United States Department of Labor
Employees' Compensation Appeals Board

GARY D. GAGNE, Appellant	)	
and	)	**Docket No. 03-1523**
	)	**Issued: April 1, 2004**
DEPARTMENT OF THE NAVY, NAVAL SHIPYARD, Bremerton, WA, Employer	)	

Appearances:
Howard L. Graham, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On May 29, 2003 appellant, through his attorney, filed an appeal from a June 24, 2002 decision of an Office of Workers' Compensation Programs' hearing representative which denied wage-loss compensation for several claimed periods of total disability. Appellant also seeks review of an April 18, 2003 Office decision which denied his request for reconsideration. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issues are: (1) whether appellant has established that he was totally disabled for work from June 21, 2000 to February 13, 2001, May 8 to 16 and June 2 to 29, 2001; and (2) whether the Office properly denied his request for reconsideration.

FACTUAL HISTORY

On September 30, 1999 appellant, then a 46-year-old safety and health specialist, filed an occupational disease claim alleging he developed bilateral carpal tunnel syndrome which he attributed to excessive writing and computer work. The medical evidence reflects that appellant

was treated on January 11, 1999 by Dr. Frederick H. Dore, Jr., a Board-certified internist, who diagnosed carpal tunnel and recommended that appellant wear a splint and perform limited duties. The employing establishment indicated that appellant was assigned to light duty after January 11 to March 18, 1999, before returning to regular duty. Appellant stopped work on September 21, 1999 and was referred by Dr. Dore to Dr. Enayat Niakan, a Board-certified neurologist, who performed diagnostic testing and found severe bilateral carpal tunnel syndrome. Appellant's claim was accepted by the Office for bilateral carpal tunnel syndrome. He underwent surgery for release of the right wrist on January 25, 2000 and release of the left wrist on March 28, 2000 performed by Dr. Bradley J. Watters, a Board-certified orthopedic surgeon. Appellant returned to full-time work in a light-duty capacity on May 31, 2000 which prescribed physical limitations.[1] He received appropriate compensation benefits for his disability from work.

Upon his return to work, appellant claimed intermittent hours of wage-loss compensation for physical therapy appointments. On June 21, 2000 appellant stopped work and filed a Form CA-7 claim for compensation for totally disability. He was examined that date by Dr. Watters who noted that appellant was seen for complaints regarding his neck and left hand. Dr. Watters noted that appellant's neck condition had been evaluated by Dr. Niakan, who did not find any signs of a focal radiculopathy. He noted that appellant also complained of emotional stress over how his employer was limiting him from his regular duty. Dr. Watters recommended obtaining a magnetic resonance imaging (MRI) scan of the cervical spine. He indicated that appellant was doing well following the bilateral carpal tunnel release surgeries and stated: "[Appellant] is so stressed at this point we recommend that he be off work while undergoing the MRI [scan]."[2]

On June 30, 2000 the Office denied appellant's claim for total disability commencing June 21, 2000, noting that his disability claim was for a neck injury which was not accepted as causally related to his bilateral carpal tunnel syndrome. Thereafter, appellant submitted additional claims for total disability compensation to February 13, 2001.

In a July 31, 2000 report to the Office from Diane Dearth, a rehabilitation nurse assigned to appellant's case, she advised that she wrote to Dr. Watters on July 3, 2000 to inquire as to whether appellant's carpal tunnel syndrome was fixed and stable. She enclosed the physician's

[1] Appellant's restrictions included no use of vibratory tools, no repetitive grasping or pushing, and no lifting over 10 pounds.

[2] A physical therapy status report of June 21, 2000 noted that appellant had not made progress in grip, wrist or arm strength since May 25, 2000. Appellant complained of increased numbness of the left hand and of experiencing thoracic and cervical discomfort. On June 16, 2000 a manual cervical traction of approximately 5 to 10 pounds was performed for 10 minutes, after which appellant complained of increased cervical pain. The report noted that appellant was unable to return to therapy since that date.

July 10, 2000 note which advised that appellant's condition was considered fixed and stable and the claim was ready for closure.

