

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of EDWARD L. BRYCE and U.S. POSTAL SERVICE,  
POST OFFICE, Topeka, KS

*Docket No. 99-1230; Submitted on the Record;  
Issued November 1, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,  
VALERIE D. EVANS-HARRELL

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined appellant's wage-earning capacity based on his actual earnings as a floor person; and (2) whether appellant established a recurrence of disability causally related to his accepted right carpal tunnel syndrome with subsequent right carpal tunnel release on February 20, 1985.

On February 7, 1985 appellant, then a 43-year-old distribution clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) for a right wrist condition. He first became aware of his condition on July 2, 1984. The Office accepted the condition of right carpal tunnel syndrome and subsequently authorized right carpal tunnel release. Appellant received appropriate compensation benefits. He started working as a floor person for Bernard McArdle's Jani King Janitorial effective April 1, 1995 until approximately February 1, 1998, the date appellant indicated he was no longer employed.

By decision dated February 17, 1998, the Office found that appellant's actual wages as a floor person represented his wage-earning capacity. Accordingly, appellant's compensation was reduced effective April 1, 1995 based on his actual earnings. By decision dated November 24, 1998, the Office reissued appellant's loss of wage-earning capacity as the previous decision did not have appeal rights attached. The Office applied the principles enunciated in *Albert C. Shadrick*,<sup>1</sup> and determined that appellant's pay rate when disability began was \$467.61 per week; that the current pay rate for that same position was \$677.48 per week; and that his current position paid \$243.96 per week, resulting in a \$299.28 loss of wage-earning capacity.

On September 30, 1998 appellant filed a claim for a recurrence of disability on or about December 1997 which he attributed to his employment injury. He indicated that he was unsure of the exact recurrence date. By decision dated November 20, 1998, the Office denied appellant's claim for a recurrence of disability on the grounds that the medical evidence of

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<sup>1</sup> 5 ECAB 376 (1953).

record failed to establish that his claimed disability was causally related to his 1998 employment injury.

The Board finds that the Office properly determined appellant's loss of wage-earning capacity based on his actual earnings as a floor person.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>2</sup> The Office met its burden in this case. Section 8115(a) of the Federal Employees' Compensation Act provides that the wage-earning capacity of an employee is determined by his actual earnings if the earnings fairly and reasonably represent his wage-earning capacity.<sup>3</sup> The Board has stated, "Generally, wages actually earned are the best measure of a wage-earning capacity and, in the absence of evidence showing that they do not fairly and reasonably represent the injured employee's wage-earning capacity, must be accepted as such measure."<sup>4</sup> The Office's procedures provide for a retroactive determination where an employee has worked for at least 60 days and the work stoppage following that date was not due to an employment-related condition.<sup>5</sup>

In the instant case, appellant had actual earnings as a floor person for Bernard McArdle's Jani King Janitorial effective April 1, 1995 and continuing until approximately February 1, 1998, the date appellant indicated he was no longer employed or March 27, 1998, the date appellant inquired as to what would happen to his compensation benefits if his current employer went out of business. The record reflects a December 18, 1997 restriction of no use of vibratory tools with the right upper extremity and a December 29, 1997 work restriction of no right upper extremity repetitive activity. As appellant was working as a floor person since April 1, 1995, his actual duties appear consistent with the medical restrictions imposed on him due to his work injury. Furthermore, as there is no indication that the job was seasonal or temporary or a make-shift position, the retroactive wage-earning capacity determination was proper. The Office properly determined that appellant's actual wages as a floor person effective April 1, 1995 fairly and reasonably represented his wage-earning capacity. As these wages were less than the pay rate for the position he held when injured on July 2, 1984, the Office properly utilized the principles enunciated in *Shadrick* to calculate appellant's loss of wage-earning capacity.

The Board further finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of total disability causally related to his July 2, 1984 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the reliable and probative evidence that the recurrence of the disabling condition for which he seeks compensation was causally related

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<sup>2</sup> *Bettye F. Wade*, 37 ECAB 556, 565 (1986).

<sup>3</sup> 5 U.S.C. § 8115(a).

