United States Department of Labor
Employees' Compensation Appeals Board

E.S., Appellant	)	
and	)	**Docket No. 09-1037**
	)	**Issued: May 7, 2010**
DEPARTMENT OF ENERGY, BONNEVILLE POWER ADMINISTRATION, Vancouver, WA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 12, 2009 appellant filed an appeal from decisions of the Office of Workers' Compensation Programs dated May 12, July 30 and November 7, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant was disabled from March 1, 1988 to May 21, 1989 and July 17, 1989 to March 16, 1999; and (2) whether the Office properly refused to reopen his claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

On appeal, appellant contends that the fact that he has a permanent impairment and was granted a schedule award establishes that he was disabled for work. He also contends that a wage-earning capacity determination should have been issued.

FACTUAL HISTORY

This case has previously been before the Board. Appellant sustained a left shoulder arch injury and lumbar strain on December 16, 1980 under case file No. xxxxxx355. On May 11, 1983 he sustained a low back contusion under case File No. xxxxxx057. On December 15, 1988 appellant filed a claim for bilateral carpal tunnel syndrome in case File No. xxxxxx757.[1] Following the denial of this claim, he filed an appeal before the Board in Docket No. 92-995. In a March 9, 1993 decision, the Board remanded the case for further development of the medical evidence based on a conflict in medical opinion.[2] The Office subsequently accepted bilateral carpal tunnel syndrome on July 15, 1993 but found that he had no disability following surgical releases of May 22 and June 5, 1989.[3]

In a November 22, 1996 decision, the Board found that the Office properly denied appellant's request for reconsideration and his claim for a schedule award as he did not establish any permanent impairment to his upper extremities.[4] In a December 15, 1999 decision, appellant was subsequently granted schedule awards for 40 percent impairment to his right and left arms. The awards ran for 249.6 weeks from March 17, 1999 to December 29, 2003.[5] Appellant elected benefits under the Federal Employees' Compensation Act and was placed on the periodic rolls effective December 30, 2003.[6]

On January 5 and May 11, 2004 appellant filed claims for compensation commencing March 1, 1988. He provided a list of employers, showing that he worked intermittently from May 1988 through 2000. On May 18, 2004 the Office requested that appellant submit additional information regarding his claim and provide medical records related to his bilateral carpal tunnel syndrome since March 1, 1988. In a June 8, 2004 letter, appellant described the jobs he had held since March 1, 1988 and submitted medical evidence.

In a March 12, 2007 decision, the Office amended appellant's schedule award to reflect his pay rate as of May 22, 1989, the date his disability began as of his first carpal tunnel surgery. Appellant received additional compensation. He timely requested reconsideration which was denied by the Office in a May 22, 2007 nonmerit decision.

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[1] Appellant was terminated from his employment for unacceptable job performance on February 29, 1988. Following his termination, he worked in private employment as a heavy equipment mechanic.

[2] Docket No. 92-995 (issued March 9, 1993).

[3] By decisions dated June 22, 1990 and January 9, 1992, the Office found that he had no disability under any of his claims.

[4] Docket No. 94-2207 (issued November 22, 1996).

[5] Appellant developed a nonemployment-related condition of polyneuropathy of the upper extremities. Impairment for this condition was included in his schedule award rating.

[6] In Docket No. 02-1278 the Board issued an order dismissing appeal on August 30, 2002, finding that appellant sought review of an April 19, 2001 Office informational letter.

In an October 4, 2007 decision, the Office denied appellant's claim for compensation from March 1, 1988 to March 16, 1999 on the grounds that the medical evidence did not establish that he was disabled for work. On January 14, 2008 appellant requested reconsideration and submitted a January 2, 2008 report from Dr. Douglas Bald, a Board-certified orthopedic surgeon.

On February 29, 2008 the employing establishment advised that appellant's termination on February 29, 1988 was not based on any physical limitation but on his failure to perform his assigned duties. After his termination, appellant applied for disability retirement. In a February 22, 1988 letter finalizing appellant's removal, the employer stated that he was terminated for unacceptable performance as of February 29, 1988.

