

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

D.M., Appellant

and

**DEPARTMENT OF THE ARMY, CAMP
LEJEUNE, NC, Employer**

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**Docket No. 14-887
Issued: October 2, 2014**

Appearances:
Martin Kaplan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 10, 2014 appellant, through his representative, filed a timely appeal from the January 30, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established a recurrence of disability on March 9, 2007 causally related to his accepted bilateral carpal tunnel condition.

FACTUAL HISTORY

This is the fourth appeal before the Board. Appellant, a 52-year-old mechanic, filed a Form CA-2 claim for benefits on November 20, 2003, alleging that he developed a bilateral carpal tunnel condition causally related to employment factors. By decision dated September 21, 2004, OWCP accepted his claim for bilateral carpal tunnel syndrome.

¹ 5 U.S.C. § 8101 *et seq.*

In a disciplinary memorandum received by OWCP on February 28, 2005, the employing establishment indicated that appellant's North Carolina driver's license had been suspended for one year on May 26, 2004 due to his being convicted of driving under the influence of alcohol. As a result of this suspension, appellant was forced to resign from the employing establishment because his inability to operate a motor vehicle disqualified him from federal employment. He disputed that he was discharged due to loss of his driver's license. Rather, appellant alleged that he resigned for medical reasons. The record contains a Form SF 50 indicating that he resigned effective July 12, 2004 for medical reasons.

Appellant submitted a June 6, 2006 Form CA-7 requesting compensation for wage loss as of May 27, 2004 and continuing.

By decision dated October 12, 2006, OWCP denied appellant's claim for compensation based on wage loss commencing May 27, 2004. It found that he failed to submit medical evidence to support that he was disabled due to residuals of his accepted injury; it stated that the evidence of record established that he had voluntarily resigned from his job with the employing establishment on July 12, 2004 due to having his license suspended, not for reasons related to his medical condition.

Pursuant to a pending schedule award claim,² appellant was referred for an impartial medical evaluation with Dr. Edwin Cooper, Board-certified in orthopedic surgery. In a report dated April 5, 2007, Dr. Cooper found that appellant had a 24 percent permanent impairment of the left and right upper extremities, causally related to his bilateral carpal tunnel condition. He stated that appellant was disabled from returning to his job as a heating and air conditioning technician. Dr. Cooper opined that his diagnoses and ratings were directly related to appellant's duties at the employing establishment, from which he resigned on May 27, 2004.

By decisions dated March 22 and August 6, 2007, OWCP denied modification of the October 12, 2006 decision.

On September 20, 2007 OWCP accepted the additional conditions of ulnar nerve compression of the left elbow and right wrist.

In a report dated April 14, 2008, Dr. Brian J. Battersby, a specialist in osteopathic medicine, stated that he had recently examined appellant for bilateral carpal tunnel syndrome. He advised that appellant still had subjective symptoms with normal nerve conduction velocities, although it was difficult to assess based on his current physical examination. Although Dr. Battersby stated that appellant required some type of treatment, he advised that appellant had refused all treatment options.

In a May 20, 2008 decision,³ the Board affirmed OWCP's August 6, 2007 decision.

² In a previous Board decision, Docket No. 06-1609 (November 21, 2006) the Board set aside OWCP's schedule award decision and remanded for further development of the medical evidence to determine the appropriate degree of permanent impairment for appellant's left and right upper extremities causally related to his accepted bilateral carpal tunnel condition.

³ Docket No. 07-2210 (issued May 20, 2008).

On June 26, 2008 appellant submitted a June 26, 2008 Form CA-7 requesting compensation for wage loss for March 9, 2007 to June 23, 2008.

In an October 21, 2008 report, Dr. Battersby stated that he agreed with Dr. Cooper's opinion that appellant was no longer capable of doing his date-of-injury job and that therefore it would be correct to conclude that as of March 9, 2007 he was unable to work as a mechanic. He advised that appellant would not be able to perform this job in the future and that he would be a good candidate for vocational rehabilitation in order to obtain another type of position in the future.

In a May 20, 2010 report, Dr. Battersby stated that appellant had been diagnosed with bilateral ulnar nerve entrapment at the elbows and bilateral carpal tunnel syndrome. He advised that these conditions resulted from his work as an air conditioner heating and cooling mechanic; he opined that it was well documented that repetitive motion and physical labor such as mechanic or repair work could cause these conditions. Dr. Battersby therefore concluded that appellant's current conditions were directly related to his employment as a heating and air conditioning mechanic.

