscles. There was also decreased interference pattern in all the muscles tested in the left lower extremity including the left quadriceps muscle. Nerve conduction velocity and distal latencies of the left peroneal and left tibial nerves were within normal limits. Dr. Seeber diagnosed

[8] Appellant stated that these injuries occurred in January 1986, October 1997, January and February 2000.

numbness of the left lower extremity and left lower extremity pain syndrome. He recommended that appellant undergo an MRI scan.

On October 4, 2005 Dr. Alfred P. Bowles, Board-certified in neurosurgery, noted that appellant had intermittent back and leg pain since 1985 which had significantly increased over the prior nine months. The pain was localized to the lumbosacral region with radiation involving both legs. On examination, Dr. Bowles noted symmetric weakness in appellant's leg muscles and noted that a December 20, 2004 MRI scan showed significant lumbar spondylosis and stenosis with moderate central canal stenosis due to bulging of the L3-4 disc, moderate central canal stenosis at L4-5 with marked osteophytic protrusions at L5-S1 with canal and lateral recess stenosis. Dr. Bowles opined that appellant would be a good candidate for lumbar decompressive surgery. In a November 8, 2005 report, he reiterated his findings and conclusions.

Appellant submitted results of a December 7, 2005 MRI scan of the left knee which noted tricompartmental osteoarthritis; degenerative tear of the medial meniscus; small joint effusion and minimal edema; and small to moderate prepatellar bursitis.

In a report dated March 2, 2006, Dr. Eric Minde, Board-certified in physical medicine and rehabilitation, advised that appellant had a number of medical conditions, all associated with his work activities. He attributed appellant's left wrist and shoulder condition to the 2003 injury and obtained a history of previous back injuries. Dr. Minde described long-standing and walking which had affected the knees to the extent that they were prominently involved on clinical examination. He advised that appellant was not able to perform the duties of meter reader due to his left hand and left wrist injury. Dr. Minde stated that appellant did not have good use of the left upper extremity which was required to do this job. He also advised that his various other injuries all caused him great difficulties and rendered appellant disabled and incapable of any gainful employment.

By decision dated September 22, 2006, the Office denied modification of the November 28, 2005 wage-earning capacity determination. It noted that appellant had filed three compensation claims prior to the April 4, 2003 injury. Appellant sustained a lumbar strain on October 8, 1997, a soft tissue injury for which he did not stop work and no period of wage loss of disability was incurred.[9] An April 28, 2000 claim of a traumatic neck injury was denied by the Office and an occupational claim beginning January 20, 2001 was filed, accepted for left carpal tunnel syndrome with no time lost from work. It was noted that, following the April 4, 2003 injury, appellant returned to work at limited duty until March 20, 2004, when no further work was made available. The Office did not accept injury to appellant's left shoulder, knees or a low back injury in 2000. Further, the medical evidence submitted on reconsideration did not establish that appellant's spinal stenosis or degenerative disc disease was related to the 1997 lumbar strain. Moreover, there was no evidence submitted to support that appellant sustained injury at work in 1985 or 1986.[10] The Office found that appellant had not submitted rationalized

[9] The October 9, 1997 treatment note of Ambucare clinic diagnosed a back sprain after a day of heavy lifting.

[10] A June 8, 1994 treatment note from a Dr. Bruce Gastineau obtained a history of sudden right leg numbness at 4:30 a.m. on June 5, 1994. Dr. Gastineau diagnosed lumbar disc disease.

medical opinion, based on an accurate history of injury, to establish that he was disabled from performing the light duties of a meter reader.

On April 12, 2007 appellant requested reconsideration. A May 18, 2006 functional capacity evaluation was performed by Dr. Nghia Van Tran, a specialist in physical medicine and rehabilitation, for a Social Security Administration disability determination. Dr. Tran noted appellant's medical history, conducted tests on appellant's ability to perform various activities, and outlined work restrictions. He stated that appellant had significant bilateral knee arthritis and arthritis in his left shoulder and left wrist. Appellant advised Dr. Tran that his daily activities were significantly limited.

In a September 12, 2006 report, Dr. Eric Roslonski, an osteopath, noted appellant's complaint of bilateral knee pain which began 20 years prior but increased in 2003 after he sustained his accepted injury. He noted that any type of movement increased the pain. Dr. Roslonski reviewed the opinion of Dr. Katz, who found that appellant was a candidate for bilateral knee arthroplasties. He noted that appellant was holding off any knee surgery due to his age. Dr. Roslonski also stated that appellant complained of left wrist, back and left shoulder pain and was a candidate for surgery to treat these conditions. In reports dated November 7 and 15, 2006, he addressed appellant's complaints of chronic pain to his left shoulder, left wrist, bilateral knees and low back. On December 13, 2006 Dr. Roslonski administered injections to ameliorate pain in appellant's knees and left shoulder.