By decision dated May 12, 2008, the Office denied modification of the October 27, 2007 decision, finding that the medical evidence was insufficient to establish appellant's disability for the periods claimed.

Appellant requested reconsideration and submitted the surgery reports of May 22 and June 5, 1989 and a September 5, 1991 report from his attending surgeon.

In a July 30, 2008 decision, the Office accepted that appellant was disabled from May 22 through July 16, 1989 due to his employment-related surgeries. It denied wage-loss compensation from March 1, 1988 to May 21, 1989 and July 17, 1989 to March 16, 1999.[7]

On October 11, 2008 appellant requested reconsideration, arguing that a wage-earning capacity determination should have been made for the periods March 1, 1988 to May 21, 1989 and July 17, 1989 to March 16, 1999. By decision dated November 7, 2008, the Office denied his reconsideration request without further merit review.

The medical evidence relevant to the period prior to appellant's termination in 1988 includes a February 17, 1987 report of Dr. Paul M. Puziss, an Office referral physician Board-certified in orthopedic surgery, who reviewed appellant's history of injury to the left shoulder and low back and medical treatment. Appellant complained of mild pain in the left shoulder area without any radicular symptoms and no numbness or tingling. He also complained of left lower back pain with numbness and tingling in all his toes. Dr. Puziss listed findings on examination, noting normal muscle strength in both upper extremities without any atrophy and normal carpal and cubital tunnels without tenderness or Tinel's sign. Reflexes and sensation to pinprick was normal. As to the lumbar spine, Dr. Puziss noted a mild catch on straightening, indicating slight degenerative disc disease. There was no midline lumbar tenderness, with 2+ tenderness of the musculature between L1 and L3. No muscle spasm was found. Muscle testing of the lower extremities was reported as normal, reflexes equal and symmetric with sensation demonstrating a generalized stocking like pinprick loss in the left lower extremity. X-rays of the left shoulder revealed a large spur over the distal superior clavicle at the acromioclavicular joint and at the

[7] In a July 28, 2008 decision, the Office denied appellant's request for reconsideration as untimely and not establishing clear evidence of error on the issue of disability causally related to his accepted injuries as of February 29, 1988 when he was terminated from work. In an August 4, 2009 decision, the Board affirmed the denial of reconsideration. Docket No. 09-130 (issued August 4, 2009).

humeral head with minimal cystic and sclerotic changes of the humeral greater tuberosity. The lumbar x-rays revealed a very minimal scoliosis concave to the left apex at L1-2 with spurring at L1-2 almost bridging one vertebra to another. Spurring was also found at L3-4 and at all other levels. Dr. Puziss diagnosed left chronic mild rotator cuff tendinitis, degenerative arthritis of the left acromioclavicular joint, degenerative spondylosis of the lumbar and lumbosacral spine and history of left lumbar spine contusion.

With regard to the 1980 injury, Dr. Puziss found some chronic irritation of the left rotator cuff with degenerative changes. He advised that the left shoulder condition was stationary and characterized it as relatively mild and that appellant should avoid heavy lifting overhead. The lumbar spine contusion accepted in 1983 had resolved and the degenerative arthritis found in the lumbar spine was not the result of the contusion. Dr. Puziss noted that a computerized tomography scan did not demonstrate any herniated disc and that appellant had subjective complaint of low back pain with slight loss of range of motion. He advised that appellant be precluded from lifting more than 50 pounds on a regular basis and, occasionally, up to 75 pounds. Dr. Puziss stated that appellant's degenerative spondylosis was a preexisting condition which was not aggravated by the 1983 work injury but did contribute to appellant's overall pain level.

In a September 11, 1987 report, Dr. Edgar K. Ragsdale, an attending Board-certified orthopedic surgeon, advised that appellant should not do overhead work while standing and not extend or elevate his arms for more than 10 minutes at a time. The record reflects that, prior to his termination from employment, appellant worked at limited duty at the employing establishment within the noted physical restrictions.