In reports dated May 6 and June 8, 2010, Dr. Battersby reiterated his diagnosis of bilateral carpal tunnel syndrome and stated that appellant had complaints of bilateral wrist pain, numbness and tingling. He advised that the onset of these symptoms occurred approximately seven years ago and that his condition was worsening, with pain rated as a 6 on a scale of 1 to 10. Dr. Battersby stated that appellant's symptoms were aggravated by lifting, grasping, repetitive movements and twisting.

On June 27, 2011 appellant filed a Form CA-2a alleging that he sustained a recurrence of disability on March 9, 2007 which was causally related to his accepted bilateral carpal tunnel condition.

On November 3, 2011 appellant submitted a Form CA-7 requesting compensation for wage loss for March 25, 2008 to November 2, 2011.

By letter dated May 31, 2012, OWCP advised appellant that it had already disposed of his claims for recurrence of his work-related disability and that the Board had already denied his claim in May 2008. It stated that he needed to submit an appeal of his claims to the Board.

By letter to the Board dated July 23, 2012, appellant's attorney alleged that OWCP's May 31, 2012 letter constituted an effective denial of appellant's claim for recurrence of disability and/or wage-loss compensation and a final adverse decision, even though the letter contained no statement of appeal rights.

In an order dated January 31, 2013,⁴ the Board set aside the finding OWCP made in its May 31, 2012 letter, stating that appellant was claiming a recurrence of disability and compensation for wage loss for periods subsequent to the Board's May 28, 2008 decision. As these claims had not yet been addressed, the Board remanded for consideration of these claims and of the medical evidence he submitted in support of these claims. The complete facts of this

⁴ Docket No. 12-1638 (issued January 31, 2013).

case are set forth in the Board's May 20, 2008 decision and January 31, 2013 order and are herein incorporated by reference.

By decision dated June 6, 2013, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish that he sustained a recurrence of his accepted bilateral carpal tunnel condition from March 9, 2007 to June 23, 2008 and from March 25, 2008 to November 2, 2011 and continuing.

On June 13, 2013 appellant's attorney requested an oral hearing, which was held on November 13, 2013.

In an August 30, 2013 report, Dr. Battersby stated that appellant's job as a mechanic required repetitive motion and using screwdrivers as an air conditioning mechanic, which led to the development of bilateral carpal tunnel syndrome and pronator teres syndrome with pain and weakness in both upper extremities; weakness across both hands, numbness and decreased grip strength; pain, numbness, tingling and weakness; decreased range of motion and a positive Tinel's test, bilaterally in his wrists. He indicated that appellant was currently unable to perform repetitive motion activity and restricted him from continuous lifting and working in extremes of cold and heat. Dr. Battersby opined that his continued bilateral carpal tunnel syndrome and pronator teres syndrome had prevented him from working.

By decision dated January 30, 2014, an OWCP hearing representative affirmed the June 6, 2013 OWCP decision. The hearing representative noted appellant's testimony that he resigned after his supervisor informed him that he would be terminated due to the loss of his driver's license.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish 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 the employment injury and supports that conclusion with sound medical reasoning.⁶ Where no such rationale is present, medical evidence is of diminished probative value.⁷

⁵ *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

⁶ *I.J.*, 59 ECAB 408 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁷ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988); *see Ronald C. Hand*, 49 ECAB 113 (1957).

In order to establish that a claimant's alleged recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between his present condition and the accepted injury must support the physician's conclusion of a causal relationship.⁸

Even if an appellant has been terminated from employment for cause, in *John W. Normand*,⁹ the Board explained that the issue remained whether he had established disability causally related to the accepted injury, *i.e.*, whether appellant was able to earn the wages he was earning on the date of injury.

ANALYSIS

Pursuant to the *Normand* line of cases, the Board finds that the issue remains whether appellant has established a recurrence of disability causally related to the accepted injury. In the instant case, appellant has failed to submit any medical opinion containing a rationalized, probative report which relates his claimed recurrence of disability for work as of March 9, 2007 and for the overlapping periods of March 9, 2007 to June 23, 2008 and March 25, 2008 to November 2, 2011 and continuing, to his accepted bilateral carpal tunnel condition. For this reason, he has not discharged his burden of proof to establish his claim that he sustained a recurrence of disability as a result of his accepted employment condition.

