

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEITH McMOORE and U.S. POSTAL SERVICE,
POST OFFICE, Eagan, Minn.

*Docket No. 96-2099; Submitted on the Record;
Issued August 27, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of disability commencing May 13, 1994 causally related to the September 11, 1989 employment injury of tendinitis in both wrists.

The Office of Workers' Compensation Programs accepted appellant's claim for tendinitis in both wrists. On July 6, 1994 appellant filed a compensation claim, Form CA-7, claiming temporary total disability benefits for the period commencing May 13, 1994. Appellant submitted evidence to support his claim.

In a report dated May 4, 1994, Dr. Mark D. Fischer, a hand surgeon, performed a physical examination and diagnosed bilateral wrist and hand pain in a stocking glove distribution with unclear etiology. He stated that other than some radiographs which he did not have but showed a scapholunate diastasis on the right side, there were no objective findings which documented or corroborated appellant's symptoms of complaints of pain. He prescribed a bone scan.

In a report dated May 11 and 12, 1994, Dr. Fischer considered appellant's history of injury, performed a physical examination, reviewed x-rays of appellant's wrists dated December 1993, a bone scan, a functional capacities evaluation dated October 9, 1993 and diagnosed flexor tendinitis of a mild to moderate degree. He stated that appellant had evidence of a ligamentous deficiency in the right wrist leading to very early arthritic changes and that the ligamentous deficiency was most likely caused by a fall or other relatively significant trauma and was not caused by repetitive overuse. Dr. Fischer stated that appellant's complaints arising from his work activities were out of proportion to any objective physical findings on either the bone scan or the physical examination. He recommended that appellant perform light work.

In a report dated May 20, 1994, Dr. Christopher Buck, a Board-certified family practitioner, noted that appellant had chronic wrist pain for four years and that recently appellant

had a flare-up and had been unable to work the past week. He diagnosed overuse syndrome with probable large amount of secondary factors in an overlay pattern.

In a report dated June 27, 1994, Dr. William H. Lohman, Board-certified in internal and preventive medicine, considered appellant's history of injury, performed a physical examination and diagnosed chronic pain syndrome. He stated that appellant's current examination was not anatomic nor specific. Dr. Lohman stated that appellant could work eight hours a day subject to lifting and carrying restrictions of from three to five pounds and no pushing or pulling of from three to five pounds depending on frequency and whether using one hand or two.

In a report dated October 10, 1994, Dr. Buck referenced Dr. Lohman's report and stated that appellant had a fully developed chronic pain syndrome and continued to work within Dr. Lohman's restrictions.

In a report dated October 28, 1994, Dr. Engasser considered appellant's history of injury, reviewed x-rays, performed a physical examination and diagnosed bilateral wrist and hand tendinitis, secondary to overuse. He stated that appellant could work with restrictions.

In a report dated November 7, 1994, Dr. Thomas C. Jetzer, Board-certified in family practice and preventive medicine, stated that he had reviewed appellant's chart and felt appellant did not "really" need restrictions.

In a report dated November 14, 1994, Dr. Mark C. Engasser, a Board-certified orthopedic surgeon, noted it was a follow-up visit, performed a physical examination and diagnosed bilateral overuse syndrome of the upper extremities and stated that appellant would continue his strengthening program. He stated that he had nothing new to offer in terms of treatment.

By decision dated January 13, 1995, the Office denied the claim, stating that the record failed to establish that appellant had temporary total disability for the period May 11, 1994 and continuing.

By letter dated January 24, 1995, appellant requested an oral hearing before an Office hearing representative, which was held on November 29, 1995. Appellant also submitted additional medical evidence.

In a report dated May 26, 1995, Dr. Engasser reiterated his diagnosis of bilateral overuse syndrome of the upper extremities and stated appellant should continue working on a light-duty basis.

At the hearing, appellant's representative stated that the issue was whether appellant was totally disabled from May 13 to May 20, 1994. He stated that appellant was able to perform light duty on May 20, 1994, but no light duty was available until February 9, 1995 when appellant returned to work. He also stated that appellant was also refused work from March 2 through March 4, 1994 because no light duty was available. Appellant testified that prior to May 13, 1994, his restrictions included no repetitive motion, no clutching and no pushing and pulling of heavy-duty mail containers. Appellant's testimony was somewhat conflicting as to whether he stopped working on May 13, 1994 due to increased wrist pain or due to his

supervisor refusing to provide him with light-duty work. When asked repeatedly the reason why he stopped working, he testified because his supervisor told him he needed a new work restriction form. Appellant also stated that he filed a grievance in response to his supervisor's refusing to provide him with light-duty work in May 1994 and that the grievance was pending arbitration. Some documents supporting the grievance, *i.e.*, Forms CA-8, suggest appellant stopped working in May 1994 due to increased pain in his wrists and other documents suggest appellant stopped working because his supervisor did not provide him with light work and one document indicates Dr. Jetzer returned appellant to regular work. By letter dated June 2, 1994, appellant's supervisor indicated that he was unable to provide appellant with work in his department because of appellant's medical restrictions and stated that he was issuing the letter to determine if there was work available to appellant within his restrictions in another area. Appellant testified he returned to work from July 1994 through January 1995, sometimes twice a month, but his supervisor denied him light work. Appellant testified that when he returned to light-duty work on February 9, 1995, his medical condition had not changed since May 1994. Appellant testified he worked until March 2, 1995 when his light-duty assignment ended and then he was assigned another light-duty assignment within a week.