On December 16, 1988 Dr. Edward J. Sale, an attending family physician, reported that diagnostic testing was performed on November 14, 1988 which documented bilateral carpal tunnel syndrome with motor and sensory latencies present. Thereafter, appellant came under the treatment of Dr. Jerry Nye, a Board-certified surgeon. In a May 19 1989 report, Dr. Nye noted that appellant reported a history of carpal tunnel syndrome beginning in 1986. He advised that appellant worked for a private employer as a millwright from April 1988 to February 1989, during which period he fell from a ladder, landing on his right knee and both palms. Appellant subsequently underwent diagnostic studies on November 14, 1988 which he classified as revealing severe carpal tunnel compression. Dr. Nye stated that appellant's condition was due to his many years of work at the employing establishment as a heavy equipment mechanic and recommended bilateral decompression. He performed carpal tunnel surgery on May 22 and June 5, 1989.

In a September 27, 1989 form report, Dr. Nye advised that appellant had been totally disabled from May 26 to July 17, 1989 due to surgery but could return to work on July 17, 1989. He noted that appellant had not been released by the physician who was treating the degenerative shoulder arthritis. In a September 5, 1991 report, Dr. Nye noted that appellant worked for a private employer from April 1988 to February 1989 where he sustained an injury, "and subsequent to his injury … apparently he began to relate to the physicians about problems with his hands." He reiterated that appellant's carpal tunnel syndrome was related to repetitive activity over a period of years with swelling about the synovium of the wrist and compression on

the nerve. Dr. Nye advised that appellant's federal employment was a major contributing cause of the carpal tunnel syndrome developing.

In a June 24, 1993 report, Dr. Samuel F. Gill, an Office referral physician Board-certified in orthopedic surgery, reviewed appellant's work history and medical treatment. He listed appellant's complaint of pain to his upper extremities in the hands, wrists and shoulders, hand numbness and lumbar spine with left leg numbness. Dr. Gill provided findings on physical examination and diagnosed postoperative carpal tunnel syndrome with no serious residual impairment, bilateral severe osteoarthritis of the shoulders and lumbar spine pain with left leg numbness, not evaluated. He advised that any disability due to appellant's accepted bilateral carpal tunnel syndrome was resolved by surgery in 1989 and he had no further functional impairment or residuals. Dr. Gill advised that the severe bilateral osteoarthritic changes to the shoulders, not residuals of carpal tunnel syndrome, prevented appellant from returning to his previous employment. On December 6, 1993 he noted that he reexamined appellant on December 1, 1993, and that hand examination demonstrated no significant loss of motion, no significant sensory loss, slight loss of grip strength and pinch strength, with no measurable muscle atrophy or specific weakness. Dr. Gill found that appellant had no ratable impairment.

A September 8, 1994 EMG/NCS, performed by Dr. Todd D.L. Woods, Board-certified in neurology, revealed evidence of bilateral median mononeuropathies affecting the sensory fibers on the right and sensory and motor fibers on the left. He advised that this was most commonly secondary to carpal tunnel syndrome, without denervation in the corresponding abductor pollicis brevis muscles. There was also evidence of distal bilateral ulnar nerve dysfunction, most likely secondary to an underlying peripheral neuropathy. In a September 28, 1998 report, Dr. Woods reviewed the 1994 testing. He stated that upper extremity examination demonstrated a negative Tinel's sign bilaterally with Phalen's testing producing wrist pain but no numbness. Sensory examination demonstrated decreased vibration at the ankles bilaterally and graded pinprick deficit increasing below the knees and distal to the mid forearms. Dr. Woods advised that appellant had evidence of underlying polyneuropathy which had progressed since the study performed in 1994; however, the carpal tunnel syndrome previously found had not progressed. He advised that appellant's upper extremity symptoms were due to polyneuropathy combined with residual carpal tunnel rather than recurrent carpal tunnel and that additional carpal tunnel intervention was not warranted. Diagnostic testing on September 28, 1998 demonstrated bilateral median mononeuropathies affecting the sensory and motor fibers, most commonly secondary to carpal tunnel syndrome without denervation in the corresponding abductor pollicis brevis muscles, and a sensorimotor polyneuropathy involving sensory greater than motor fibers that had progressed since the 1994 study.