In an August 10, 2000 report, Dr. Dore advised that appellant had a prior history of an occupational neck condition which had been treated and the symptoms resolved. He indicated, however, that, during the postoperative physical therapy treatment for appellant's bilateral carpal tunnel condition, appellant's neck was aggravated to the point it was disabling. Dr. Dore indicated that appellant's neck symptoms were exacerbated by his postoperative physical therapy and recommended an MRI scan. On September 22, 2000 Dr. Dore noted that he was awaiting authorization of the MRI scan and that appellant was unable to work in a limited-duty status due to ongoing neck and left wrist pain.

On October 13, 2000 the Office requested Dr. Dore to further explain the relationship of appellant's neck pain to the physical therapy treatments and to address how his left wrist symptoms precluded him from performing limited duty since June 21, 2000. On October 17, 2000 Dr. Dore advised that on June 19, 2000 appellant advised him that the physical therapist had been doing traction on his neck, which became stiff and sore, and he experienced worsening paresthesias of both hands. He noted that he found some paraspinous muscle spasms on examination of the neck. Dr. Dore stated that appellant's neck condition was such that he could not perform the limited-duty job due to neck pain and the paresthesias of the left hand. He indicated that medication provided to treat appellant's symptoms caused excessive sedation. Dr. Dore noted, however, that it was unclear whether appellant's continued left wrist pain was a residual from surgery or due to an exacerbation of appellant's neck condition, necessitating a cervical MRI scan and further nerve conduction studies.

On November 13, 2000 the Office inquired from the physical therapy center as to appellant's range-of-motion strengthening program and the modalities used in treating his neck. On December 11, 2000 D. Lyle McClune, a physical therapist, noted that he worked with appellant from June 16 to August 14, 2000, when he was discharged from physical therapy. Mr. McClune stated that he was not ever able to determine the cause for appellant's neck pain but, due to complaints of cervical and thoracic discomfort associated with appellant's left hand paresthesias, he applied a manual cervical traction of 5 to 10 pounds for 10 minutes on June 16, 2000. This was done to see if there was a correlation between the cervical complaints and the left hand paresthesias. On June 21, 2000 appellant cancelled his next treatment, citing increasing cervical pain. When appellant returned nine days later, he complained of continuing left hand paresthesias and left shoulder pain. Mr. McClune thereafter discontinued traction as a treatment modality until appellant's discharge on August 14, 2000.

On November 29, 2000 Dr. Watters advised the Office that appellant's neck symptoms "seem to be separate and basically unrelated to his carpal tunnel syndrome." He noted that, when appellant was first seen on December 30, 1999, appellant had both neck symptoms as well as carpal tunnel syndrome symptoms. He stated, "and though they both may cause some symptoms into the arms he appeared to have two discreet separate problems." Dr. Watters noted that appellant's medical history documented four prior neck strain injuries. He discussed appellant's use of a splint and physical therapy, noting that he did not feel that this would cause any significant exacerbations of his neck problems. Dr. Watters stated that appellant continued under treatment by Dr. Niakan for his cervical spine condition.

By decision dated January 2, 2001, the Office found that the medical evidence did not establish that the causal relationship of his neck condition was due to his accepted bilateral carpal tunnel syndrome or that his physical therapy had exacerbated his cervical condition.

Appellant returned to work at the employing establishment in a part-time limited-duty capacity for four hours a day on February 13, 2001. Thereafter, he submitted claims for intermittent disability for treatment of his medical conditions.

Appellant was treated by Dr. Brian P. Wicks, a Board-certified orthopedic surgeon associated with Dr. Watters. In an April 2, 2001 report, Dr. Wicks noted that appellant had frequent nocturnal symptoms and that any repetitive use increased his left hand symptoms. He noted that appellant underwent repeat nerve conduction electrical studies on February 27, 2001 by Dr. Niakan, which revealed no change in the right side distal latency but found that the left side had actually worsened when compared to the original electrical studies obtained on September 29, 1999. Dr. Wicks stated that carpal tunnel examination of the right side was negative but the left side revealed some wasting of the thenar eminence, a negative Tinel's sign and positive Phalen's test. Both hands showed osteoarthritic changes, most prominent in the index finger bilaterally. He stated an impression of a probable incomplete release of the left carpal tunnel possibly secondary to a thick band of distal forearm fascia. Dr. Wicks recommended another left carpal tunnel release.