In a June 5, 2007 decision, the Office denied modification of the November 28, 2005 wage-earning capacity determination. It found that the reports of Dr. Tran and Dr. Roslonski, together with appellant's application for social security disability benefits, were not sufficient to establish that he was totally disabled due to residuals of his accepted condition or from performing the duties of the meter reader position.[11]

On January 4, 2008 appellant, through counsel, requested reconsideration.[12] In a September 5, 2007 report, Dr. Charles J. Burke, Board-certified in orthopedic surgery, noted that appellant had left shoulder pain with an underlying radicular component, suggestive of a cervical radiculopathy versus true shoulder pain. He diagnosed left wrist pain and degenerative disc disease of both knees. Dr. Burke noted that appellant's left upper extremity pain was consistent with a cervical etiology. He recommended treatment of appellant's cervical condition before his left shoulder condition. Dr. Burke also recommended a new MRI scan, as the most recent was three years old. He advised that left shoulder surgical intervention was not warranted. Dr. Burke noted that appellant would follow up with Dr. Katz, or a hand and upper extremity specialist.

[11] Appellant submitted an August 14, 2006 Social Security Administration disability determination. The Board notes, however, that determinations of disability under the Social Security Act are not determinative of his entitlement to benefits under the Federal Employees' Compensation Act as there are different standards of medical proof on the issue of disability. *See Freddie Mosley*, 54 ECAB 255 (2002).

[12] A June 16, 1994 report of Dr. Oscar G. Limcaco, a Board-certified neurologist, addressed a history of right leg numbness on June 5, 1994 after appellant got up at 3:00 a.m. to go fishing. Dr. Limcaco was preparing coffee and suddenly developed pain and numbness in the back and right leg. He reported that appellant had been in excellent health with no serious illness in the past. Dr. Limcaco noted the possibility of nerve root compression.

On September 20, 2007 Dr. Patrick N. Smith, a specialist in orthopedic surgery, obtained a history of appellant's complaint of back and left arm pain with numbness and tingling. He noted that appellant sustained a work-related injury in April 2003 and had since experienced problems with his neck, left shoulder and left arm. On examination, appellant had limited motion with flexion and extension of his lumbar spine and limited motion with rotation, in addition to weakness of the left upper extremity, including the biceps and wrist extension. Otherwise, his strength was intact throughout his right upper extremity. Dr. Smith noted that results of a cervical MRI scan showed a disc herniation at C5-6 and C6-7. He advised that appellant wanted to proceed with an anterior cervical discectomy and fusion at C5-6 and C6-7. Dr. Smith explained the risks of this procedure with appellant.

In an October 24, 2007 deposition, Dr. Minde discussed appellant's medical history and reiterated the findings and conclusions in his March 2, 2006 report. He stated that the "brunt" of the injury appellant sustained on April 4, 2003 was to the left wrist and left shoulder. Dr. Minde advised that appellant's multiple injuries, which preexisted the April 2003 work injury, included cervical disc herniation, low and upper back conditions, and bilateral knee conditions. He stated that these conditions rendered appellant fully incapacitated; noting that he did not have good function of the left upper extremity which prevented him from performing the meter reading job.

By decision dated April 9, 2008, the Office denied modification of the November 28, 2005 wage-earning capacity determination. It found that the medical evidence was insufficient to relate appellant's cervical disc herniations, left shoulder or knee conditions to his employment. The Office noted that appellant continued to be entitled to medical treatment for residuals of his accept left wrist condition.

LEGAL PRECEDENT

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.[13] The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.[14]

ANALYSIS

It is well established that where residuals of an accepted employment-related condition prevent an employee from performing his regular duties, physical conditions that preexisted the accepted condition must be taken into consideration. Physical ailments acquired subsequent to and unrelated to the accepted injury are excluded from any wage-earning capacity determination.[15] Appellant's contention on appeal is that the November 2005 wage-earning capacity decision was made in error based on the medical evidence of record. He argued before

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

[14] *Linda Thompson*, 51 ECAB 694 (2000).

[15] *See Mark H. Dever*, 53 ECAB 710 (2002); *Pope D. Cox*, 39 ECAB 143 (1987).

the Office that his cervical and lumbar degenerative disease, left shoulder, and bilateral knee conditions all relate to or preexisted his April 2003 injury and were not properly considered in determining his physical capacity to perform the meter reader position.

