

**United States Department of Labor
Employees' Compensation Appeals Board**

R.W., Appellant)	
)	
and)	Docket No. 10-190
)	Issued: July 27, 2010
U.S. POSTAL SERVICE, POST OFFICE, Alexandria, LA, Employer)	
)	
)	

Appearances:

Daniel E. Broussard, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 20, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 23, 2009. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established a recurrence of total disability commencing October 8, 2005 causally related to his accepted employment injury.

FACTUAL HISTORY

This case has previously been before the Board. In a June 1, 2006 decision, the Board affirmed an August 23, 2005 Office decision finding that appellant did not establish his claim for a recurrence of total disability beginning July 2, 2003 causally related to his accepted left wrist tenosynovitis.¹ The Board noted that appellant filed a recurrence of disability claim after the

¹ Docket No. 05-1906 (issued June 1, 2006).

employing establishment removed his limited-duty clerk assignment on July 2, 2003 due to his failure to provide updated medical documentation to support his status. On October 6, 2003 the employer transferred him to the Vidalia Post Office as a carrier based on an Equal Employment Opportunity Commission (EEOC) directive although limited-duty work was only available for two hours daily. There was no wage loss from July 2 to October 6, 2003 as appellant did not stop work. While he stated that he filed the claim because he wanted to be returned to his limited-duty status, the Board found that it had no jurisdiction to address the employing establishment's removal of his limited-duty status due to failure to submit medical documentation as this issue does not arise under the Federal Employees' Compensation Act.² The Board noted that the employer was directed by the EEOC to transfer appellant to Vidalia as a carrier and, having complied, the employer could only provide him with about two hours of limited-duty work daily. For any disability after October 6, 2003, the medical evidence did not establish that appellant sustained disability due to residuals of his accepted condition. The Board found that there was no evidence of a change in the nature of appellant's injury-related condition or that the available limited-duty work exceeded his restrictions. Although, appellant asserted that his recurrence was due to his transfer from clerk to carrier, the Board found that the transfer was based on the EEOC's decision and his stated preference to work as a carrier at that location due to its convenience. The history of the case as set forth in the Board's prior decision is incorporated herein by reference.

On October 8, 2005 appellant was terminated from the employing establishment on the basis that he was medically unable to perform the duties of a city carrier. On June 27, 2007 he filed a notice of recurrence of disability commencing October 8, 2005 the date of his termination. In support of his claim, appellant submitted numerous treatment notes and diagnostic testing from the Department of Veterans Affairs, which diagnosed various medical conditions, along with a copy of the October 3, 2005 letter of removal from the employing establishment. A June 8, 2007 clinic note reported that appellant presented for a boil on his neck and a September 13, 2007 note diagnosing a cervical radiculopathy injury.

In an October 9, 2007 note, Dr. Yolanda O'Rourke, a Board-certified internist, stated that appellant had multiple medical problems that include hypertension, colon polyps, remote peptic ulcer disease, dyslipidemia, type II diabetes mellitus, chronic insomnia and chronic neck pain with bilateral radiculopathy. She indicated that, while he has seen multiple specialists, there has been no significant improvement in his chronic neck pain.

In a June 18, 2008 letter, the Office advised appellant of the deficiencies in his claim and requested further factual and medical evidence, including a narrative report from his attending physician which addressed the history of the original injury and contained the physician's opinion regarding the need for continued medical treatment and the accepted work-related condition and the physician's opinion on why he was unable to work.

In response, appellant submitted a July 16, 2008 sworn affidavit maintaining that his current condition was related to his initial injury and that he had not sustained any intervening injuries at work or elsewhere.

² 5 U.S.C. §§ 8101-8193.

In a July 15, 2008 medical report, Dr. O'Rourke advised that appellant had undergone continuous medical care by many specialists for over a decade secondary to left neck and left upper extremity pain which began after a 1996 work injury. She stated that appellant's overall condition has worsened over the years; however, he should be able to perform light-duty work as a mail clerk. Dr. O'Rourke indicated that his current diagnoses included left shoulder adhesion capsulitis, subacromial bursitis, left rotator cuff tear, cervical radiculopathy, hypertension, diabetes mellitus and hyperlipidemia. She noted that a 2005 magnetic resonance imaging (MRI) scan revealed degenerative cervical spondylosis with mild left foraminal narrowing at C6-7 and C7-T1 and that appellant's cervical radiculopathy was confirmed in 2000 with an electromyogram (EMG).

In a July 30, 2008 decision, the Office denied appellant's recurrence claim on the basis that the medical evidence failed to establish that his current conditions were causally related to the accepted work-related conditions of tenosynovitis of the left forearm and wrist.