<sup>4</sup> *Gregory A. Compton*, 45 ECAB 154, 156 (1993); *Floyd A. Gervais*, 40 ECAB 1045, 1048 (1989).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.7 (December 1993).

to the accepted employment injury.<sup>6</sup> As part of this burden, appellant must submit rationalized medical opinion evidence based on a complete and accurate factual and medical background showing a causal relationship between the current disabling condition and the accepted employment-related injury.<sup>7</sup> Causal relationship is medical in nature and, generally, can be established only by medical evidence.<sup>8</sup>

In this case, the record shows that the Office accepted the condition of right carpal tunnel syndrome and related surgeries and that appellant was no longer employed as a floor person in March 1998 due to the private employer going out of business. Appellant subsequently filed a claim alleging recurrence of total disability on September 30, 1998 which he attributed to his employment injury.

In a recurrence of disability situation, generally no event other than the previous injury accounts for the disability.<sup>9</sup> A recurrence of disability is a spontaneous return to disability due to the original employment injury with no intervening causes involved.<sup>10</sup> In the instant case, there is no probative evidence to establish that appellant was unable to perform the job as a floor person because of his accepted injury.

In support of his recurrence of disability claim, appellant submitted copies of medical evidence previously of record along with new medical evidence. In a September 24, 1998 medical report, Dr. Eugene Ross, Chief of Staff at the Veterans Affairs Medical Center, noted that appellant had a long-standing lumbar strain which was service connected and recommended certain restrictions to be adhered to in appellant's occupation. This report, however, is irrelevant to appellant's claim as it is not relevant to the accepted condition of right carpal tunnel syndrome.

Treatment notes from Dr. Robert L. Wilson, a Board-certified hand surgeon, indicated that on December 18, 1997 appellant was working part-time running a floor buffing machine and was having increased pain in his right wrist. An examination was performed and an impression of tendinitis of the ECU along with a possible ulnar nerve compression was given. Dr. Wilson indicated that appellant should continue working, but should not use vibrating tools as they will worsen his symptoms. The next examination of February 2, 1998 revealed that appellant was presently working and still experiencing the symptoms of numbness in the ulnar border of his arm and tenderness in this forearm. An impression of tendinitis and a suggestion of ulnar nerve compression was again provided. Dr. Wilson indicated that appellant will continue working and that he will see appellant in six months. The next examination of August 3, 1998 noted that appellant was not working, frequently dropped items and had particular problems with vibrating tools. Dr. Wilson performed an examination and advised that appellant was capable of working

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<sup>6</sup> *Jessie Johnson, Jr.*, 39 ECAB 945 (1988).

<sup>7</sup> *Id.*

<sup>8</sup> *Armando Colon*, 41 ECAB 563, 565 (1990); *Ausberto Guzman*, 25 ECAB 362, 364 (1974).

<sup>9</sup> *See William R. Lance*, 18 ECAB 422, 428 (1967).

<sup>10</sup> *Stephen J. Perkins*, 40 ECAB 1193 (1989).

but, as in the past, was restricted from the use of vibratory tools with his right hand. An October 5, 1998 upper extremity injury work status report from Dr. Wilson restricted appellant to no vibrating tools (no buffers) for his right upper extremity.

In this case, the record reflects that the Office, in a letter dated September 15, 1998, advised appellant of the relevant information needed for a recurrence claim including a detailed job description of his current duties as well as a well-rationalized narrative medical report from his physician describing the objective findings which convinced him that his condition had worsened and explaining how appellant could no longer perform the duties he was performing when he stopped work. The record further reflects that although appellant claimed he was no longer employed as of February 1, 1998, he was working on February 2, 1998, the date Dr. Wilson examined him, and also appeared to have been working in March 1998 as he called the Office on March 27, 1998 to inquire what would happen to his compensation if his current employer went out of business.

The medical evidence establishes that although Dr. Wilson restricted appellant to no vibrating tools (no buffers) on December 18, 1997, appellant continued to work as a floor person until March 1998 when his employer apparently went out of business. Accordingly, as appellant continued to work after the restrictions were placed on him for at least 60 days, it is established that appellant was able to perform the job of floor person. Dr. Wilson's subsequent report of February 2, 1998 does not indicate that appellant's accepted condition materially worsened as a result of appellant's work. Moreover, it appears that appellant stopped working as a floor person in March 1998 only because his employer went out of business. Accordingly, the record is devoid of any evidence establishing that appellant was unable to perform his job because of his accepted industrial condition.

As appellant failed to submit rationalized medical evidence establishing that his claimed recurrence of total disability was causally related to the accepted employment injury, the Office properly denied his claim.

The decisions of the Office of Workers' Compensation Programs dated November 24 and 20, 1998 are affirmed.

Dated, Washington, DC  
November 1, 2000

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member