On March 17, 1999 Dr. Douglas Bald, a Board-certified orthopedic surgeon, reviewed appellant's employment history and medical treatment for carpal tunnel syndrome. He obtained a history from appellant that his symptoms related back to 1984 or 1985 and that his work required routine use of vibrating equipment. Dr. Bald noted the 1998 diagnostic test results and listed appellant's chief complaint as constant severe pain, numbness, burning and tingling in both hands. Upper extremity examination demonstrated no atrophy, positive Phalen's and Tinel's tests bilaterally, normal muscle strength in all muscle groups and subjective diminished sensation involving the entire volar aspect of both hands including all five digits. Dr. Bald diagnosed carpal tunnel syndrome of both wrists and diffuse sensorimotor polyneuropathy of the upper and

lower extremities bilaterally. He advised that appellant had 40 percent impairment to each upper extremity and apportioned half of the impairment to the accepted carpal tunnel syndrome. Dr. Bald stated that, although appellant was moderately symptomatic, he did not require further medical treatment.

In a May 27, 2004 report, Dr. Bald noted that he had not examined appellant since 1999. Appellant complained of pain, burning, stiffness and numbness to both hands. Neurological examination of both the upper extremities demonstrated normal muscle strength and subjective diminished sensation on the volar aspect of both hands in all five digits. Dr. Bald diagnosed carpal tunnel syndrome of both wrists and diffuse sensorimotor polyneuropathy of the upper and lower extremities. He advised that appellant was not physically capable of returning to his previous employment as a heavy equipment operator, noting that he continued to have a measurable impairment attributable to his work-related entrapment neuropathy with considerable contribution from the nonwork-related polyneuropathy. Dr. Bald advised that appellant also described fairly severely symptomatic arthritic conditions involving both shoulders that were not evaluated.

On July 19, 2004 Dr. Marcus Melvin, an Office referral physician Board-certified in general and plastic surgery, reviewed the medical record and statement of accepted facts. On examination, appellant complained of pain, numbness and tingling to both hands with grip weakness. Dr. Melvin noted that appellant had multiple peripheral problems with his legs, hands, back and knees. Physical examination was restricted to both hands and demonstrated decreased sensation in the median and ulnar distributions with Phalen's and compression tests positive bilaterally and a restricted range of motion in all digits. Dr. Melvin diagnosed bilateral carpal tunnel syndrome and advised that appellant was totally disabled prior to his carpal tunnel syndrome release surgeries in 1989. He stated that the surgeries were successful and relieved appellant of his primary problems; however, appellant had residual problems due to his polyneuropathy which rendered him totally disabled. In an attached work capacity evaluation, Dr. Melvin advised that appellant was permanently disabled. In an October 14, 2004 report, he advised that the diagnosis of bilateral carpal tunnel syndrome was based on his examination that demonstrated decreased median distribution sensation and positive Phalen's and compression tests bilaterally.

In a January 2, 2008 report, Dr. Bald diagnosed bilateral carpal tunnel syndrome. He advised that he first examined appellant at the request of the employing establishment on March 17, 1999. At that time, appellant reported that his symptoms began in 1984 or early 1985 and subsequent studies confirmed the presence of bilateral carpal tunnel syndrome, for which he had surgical treatment. Dr. Bald advised that in 1999 appellant was totally disabled with a significantly reduced range of motion, weakness and sensory deficit in both upper extremities. Appellant was again seen on May 27, 2004 for persistent symptoms and continued physical limitations regarding the use of both hands. Dr. Bald advised that he was not physically capable of returning to his job as a heavy equipment operator. He reviewed the medical records and progression of carpal tunnel syndrome and found that appellant was not capable of working in his regular position of heavy duty operator from March 1, 1988 through March 16, 1999. Dr. Bald advised that no further treatment was necessary.

