

FACTUAL HISTORY

On September 4, 2008 appellant, then a 45-year-old marine machinery repairer, filed an occupational disease claim alleging carpal tunnel syndrome due to job activities of wrenching or pulling on ropes or cables. He first became aware of his condition on June 20, 2008 and first attributed it to his employment on that date. Dr. Daniel Flores, a Board-certified family practitioner, examined appellant on June 6, 2008 and diagnosed carpal tunnel syndrome. Appellant underwent electrodiagnostic studies on June 20, 2008 which demonstrated moderate median neuropathies at the left and right wrists or carpal tunnel syndrome perhaps more on the left.

OWCP accepted appellant's claim for bilateral wrist strain on September 19, 2008.² It referred him for a second opinion evaluation. In a report dated October 13, 2008, Dr. Joseph McCoy, a Board-certified orthopedic surgeon, reviewed the statement of accepted fact and diagnosed mild-to-moderate bilateral carpal tunnel syndrome. He noted appellant's history of injury and his symptoms, including numbness and tingling at night significant enough to wake him. On physical examination, Dr. McCoy found negative Tinel's sign and mildly positive Phalen's test. He reviewed the nerve conduction studies, which were compatible with moderate median neuropathy. Dr. McCoy opined that appellant's carpal tunnel syndrome was industrially caused.³ He stated that the only active diagnosis was mild-to-moderate carpal tunnel syndrome bilaterally which was clearly established. Dr. McCoy stated that appellant had participated in powerful and repetitive gripping activities as part of his usual and customary work for at least four year and had no other known risk factors for carpal tunnel syndrome. He stated, "I do believe the most significant causative factor is [appellant's] above-noted industrial exposure." Dr. McCoy further opined that this was not an aggravation of a preexisting problem, but a new occupational problem which has gradually developed. He found that appellant was capable of performing his regular duties. Dr. McCoy recommended that appellant wear anti-vibration gloves while working with power tools, that he take breaks when gripping and that he wear wrist splints at night.

Appellant filed a recurrence of disability claim on September 11, 2012 alleging that on June 10, 2012 he sustained a recurrence of his June 20, 2008 employment injury. He stated that his condition had never changed and that he woke up at night from pain in his hands and palms.

OWCP requested additional factual and medical evidence from appellant on September 18, 2012. Appellant submitted a medical record establishing that he underwent a nerve conduction study on September 20, 2012 which demonstrated increased median neuropathy when compared to the 2008 study.

² At the time of OWCP's September 19, 2008 decision, there is no medical evidence in the record with any diagnosis other than carpal tunnel syndrome.

³ The record does not contain a decision from OWCP accepting appellant's claim for carpal tunnel syndrome as diagnosed by the second opinion physician nor is there additional development of the medical evidence regarding this diagnosed work-related condition.

In a decision dated November 19, 2012, OWCP noted that appellant filed an occupational disease claim on September 4, 2008 which was accepted for bilateral wrist sprain. It denied his September 11, 2012 recurrence claim finding that he had not submitted sufficient medical evidence in support of his current claim and that the last medical report of record was dated January 27, 2004.⁴

Appellant resubmitted the June 6, 2008 note of Dr. Flores and requested reconsideration on March 8, 2013. He also resubmitted Dr. McCoy's October 13, 2008 report and submitted an October 14, 2008 work restriction evaluation from Dr. McCoy recommending that appellant wear viscoelastic anti-vibration gloves and perform powerful gripping in short segments when possible.

By decision dated June 7, 2013, OWCP declined to reopen appellant's claim for reconsideration of the merits. It found that he had submitted duplicative medical evidence from 2008. OWCP also noted that there was no evidence that appellant continued to seek treatment for his work-related condition between 2008 and 2012.

Appellant requested reconsideration on September 18, 2013. He submitted a note dated August 29, 2013 from Dr. Flores, who diagnosed carpal tunnel syndrome on May 12, 2007 and noted that appellant underwent electrodiagnostic testing in June 2008, which confirmed the diagnosis. Dr. Flores stated that appellant continued to perform the same work duties and underwent a repeat nerve conduction study in September 2012 which demonstrated severe carpal tunnel syndrome. He stated, "I believe that [appellant's] condition as of June 10, 2012 originated from his work injury of 2008."

By decision dated October 8, 2013, OWCP denied modification of its prior decision. It found that appellant's claim did not meet the definition of a recurrence of disability as he attributed his condition to his work duties. Further, Dr. Flores opined that appellant's ongoing work duties contributed to his current condition.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability commencing June 10, 2012 and his June 20, 2008 employment injury.⁶ This burden includes the necessity of

⁴ Appellant filed an occupational disease claim on November 1, 2012 alleging that he developed carpal tunnel syndrome due to his duties of handling tools and instruments. In a note dated November 2, 2012, he stated that he was withdrawing the filing of the occupational disease claim and wished OWCP to continue with the recurrence claim.

⁵ 20 C.F.R. § 10.5(x).

⁶ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁷

ANALYSIS

Appellant filed a claim for a bilateral wrist condition in 2008. The medical evidence to record diagnosed carpal tunnel syndrome. This evidence included Dr. Flores' June 6, 2008 report and electrodiagnostic studies on June 20, 2008, both of which included a diagnosis of carpal tunnel syndrome. OWCP accepted this claim for bilateral wrist sprain.

Dr. McCoy, an OWCP second opinion physician, reviewed the statement of accepted facts and examined appellant on October 13, 2008. He diagnosed mild-to-moderate bilateral carpal tunnel syndrome. On physical examination, Dr. McCoy found negative Tinel's sign and mildly positive Phalen's test. He reviewed the nerve conduction studies and opined that appellant's carpal tunnel syndrome was industrially caused. Dr. McCoy found that appellant was capable of performing his regular duties with wear of anti-vibration gloves while working with power tools, as well as breaks when gripping and wrist splints at night.

Appellant filed a claim alleging that on June 10, 2012 he sustained a recurrence of his June 20, 2008 employment injury. OWCP denied his claim on November 19, 2012. Appellant then requested reconsideration, which OWCP denied on June 7, 2013 on the grounds that the medical evidence submitted was repetitious. The Board notes that OWCP had not reviewed the medical evidence submitted by appellant on the merits at the time of the June 7, 2013 decision.

Appellant again requested reconsideration on September 18, 2013 and OWCP denied his claim on October 8, 2013 on the grounds that he had additional employment exposures, that he and his physician implicated these exposures in describing his current condition and that appellant should have filed a new occupational disease claim.

The Board finds appellant's current claim one of an occupational disease rather than a recurrence of disability. Appellant attributed the worsening of his diagnosed condition of bilateral carpal tunnel syndrome to new exposures he encountered in the work environment, specifically to gripping and using power tools in the performance of duty. Therefore, his current claim is not a recurrence of disability as it is not a spontaneous change without new exposure to the work environment that caused the condition. The Board finds that appellant did not establish a claim for recurrence of disability.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

⁷ See *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a claim for recurrence of disability.

ORDER

IT IS HEREBY ORDERED THAT the October 8, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2014
Washington, DC

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

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

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