The record reveals that appellant filed several claims prior to his injury on April 4, 2003. The Office accepted that on October 8, 1997 he sustained a lumbar strain for which he did not stop work or incur wage loss. The contemporaneous medical evidence indicates that he was treated for a back sprain without any disability for work. Appellant's claim of a traumatic neck injury on April 28, 2000 was denied by the Office. On January 20, 2001 the Office accepted that he sustained left carpal tunnel syndrome due to his federal employment. Counsel did not support allegations of a prior low back injury in December 1985 or January 1986, a left knee injury in 1994 or 1995 or a right thumb injury. Moreover, there was no medical evidence ascribing any disability for work due to such conditions.

The evidence reveals that appellant was working regular full duty as a maintenance supervisor prior to his injury on April 4, 2003. The medical reports at that time do not establish disability due to any preexisting condition. Appellant worked until April 18, 2003, when he stopped prior to left wrist surgery on July 16, 2003. He returned to full-time light-duty work on September 22, 2003 with restrictions pertaining to the use of his left hand and arm, as recommended by Dr. Katz. These remained in place until March 20, 2004, when the employing establishment advised that it could no longer accommodate his wrist limitations. Dr. Sotoreanos and Dr. Katz advised that further surgery could be performed but reiterated appellant's capacity for light duty within his restrictions. They did not attribute any disability due to a preexisting medical condition. The medical reports contemporaneous with his treatment and surgery, do not address any findings pertaining to appellant's left shoulder arising from the April 4, 2003 injury.

When seen by Dr. El-Attrache on February 17, 2004, it was noted that examination of the cervical and lumbar spine revealed full ranges of motion without complaint. No limitation was noted by the physician, who addressed residuals of appellant's left wrist condition for which he recommended restrictions. On September 23, 2004 Dr. Haus examined appellant and made findings pertaining to his left wrist. She noted a remote history of a low back injury but stated that appellant did not elaborate on whether he lost time from work due to this condition. Dr. Haus' work restrictions noted that appellant was capable of full-time duty with a 20-pound limitation on use of the left, nondominant wrist. Her work limitation form noted the remote back injury but did not assign any restrictions due to this condition.

Dr. Munzer advised in November 2004, that appellant experienced discomfort in his left shoulder for approximately two to three weeks. He also noted a two-month history of numbness in the region of the left knee. Dr. Munzer did not provide any opinion relating appellant's left shoulder or knee conditions to the April 4, 2003 injury. He did not relate any history of a 1994 or 1995 left knee employment injury. Moreover, Dr. Munzer did not advise that appellant was disabled for light-duty work due to these conditions. On November 1, 2005 Dr. Katz first addressed a left shoulder condition which appellant ascribed to striking a wall with his left upper extremity. He noted limitations over the AC joint degenerative disease shown on x-ray. Dr. Katz recommended home exercises and medication. He did not find that appellant was totally disabled for work due to his left shoulder condition or otherwise amend the work restrictions previously noted.

At the time of the November 28, 2005 wage-earning capacity determination, appellant's preexisting left wrist and back conditions were taken into consideration. The medical evidence, however, did not establish disability for work due to these conditions. As to his left shoulder, the Office determined that it was not a preexisting condition. It found that the history of injury reported by Dr. Katz on November 1, 2005 departed from that reported by Dr. Munzer in November 2004, when the left shoulder complaints were first addressed. The Board finds that appellant has not established that the determination of his medical restrictions and capacity for full-time light duty by the Office was in error. The contemporaneous reports of Dr. Munzer and Dr. Gunnlaugson addressed the history of injury to appellant's left wrist on April 4, 2003. The physicians did not relate any history or make findings pertaining to the left shoulder. Through January 27, 2004, Dr. Katz addressed only appellant's left wrist condition. He did not adequately explain the basis for his November 1, 2005 report and change to the history of injury. The Office properly determined that the work restrictions specified in the September 24, 2004 report of Dr. Haus represented appellant's physical capacity for light-duty work.

The Office found that appellant was capable of performing the meter reader position because it was a nonstrenuous position which did not require a great deal of physical exertion. As noted, the left wrist injury was to appellant's nondominate arm and no restrictions were imposed on his dominant right arm. The position required him to drive and walk to homes and businesses and take readings of electric, gas, water or steam consumption meters, inspect the meters and connections for defects, damage, or unauthorized connections, then write and record the results. The physical requirements entailed occasional stooping, kneeling, crouching, fingering, taste/smelling, depth perception, color vision with accommodation and exposure to environmental conditions, including cold weather. It also required frequent reaching, handling, and near acuity, including field of vision. The Board finds that the weight of medical opinion establishes that appellant had the physical ability to perform the duties of a meter reader. The requirements of this position conform to the physical restrictions set forth by Dr. Haus.