As noted, on July 30, 2008, the Office found that appellant was entitled to wage-loss compensation for the period May 22 through July 16, 1989 but denied disability before and after that period. In the November 7, 2008 decision, the Office denied appellant's reconsideration request without further merit review.

LEGAL PRECEDENT -- ISSUE 1

Under the Federal Employees' Compensation Act,[8] the term "disability" is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.[9] Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act.[10] Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.[11]

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[12] Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.[13]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[14] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[15] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the

[8] 5 U.S.C. §§ 8101-8193.

[9] *See Prince E. Wallace*, 52 ECAB 357 (2001).

[10] *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

[11] *Tammy L. Medley*, 55 ECAB 182 (2003).

[12] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[13] *Albert C. Brown*, 52 ECAB 152 (2000).

[14] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[15] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[16]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not established that he was totally disabled for work from March 1, 1988 to May 21, 1989, as alleged.

Prior to the time appellant's employment was terminated on February 29, 1988, the record establishes that he was performing modified duty as a heavy equipment mechanic with lifting restrictions and no overhead work while standing and no work in a cramped position. The medical evidence does not reflect that any physician of record supported that he was totally disabled from continuing in such work due to residuals of his accepted left shoulder or low back conditions. Dr. Puziss addressed appellant's left shoulder and low back symptoms, finding that he could work subject to specified restrictions. A computerized tomography scan did not demonstrate the presence of any herniated disc and the physician advised that appellant's complaints were due to underlying lumbar degenerative spondylosis, mild rotator cuff tendinitis and degenerative arthritis of the left acromioclavicular joint. Dr. Ragsdale similarly advised that appellant could work at limited duty with restrictions. Moreover, the record reflects that appellant subsequently secured employment in the private sector from April 1988 to February 1989. The medical evidence does not support that he was totally disabled due to his accepted conditions commencing March 1, 1988.

Appellant also contends that he was totally disabled as of that date due to his carpal tunnel condition. The medical evidence of record, however, does not document medical treatment or disability due to such condition until some time after he left federal employment. Dr. Puziss provided findings on physical examination on February 17, 1987, noting that appellant's complaints focused on his left shoulder and low back. On examination, he described symptoms of mild pain in the left shoulder without radiculopathy, normal strength in both upper extremities without atrophy and normal testing of the carpal and cubital tunnels without tenderness or Tinel's sign. Appellant's physician, Dr. Ragsdale, did not address any complaints or disability due to carpal tunnel syndrome. Rather, the reports of Dr. Nye reflect that, while employed in the private sector, appellant sustained an injury in which he fell approximately five feet from a ladder landing on his palms and right knee. This incident is documented as occurring sometime in late July or early August 1988. Thereafter, on November 14, 1988 testing documented bilateral carpal tunnel syndrome for which appellant underwent surgery.[17] Appellant was first examined by Dr. Nye in May 1989 and he found appellant disabled due to surgery from May 22 to July 17, 1989, when he was released to return to employment. The medical evidence of record is insufficient to establish that appellant was disabled from the requirements of his prior federal limited-duty work due to his bilateral carpal tunnel syndrome for the period March 1, 1988 to May 21, 1989. While the Office accepted that appellant's carpal tunnel syndrome was contributed to by his federal employment, the evidence does not reflect

[16] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[17] The record reflects that appellant filed a workers' compensation claim in his private-sector employment which was apparently denied.

disability due to this condition until he underwent surgery on May 22, 1989. As noted, the Office paid compensation for total disability until July 17, 1989 as supported by the reports of Dr. Nye.

Appellant contends on appeal that, because he sustained permanent impairment for which he was granted a schedule award, he is entitled to wage-loss compensation for the period claimed. It is well established, however, that disability is not synonymous with physical impairment which may or may not result in the incapacity to earn wages.[18] The fact that appellant was granted schedule awards for his upper extremity impairment is not determinative as to any employment-related disability. Only if the medical evidence establishes that residuals of an employment injury are such that, from a medical standpoint, the employee is prevented from continuing in his or her employment, is the employee entitled to wage-loss compensation.[19] The Board finds the medical evidence is not sufficient to establish that appellant was disabled from March 1, 1988 to May 21, 1989.