Appellant was also treated by Dr. Michael S. McManus, Board-certified in occupational medicine, who provided a series of treatment notes addressing appellant's bilateral carpal tunnel condition and erosive osteoarthritis. In a May 7, 2001 note, Dr. McManus indicated that appellant was seen that day "complaining of severe anxiety and depressive symptoms, recently aggravated by argument with supervisor at workplace." He indicated that appellant was temporarily disabled and referred her to Dr. Steven Savlov, a psychologist. In a note of that date, Dr. McManus held appellant off work through May 16, 2001. On May 16, 2001 he reported that appellant's mood had improved and that he felt more rested. Dr. McManus returned appellant to work that day for four hours limited duty under specified restrictions.

The Office referred appellant for a second opinion evaluation to Dr. Harry S. Reese, a Board-certified orthopedic surgeon. In a June 11, 2001 report, Dr. Reese reviewed appellant's history of injury and medical treatment. He addressed appellant's complaint of continued left hand numbness and burning and provided his findings on physical examination. Dr. Reese noted some residual entrapment signs on the left with a positive Phalen's test. He stated that appellant's left side symptoms indicated that full decompression was not achieved by the surgical release, but this could not be discovered until repeat surgical intervention. Dr. Reese opined that appellant had no period of total disability due to residuals of his accepted bilateral carpal tunnel syndrome and the records revealed no evidence of objective worsening as of June 20 or November 20, 2000. He recommended reexploration of the left wrist due to residual entrapment.

On July 26, 2001 appellant underwent a repeat left carpal tunnel surgical release performed by Dr. Wicks. He received appropriate compensation for disability from July 26 to August 13, 2001 when he was released to return to part-time limited duty. Appellant was released by Dr. Wicks to work regular duty for eight hours a day on August 28, 2001.

By decision dated August 14, 2001, the Office denied appellant's claim for wage-loss compensation for intermittent periods from June 21 to July 25, 2001. The Office found that the medical evidence did not establish that his disability was due to residuals of his accepted carpal tunnel syndrome.

On September 10, 2001 appellant requested a hearing before an Office hearing representative, which was held on March 26, 2002. Appellant submitted an August 24, 2001 report from Dr. Dore, who stated that he recommend that appellant stop work following examination on June 19, 2000 for paresthesias of the hands. He indicated that appellant was treated for left wrist numbness on July 28, 2000 and felt appellant's pain was related to the carpal tunnel surgery but deferred diagnosis and treatment to Dr. Watters. Dr. Dore stated that appellant missed multiple days of work and was only able to work in a limited-duty capacity because of persistent symptoms due to his left carpal tunnel condition. Following the hearing, appellant submitted an April 30, 2002 report from Dr. McManus, who addressed appellant's left hand symptoms and treatment. He indicated that appellant's work restrictions from May 3, 2000 through July 25, 2001 "precluded him from working or working on a full-time basis were a direct result of his persistent severe range/worsening left carpal tunnel syndrome status post a complete decompression. Other factors did not contribute to [his] inability to perform full-time work during this period of time."

In a June 24, 2002 decision, the Office hearing representative found that the medical evidence of record established appellant's partial disability for work for the periods February 13 to May 7, May 17 to June 1 and July 2 to 25, 2001 and directed payment of wage-loss compensation for these periods.[3] She also found, however, that the medical evidence did not establish that appellant's total disability for the period June 21, 2000 to February 12, 2001; May 8 to 16 and June 2 to June 29, 2001 was causally related to residuals of his accepted bilateral carpal tunnel syndrome.

On April 14, 2003 appellant requested reconsideration, contending that he was disabled for the period June 21, 2000 to February 13, 2001. Appellant submitted a copy of Dr. Wick's July 24, 2001 medical report and the January 9, 2001 attending physician's report and April 25, 2002 report of Dr. Dore.