In a report dated December 13, 1995, Dr. Buck stated that on May 20, 1994 when he saw appellant, appellant had diffuse nonspecific wrist pain, which could have been related to mild flexor tendinitis. He stated that he agreed with Dr. Lohman's diagnosis of chronic pain syndrome and noted appellant's lifting pushing or pulling restrictions. He also noted that it was difficult to ascertain a more anatomical diagnosis of appellant's wrist pain other than chronic pain syndrome.

By decision dated March 25, 1996, the Office hearing representative affirmed the Office's January 13, 1995 decision.

The Board finds that the Office properly determined that appellant did not meet his burden of proof in establishing that he sustained a recurrence of disability commencing May 13, 1994 causally related to appellant's condition of tendinitis of both wrists.

An individual 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 compensation is claimed is causally related to the accepted injury.¹ When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she 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 show that he cannot perform such light duty.² As part of this burden, the employee must show a change in the nature and extent of the light-duty job requirements.³ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis

¹ *Dominic M. DeScala*, 37 ECAB 369 (1986); *Bobby Melton*, 33 ECAB 1305 (1982).

² *George DePasquale*, 39 ECAB 295, 304; *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Id.*

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.⁴ An award of compensation may not be made on the basis of surmise, conjecture, or speculation or an appellant's unsupported belief of causal relation.⁵

In the present case, while the evidence consisting of appellant's hearing testimony and his grievance is somewhat unclear as to whether appellant stopped working on May 13, 1994 due to increased wrist pain or failure of the employing establishment to provide him with work within his restrictions, none of the medical evidence at that time and thereafter establishes that appellant was disabled due to the September 11, 1989 employment injury. In his May 11 and 12, 1994 report, Dr. Fisher diagnosed flexor tendinitis of a mild to moderate degree and stated that appellant had ligamentous deficiency in the right wrist, which was most likely caused by a fall or other relatively significant trauma and was not caused by repetitive overuse. He opined that appellant's complaints arising from his work activities were out of proportion to any objective physical findings on either the bone scan or the physical examination. Dr. Fisher's opinion supports that appellant's wrist condition was not work related. In his May 20, 1994 opinion, Dr. Buck diagnosed overuse syndrome with probable large amount of secondary factors in an overlay pattern. His opinion is not probative because he did not specifically relate appellant's condition to his September 11, 1989 employment injury. In his December 13, 1995 report, Dr. Buck stated that on May 20, 1994 when he saw appellant, appellant had diffuse nonspecific wrist pain, which could have been related to mild flexor tendinitis. He stated that it was difficult to ascertain a more anatomical diagnosis of appellant's wrist pain other than chronic pain syndrome. His most recent opinion, therefore, also does not relate appellant's wrist condition to the September 11, 1989 employment injury.

In his June 27, 1994 opinion, Dr. Lohman diagnosed chronic pain syndrome and stated that appellant's current examination was not anatomic nor specific. Therefore, his opinion does not relate appellant's wrist condition to the September 11, 1989 employment injury. In his October 10, 1994 report, Dr. Buck diagnosed chronic pain syndrome, but did not address the cause of that condition. Similarly, in his November 7, 1994 report, Dr. Jetzer did not address causation and opined that appellant did not "really" need restrictions. In his October 28 and November 14, 1994 and May 26, 1995 reports, Dr. Engasser diagnosed bilateral wrist and hand tendinitis, secondary to overuse or bilateral overuse syndrome of the upper extremities, but did not address the cause of appellant's condition. Although all the physicians, with the exception of Dr. Jetzer, consistently opined that appellant could perform light-duty work, none of them attributed appellant's wrist condition to his September 11, 1989 employment injury. While there is evidence of record to suggest that appellant's work requirements changed either on May 13, 1994 or in June 1994 based on appellant's hearing testimony and his supervisor's June 2, 1994 letter stating that he had no work within appellant's restrictions, the medical evidence does not establish that appellant was unable to work due to a change in the nature of his work or due to his September 11, 1989 employment injury. Appellant has, therefore, not met his burden to

⁴ See *Nicolea Bruso*, 33 ECAB 1138 (1982).

⁵ See *William S. Wright*, 45 ECAB 498, 503 (1994).

establish a recurrence of disability commencing May 13, 1994 causally related to the September 11, 1989 employment injury.⁶

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 25, 1996 is hereby affirmed.

Dated, Washington, D.C.
August 27, 1998

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ See *Beverly Dukes*, 46 ECAB 1014, 1018-19 (1995); *Terry R. Hedman*, *supra* note 2 at 227-28 (1986).