With regard to his disability from July 17, 1989 to March 16, 1999, the date the period of the schedule awards commenced, the medical evidence is not sufficient to establish disability due to the accepted conditions. Following surgery, Dr. Nye released appellant to return to work subject to restrictions based on the accepted bilateral carpal tunnel syndrome. The medical evidence does not reflect that any physician found appellant disabled for his prior limited-duty work due to the accepted left shoulder condition or lumbar strain. Rather, the medical records reflect that appellant was diagnosed with osteoarthritis of his shoulders and polyneuropathy affecting his upper and lower extremities. Appellant's conditions of polyneuropathy of all extremities and severe degenerative arthritis of both shoulders have not been accepted as employment related.

Dr. Nye reported on May 19, 1989 that appellant's carpal tunnel syndrome was probably the reason for his being terminated. This opinion, however, is at best speculative as the physician provided no knowledge of the circumstances surrounding the termination or the medical evidence of record prior to March 1, 1988.[20] On September 27, 1989 Dr. Nye advised that appellant could return to work on July 17, 1989 but noted that he had not been released by the physician caring for his degenerative shoulder, a condition that has not been accepted as employment related. His reports are insufficient to establish that appellant was totally disabled other than for the period May 22 to July 17, 1989.

On June 24, 1993 Dr. Gill advised that appellant may have had a temporary functional impairment after February 29, 1988 that was resolved by the 1989 surgical procedures and that he had no further functional impairment or residuals related to the accepted carpal tunnel syndrome. On examination, he stated that appellant has no serious residual impairment due to carpal tunnel syndrome. Dr. Gill advised that appellant's severe bilateral osteoarthritis of the shoulders prevented his return to employment. On December 6, 1993 he reexamined appellant

[18] *D.M.*, 59 ECAB ____ (Docket No. 07-1230, issued November 13, 2007).

[19] *Id*.

[20] *Albert C. Brown*, *supra* note 13.

but found no disability due to carpal tunnel syndrome. Dr. Gill's reports are not sufficient to find employment-related disability following July 17, 1989, as alleged. He clearly stated that any disability due to the accepted carpal tunnel syndrome was resolved by the 1989 procedures.

Thereafter, appellant underwent additional diagnostic testing in September 1994 that revealed bilateral median neuropathy and ulnar nerve dysfunction. Dr. Woods reviewed the studies and noted that the EMG/NCS findings were most likely secondary to an underlying peripheral neuropathy. In September 1998, he advised that appellant's underlying polyneuropathy had progressed since 1994 but that the carpal tunnel syndrome had not progressed. On examination, Dr. Woods noted a negative Tinel's scan bilaterally with Phalen's test producing pain but no numbness. He attributed appellant's upper extremity symptoms to the underlying polyneuropathy rather than recurrent carpal tunnel and stated that additional intervention was not warranted based on the accepted condition. Dr. Woods' reports therefore do not establish that appellant was disabled during this period due to the accepted bilateral carpal tunnel syndrome.

On March 17, 1999 Dr. Bald diagnosed carpal tunnel syndrome of both wrists and diffuse sensorimotor polyneuropathy of the upper and lower extremities bilaterally; however, he did not provide any opinion regarding appellant's ability to work. Rather, he rated impairment due to appellant's carpal tunnel syndrome. Based on this report, appellant received compensation under a schedule award commencing March 17, 1999, the date of Dr. Bald's report.