By decision dated April 18, 2003, the Office denied appellant's reconsideration request finding that the evidence submitted was duplicative of evidence already of record and not sufficient to warrant further review.

LEGAL PRECEDENT

A claimant, for each period of disability claimed, has the burden of proving by the preponderance of the evidence that he or she is disabled for work as a result of the accepted

[3] On April 25, 2002 the Office issued a schedule award to appellant for 13 percent impairment of his left upper extremity and 21 percent impairment of his right upper extremity. The period of the awards ran from October 21, 2001 to November 12, 2003. The Board does not have jurisdiction over the schedule awards as his appeal was not filed until May 29, 2003. *See* 20 C.F.R. § 501.2(c).

employment injury.[4] Generally, the test of disability under the Federal Employees' Compensation Act is whether an employment-related condition prevents the employee from earning the wages he was earning at the time of injury.[5] Under the Act, the term disability is defined as the incapacity because of an injury in the employment to earn the wages the employee was receiving at the time of the injury.[6] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by the preponderance of the reliable, probative and substantial medical opinion evidence.[7] The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to the federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and based upon a complete and accurate factual background.[8]

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome causally related to his federal employment and authorized surgical procedures on January 25 and March 28, 2000 for treatment of his wrists. Appellant was attended by Dr. Watters, a specialist in orthopedic surgery, who performed surgery and returned appellant to limited-duty work on May 31, 2000 within specified physical restrictions. Appellant stopped work on June 21, 2000 to February 13, 2001 and claimed that his disability for work during this period was causally related to his accepted left carpal tunnel condition. The Board notes, however, that appellant was examined on June 21, 2000 by Dr. Watters who addressed his complaints of neck and left hand pain. He noted that appellant also complained that day of emotional stress because his employer was limiting him from performing his regular duty. With regard to appellant's bilateral carpal tunnel syndrome, Dr. Watters noted that appellant was doing well but stated that he was "so stressed" that the physician recommended he be off work pending an MRI scan. This report, contemporaneous with the period appellant claims his disability commenced, does not establish that appellant stopped work that day due to residuals of his accepted carpal tunnel condition. Rather, Dr. Watters recommended that appellant stop work due to stress. In response to an inquiry from the rehabilitation nurse, Dr. Watters indicated on July 3, 2000 that appellant's carpal tunnel condition was considered fixed and stable. He did not relate appellant's disability at that time to the accepted condition. Thereafter, on November 29, 2000, Dr. Watters responded to an inquiry from the Office pertaining to appellant's neck and left upper extremity complaints. He related that appellant had a preexisting history of four prior neck strains and that these were two discreet and separate problems. Dr. Watters also discussed appellant's use of a splint and physical therapy, noting that these would not cause any significant exacerbation of appellant's cervical symptoms. He did not provide any opinion relating appellant's disability for work during this period to any residual symptoms involving the left wrist.

[4] *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

[5] *See Gewin C. Hawkins*, 52 ECAB 242 (2001).

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

[7] *See Fereidoon Kharabi*, *supra* note 4.

[8] *See Bonnie Goodman*, 50 ECAB 139 (1998).

The Office referred appellant to Dr. Reese, also a specialist in orthopedic surgery. On June 11, 2001 he reviewed appellant's history of injury and medical treatment and discussed the medical and diagnostic records. While Dr. Reese confirmed residual entrapment symptoms involving the left hand, he opined that such residuals did not cause appellant to be totally disabled for work. Upon review, he opined that the medical records revealed no objective worsening of appellant's left wrist condition as of June 20 or November 20, 2000.

The Board finds that the weight of medical opinion evidence as to appellant's claimed disability for the period of June 21, 2000 to February 13, 2001 is represented by the reports of Dr. Watters and Dr. Reese. Dr. Watters was the attending physician who performed surgery on appellant prior to the claimed period of disability and followed appellant's treatment after that date. The contemporaneous reports of Dr. Watters do not attribute appellant's total disability for work to residuals of the accepted bilateral carpal tunnel condition. The report of Dr. Reese, also a specialist in the relevant field, supports the finding that appellant was not totally disabled for work due to any continued left hand symptoms.