Subsequent to the November 28, 2005 wage-earning capacity decision, appellant has contended that he was disabled due to various preexisting conditions that were not considered by the Office. As noted, only his left wrist and back conditions were accepted by the Office as preexisting the wage-earning capacity determination.

On reconsideration and before the Board, appellant reiterated his contention that the wage-earning capacity determination was made in error without due regard for the medical evidence. The November 16, 2004 report of Dr. Seeber noted appellant's one-year intermittent complaint of low back and lower extremity pain with numbness. This history is reflective of a condition arising after April 4, 2003. Dr. Seeber related a 10-year history of a low back injury, which departs from an accurate history of a low back sprain on October 8, 1997 for which appellant did not stop work. He addressed treating appellant in 2002 for left carpal tunnel syndrome, from which surgery had provided a good result. Dr. Seeber did not address appellant's capacity for light-duty work or record any limitations due to the low back. On October 4, 2005 Dr. Bowles recorded a history of intermittent back and leg pain since 1985, which had significantly increased over the prior nine months. He reviewed a 2004 MRI scan which showed significant lumbar spondylosis and spinal stenosis, noting appellant was a candidate for surgery. Dr. Bowles did not address the issue of appellant's capacity for work or note any limitations pertaining to his low back condition.

On March 2, 2006 Dr. Minde advised that appellant was not able to perform the duties of a meter reader as he did not have "good use of his left upper extremity." He also attributed appellant's knee and left shoulder conditions to injuries in his federal employment. Dr. Minde did not adequately explain the basis for his conclusion that left wrist residuals caused total disability for light-duty work. He did not discuss appellant's use of his dominant right hand to perform the duties of a meter reader. While Dr. Minde noted that appellant did not have good use of his left arm, he did not sufficiently explain how the restrictions imposed by Dr. Haus were not adequate to compensate for the residuals in that extremity. Further, he did not describe any material change in the nature or extent of the accepted left wrist condition. This report did not warrant modification of the 2005 decision. The October 24, 2007 deposition of Dr. Minde largely reiterated material from the March 2, 2006 report, noting that the brunt of the April 4, 2003 incident was to the left wrist and shoulder. Dr. Minde accepted as factual various injuries arising prior to and preexisting the 2003 injury which rendered appellant totally disabled for gainful appellant. He reiterated that appellant did not have good function of his left upper extremity.

The remainder of the medical evidence is not sufficient to establish a material change in the nature of the accepted conditions which disable appellant from performing the duties of a meter reader. Dr. Tran noted that a functional capacity evaluation was performed in 2006 pertaining to appellant's application for social security benefits. He did not note any material change to appellant's left wrist condition, but made reference to the diagnostic studies obtained in 2003 prior to surgery. Dr. Tran noted that appellant had arthritis of the knees, left shoulder and wrist and had described daily activities that were significantly limited. He advised that Dr. Minde found that appellant was totally disabled and noted that consideration should be given to his opinion. The report did not specifically address the duties of a light-duty meter reader or address limitations in performing such responsibilities due to a material change in the left wrist or back sprain conditions. Dr. Roslonski obtained a 20-year history of bilateral knee pain, which increased following appellant's 2003 employment injury. As noted, however, the contemporaneous medical reports did not address any knee injury arising from the April 4, 2003 incident at work. Dr. Roslonski noted that appellant had put off any knee surgery. His additional reports noted appellant's ongoing complaints of pain, but do not address any disability for work as a meter reader or note additional limitations due to a progression in appellant's accepted conditions. Dr. Burke described appellant's left shoulder pain which he noted had an underlying radicular component, suggestive of cervical radiculopathy. He briefly referred to appellant's left wrist pain and degenerative disease of the knees. Dr. Burke recommended treatment of appellant's cervical condition and recommended update diagnostic testing. He did not address the meter reader light-duty work or comment on any progression or material change to appellant's condition. Dr. Smith described appellant's back and left arm pain in passing, noting that an MRI scan showed disc herniations of the cervical spine. He discussed a cervical discectomy with appellant but did not address his capacity for work in the selected position or clearly address any material change in the left wrist.

Appellant did not submit sufficient medical evidence to establish that the 2005 wage-earning determination was erroneous or that there has been a material change in the accepted conditions. He has not met his burden of proof to establish that the Office's wage-earning capacity decision should be modified.

CONCLUSION

The Board finds that appellant has not established that the November 28, 2005 wage-earning capacity decision should be modified.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 8, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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