On May 27, 2004 after the period of claimed disability, Dr. Bald advised that appellant was incapable of returning to his previous employment as a heavy equipment mechanic. He noted that appellant had measurable impairment attributable to the entrapment neuropathy with a considerable contribution from the nonemployment-related polyneuropathy. This report, however, does not address disability from July 17, 1989 to March 16, 1999, the period relevant to appellant's claim on appeal. Moreover, Dr. Bald did not provide any history of the limited-duty work appellant was performing prior to his termination on February 29, 1988. This report is not sufficient to establish that appellant was totally disabled for work due to his accepted conditions following his release by Dr. Nye on July 17, 1989. The Board will not require the Office to pay compensation for disability in the absence of medical evidence addressing the specific period for which compensation is claimed.[21]

On January 2, 2008 Dr. Bald noted that appellant returned for follow-up, concerned about his ability to perform his job from March 1988 through March 1999. He stated that, when originally seen on March 17, 1999, appellant stated that his symptoms had actually begun in 1984 or 1985. Dr. Bald reiterated that appellant was not physically capable of working "in his regular-duty position as a Heavy Equipment Operator … from March 1, 1988 through March 16, 1999." The Board finds that the opinion of Dr. Bald is of diminished probative value as it is not based on an accurate medical or factual background or well rationalized on the medical conclusion expressed. As noted, appellant was not performing his regular duties as a heavy equipment operator since his placement on limited duty several years prior to his termination. It is well established that medical reports must be based on a complete and accurate

[21] *Supra* note 12.

factual and medical background.[22] Dr. Bald's one-page treatment record provided no review of the specific duties appellant was performing at the time he stopped work or of the medical evidence pertaining to appellant's upper extremities prior to March 1, 1988. His reports are therefore insufficient to establish disability as claimed.

Dr. Melvin's July 19, 2004 report is also insufficient to establish appellant's claim. He advised that appellant continued to be totally disabled prior to his carpal tunnel release surgeries but also stated that most of appellant's residual problems stemmed from his polyneuropathy condition which prevented him from returning to work. This opinion is of reduced probative value as it is not well explained and failed to provide an accurate factual or medical history. On October 14, 2004 Dr. Melvin reiterated that appellant was totally disabled at that time due to bilateral carpal tunnel syndrome; however, this report pertains to disability in 2004 and not that claimed on appeal. The weight of medical evidence is determined by its reliability, probative value and convincing quality. The Board looks to the opportunity for and thoroughness of any physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the conclusions reached.[23] The medical evidence of record does not establish appellant's claim of total disability from March 1, 1988 to May 21, 1989 or July 17, 1989 to March 16, 1999.[24]

Appellant also contended that a wage-earning capacity determination should have been made. As noted, an employee who has a physical impairment causally related to his federal employment but who nevertheless has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used under the Act. Appellant has not established through probative and well-rationalized medical evidence that he was unable to continue in his limited-duty employment after February 29, 1988 due to residuals of his accepted conditions.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[25] Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).[26] This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new

[22] *James R. Taylor*, 56 ECAB 537 (2005).

[23] *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007).

[24] *Tammy L. Medley, supra* note 11.

[25] 5 U.S.C. § 8128(a).

[26] 20 C.F.R. § 10.608(a).

evidence not previously considered by the Office.[27] Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[28]

ANALYSIS -- ISSUE 2

In his October 11, 2008 request for reconsideration, appellant asked only that his case be reviewed. He did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to further merit review of his claim under section 10.606(b)(2).[29] He resubmitted a January 2, 2008 report from Dr. Bald that had been reviewed by the Office in its May 12, 2008 decision. The submission of evidence which repeats or duplicates that already of record and previously considered does not constitute a basis for reopening a claim for merit review.[30]

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit relevant and pertinent new evidence not previously considered. The Office did not abuse its discretion by denying his reconsideration request.[31]

CONCLUSION

The Board finds that appellant did not establish that he was disabled from March 1, 1988 to May 21, 1989 and July 17, 1989 to March 16, 1999 due to residuals of his accepted conditions. The Office properly refused to reopen his claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

[27] *Id*. at § 10.608(b)(1) and (2).

[28] *Id.* at § 10.608(b).

[29] *Id.* at § 10.606(b)(2).

[30] *R.M.*, 59 ECAB ___ (Docket No. 08-734, issued September 5, 2008).

[31] *See Susan A. Filkins*, 57 ECAB 630 (2006).

ORDER

IT IS HEREBY ORDERED THAT the November 7, July 30 and May 12, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: May 7, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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