Appellant contends that the reports of Dr. Dore support his claim for disability. On August 10, 2000 the physician stated that physical therapy for appellant's carpal tunnel syndrome had aggravated his neck condition. This aspect of the claim was developed by the Office and denied by decision dated January 2, 2001. When asked by the Office to explain the relationship of appellant's symptoms which precluded him from performing limited duty since July 21, 2000, Dr. Dore stated on October 17, 2000 that appellant's neck condition and left wrist symptoms were such that he could not perform limited duty. However, he noted that it was unclear whether the continued left wrist pain was a residual from surgery or due to appellant's cervical condition. The Board finds that the reports submitted from Dr. Dore for this period of disability are not well rationalized and are speculative on the issue of causal relationship and disability for work.

The Office also denied compensation for the period May 7 to 16, 2001. The May 7, 2001 treatment note of Dr. McManus stated that appellant was seen that day complaining of severe anxiety and depressive symptoms recently aggravated by an argument with a supervisor. Although Dr. McManus found appellant disabled for work for the period May 7 to 16, 2001, he noted that it was for an emotional condition which has not been accepted by the Office as employment related. The contemporaneous records indicate that the physician referred appellant for treatment by a psychologist. On May 16, 2001 Dr. McManus reported that appellant's mood had improved such that he could return to part-time limited-duty work. The Board finds that the medical reports of record do not attribute appellant's disability for work from May 7 to 16, 2001 to residuals of his accepted bilateral carpal tunnel syndrome or the surgeries performed by Dr. Watters.

Similarly, the treatment notes submitted from Dr. McManus during the period June 2 to 29, 2001 address appellant's complaints of pain and the referral of appellant to Dr. Ina Oppliger, a rheumatologist, for evaluation on June 5, 2001. On June 7, 2001 Dr. McManus examined appellant for wrist and hand complaints, noting an aggravation of erosive osteoarthritis of the hands and digits. The physician listed his findings on examination and noted that appellant should continue with his modified/restricted duty. On July 19, 2001 appellant was again examined by Dr. McManus, who completed a work restriction evaluation outlining appellant's

limitations for four hours of limited duty for the period June 7 to July 19, 2001. In a medical narrative of that date, Dr. McManus noted that appellant was scheduled to undergo further left carpal tunnel release surgery by Dr. Wicks on July 26, 2001, but noted that appellant was to continue with his present work restrictions and limitations. The Board finds that these contemporaneous medical reports do not establish that appellant was totally disabled for work for the period June 2 to 29, 2001. Dr. McManus examined appellant during this period and submitted medical reports noting that he should continue with limited-duty work for four hours a day pending the July 26, 2001 surgery.

LEGAL PRECEDENT -- ISSUE 2

Under the Office's federal regulations, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office, or submitted relevant and pertinent new evidence not previously considered by the Office.[9] The regulations provide that when an application for review of the merits of a claim does not meet at least one of these three standards, the Office will deny the application without reviewing the merits of the claim.[10] In reviewing the evidence submitted by a claimant in support of reconsideration, it is well established that evidence that repeats or duplicates the evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case on its merits.[11]

ANALYSIS -- ISSUE 2

The evidence submitted by appellant in support of his April 20, 2003 request for reconsideration consisted of copies of medical reports already of record and reviewed by the Office. Appellant submitted the July 24, 2001 report of Dr. Wicks and reports of January 9, 2001 and April 25, 2002 of Dr. Dore. As these reports were duplicative of those already submitted and considered by the Office, the Board finds that the reports do not constitute new evidence sufficient to require a reopening of the merits of the claim. Therefore, the Office properly denied appellant's request for reconsideration.

CONCLUSION

The Board finds that appellant failed to establish that he was totally disabled for work for the periods June 21 to February 13, 2001, May 8 to 16 and June 2 to 29, 2001. The Board also finds that the Office properly denied appellant's April 20, 2003 request for reconsideration.

[9] 20 C.F.R. § 10.606(b).

[10] 20 C.F.R. § 10.608(b).

[11] *See Helen E. Paglinawan*, 51 ECAB 591 (2000).

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2003 and June 24, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 1, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member