On August 11, 2008 appellant requested a telephonic hearing, which was held on December 9, 2008. At the hearing, his attorney argued that, although appellant had other nonemployment-related conditions, the current work restrictions of carrying and lifting were caused by the accepted injury and thus the recurrence claim should be accepted on the basis that the employing establishment failed to provide limited work in accordance with his injury-related restrictions. Appellant testified as to his current limitations caused by the accepted injury and maintained that there had not been any other accidents or injuries since he was terminated.

Numerous reports concerning appellant's multiple conditions were submitted. In a December 22, 2008 report, Dr. O'Rourke stated that appellant had chronic pain involving the neck and radiating into his left shoulder (cervical radiculopathy) plus bilateral carpal tunnel syndrome. She noted that he has been followed in multiple specialty clinics and took multiple medications including a narcotic medication to control his pain. Dr. O'Rourke indicated that there has been little clinical improvement in appellant's condition and he must continue with more medical treatment and evaluation. She noted that he was scheduled for an EMG study next month and his specialist was hoping that this test would provide additional information.

By decision dated April 23, 2009, an Office hearing representative affirmed the prior decision. The hearing representative noted that no medical evidence of record indicated that appellant's current cervical condition at C6-7 and resultant radiculopathy was causally related to the accepted employment events on and prior to September 12, 1996.

LEGAL PRECEDENT

Where 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.³

Office regulations provide that 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 had 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 that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her 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 or her established physical limitations.⁵

ANALYSIS

The employing establishment terminated appellant for employment effective October 8, 2005 on the basis that he was unable to medically perform the duties of a city carrier. Appellant filed a claim for recurrent total disability as of October 8, 2005. The Office previously accepted that appellant sustained tenosynovitis of the left forearm and wrist as a result of his federal duties. As noted in the Board's prior decision, appellant returned to limited-duty work until he was eventually reclassified as a regular city carrier and transferred to a different location pursuant to an EEOC decision and his preference to work at that location due to its convenience. As indicated, the Board previously found that it had no jurisdiction over the employing establishment's removal of appellant's limited-duty status due to his failure to submit supporting medical documentation. There is no evidence of record following the Board's prior decision showing that the reasons for the removal of limited duty had changed or that the Office further reviewed the basis of the denial of appellant's limited-duty status.⁶ Consequently, appellant's assertions before the Office and on appeal, regarding the employing establishment's failure to provide him further light duty have already been reviewed and decided by the Board.

In support of his claim for a change in the nature and extent of his injury-related condition, appellant submitted several reports from Dr. O'Rourke regarding his current cervical condition at C6-7 and resultant radiculopathy. Dr. O'Rourke advised that appellant has been undergoing continuous medical care for over a decade secondary to left neck and left upper extremity pain which began after a 1996 work injury. She indicated in several reports that appellant's overall condition had worsened over the years and he required continued medical treatment and evaluation. In her July 15, 2008 report, Dr. O'Rourke indicated that appellant

³ *Jackie D. West*, 54 ECAB 158 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁴ 20 C.F.R. § 10.5(x).

⁵ *Id.*

⁶ A decision of the Board is final upon the expiration of 30 days from the date of the decision. 20 C.F.R. § 501.6(d). In the absence of further review by the Office on the issue addressed by a Board decision, the subject matter reviewed is *res judicata* and is not subject to further consideration by the Board. *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

should be able to perform light-duty work as a mail clerk. However, while she stated that appellant's left neck and left upper extremity pain began after a 1996 work injury, she failed to mention or discuss the employment events or provide a rationalized medical opinion bridging his current condition(s) and disability to such events.⁷ Furthermore, Dr. O'Rourke did not specifically address why appellant's disability beginning October 8, 2005 was caused by a spontaneous change in his accepted left tenosynovitis condition nor did she explain why diagnosed conditions, not accepted by the Office, would have been caused or aggravated by the accepted left tenosynovitis.⁸ As such, her opinion is insufficient to support that the claimed recurrent disability is causally related to the accepted employment injury.

The remainder of the medical evidence of record, which includes numerous medical reports for several conditions and diagnostic testing, do not contain any opinion on the causal relationship of appellant's conditions or the need for continued treatment to the accepted employment injury.

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁹ For these reasons, the medical evidence does not establish that appellant sustained a recurrence of disability on October 8, 2005 causally related to his accepted left wrist tenosynovitis condition or the accepted employment events on and prior to September 12, 1996.

CONCLUSION

The Board finds that appellant failed to establish that he had any condition or disability on and after October 8, 2005 causally related to his September 12, 1996 employment injury.

⁷ See *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁸ See *T.M.*, 60 ECAB ____ (Docket No. 08-975, issued February 6, 2009) (for conditions not accepted or approved by the Office as due to an employment injury, the claimant bears the burden of proof to establish that such conditions are causally related to the employment injury through the submission of rationalized medical evidence).

⁹ See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' April 23, 2009 decision is affirmed.

Issued: July 27, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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