In Dr. Battersby's April 14, 2008 report, he stated that appellant had bilateral carpal tunnel syndrome and was experiencing subjective symptoms with normal nerve conduction velocities. He advised that it was difficult to assess appellant's condition based on his current physical examination and noted his refusal to undergo treatment. Dr. Battersby did not provide an explanation which included a history of bridging symptoms from the 2003 injury.

In his October 21, 2008 report, Dr. Battersby stated that his concurrence with Dr. Cooper's opinion that appellant was no longer capable of doing his date-of-injury job and that he agreed that he was unable to work as a mechanic as of March 9, 2007. He opined that appellant would not be able to perform this job in the future and that he was a suitable candidate for vocational rehabilitation for other types of employment. Dr. Battersby asserted in his May 20, 2010 report that appellant had bilateral ulnar nerve entrapment and bilateral carpal tunnel syndrome and that these conditions resulted from his work as an air conditioner/heating and cooling mechanic. He advised that repetitive motion and physical labor such as mechanic or repair work could cause these conditions and opined that appellant's current conditions were directly related to his employment as a heating and air conditioning mechanic. In his May 6 and June 8, 2010 reports, Dr. Battersby reiterated his diagnosis of bilateral carpal tunnel syndrome and related that appellant had complaints of bilateral wrist pain, numbness and tingling, which commenced approximately seven years ago. He advised that appellant's symptoms were worsening and were aggravated by lifting, grasping, repetitive movements and twisting. Dr. Battersby also submitted an August 30, 2013 report in which he reiterated the diagnosis of bilateral carpal tunnel syndrome and listed the symptoms accompanying this condition; he stated that his bilateral carpal tunnel syndrome developed due to his job as an air conditioning mechanic, which required repetitive motion and using screwdrivers. He stated that appellant's

⁸ *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁹ 39 ECAB 1378 (1988).

continued bilateral carpal tunnel syndrome, in addition to pronator teres syndrome, prevented him from working. The Board notes that none of the activities cited by Dr. Battersby were related to appellant's employment, which no longer performed after May 27, 2004.

Dr. Battersby did not provide a rationalized, probative medical opinion indicating that appellant sustained a recurrence of disability on March 9, 2007 causally related to his accepted bilateral carpal tunnel syndrome. His opinion on causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.¹⁰ Dr. Battersby did not explain why appellant's current condition and alleged disability were causally related to the accepted injury. While he stated findings on examination, described symptoms and complaints of pain appellant experienced as a result of bilateral carpal tunnel syndrome, these statements are broad and vague as they do not explain whether appellant's accepted bilateral carpal tunnel syndrome contributed to his claimed condition and/or disability as of March 9, 2007. Dr. Battersby failed to sufficiently explain whether appellant required medical treatment beginning March 9, 2007 due to his accepted bilateral carpal tunnel syndrome.¹¹

Similarly, Dr. Cooper's 2007 report was previously reviewed by the Board in its May 28, 2008 decision; as noted in that decision his report was intended as an impartial medical opinion for appellant's schedule award claim. It did not contain a rationalized, probative opinion on the issue of whether appellant sustained a recurrence of disability causally related to his accepted bilateral carpal tunnel condition.

Appellant has not submitted a physician's reasoned opinion in which the physician explains the reasons why his condition as of March 9, 2007 was causally related to the accepted bilateral carpal tunnel condition. For these reasons, the medical evidence is insufficient to establish a recurrence of a medical condition causally related to the accepted bilateral carpal tunnel condition. The Board affirms the January 30, 2014 decision affirming the denial of appellant's claim for a recurrence of disability beginning March 9, 2007.

CONCLUSION

The Board finds that appellant has not sustained a recurrence of disability on March 9, 2007 causally related to his accepted bilateral carpal tunnel condition.

¹⁰ *William C. Thomas*, 45 ECAB 591 (1994).

¹¹ *See Mary A. Ceglia*, 55 ECAB 656 (2004) (appellant has the burden of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound rationale).

ORDER

IT IS HEREBY ORDERED THAT the January 30, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 2, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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