



## **FACTUAL HISTORY**

On February 22, 2003 appellant filed an occupational disease claim alleging that as of January 25, 2003 he developed conditions of the hands, arms and neck due to work activities. Appellant did not stop work.

The employing establishment challenged the claim on the grounds that appellant was injured in a nonwork-related vehicle accident on December 2, 2002. The employing establishment indicated that appellant reported for duty without restrictions on January 16, 2003.

On January 2, 2003 Dr. Timothy Morley, an osteopathic physician, noted that appellant had been involved in a motor vehicle accident on December 2, 2002 and was incapacitated through January 8, 2003 but could return to regular work on January 9, 2003.

On February 5, 2003 Dr. Morley opined that appellant was incapacitated from February 1 to April 1, 2003 due to carpal tunnel syndrome, as a result of his work and a motor vehicle accident on December 2, 2002. He was given light-duty activity restrictions for two to three months and was advised to return to light duty as of February 1, 2003.

On February 7, 2003 Dr. Michael A. Fraslia, a Board-certified orthopedic surgeon, noted that appellant was disabled until January 13, 2003 due to his December 2, 2002 motor vehicle accident, but could return to full duty on February 2, 2003.

By reports dated March 6 and April 1, 2003, Dr. Morley noted appellant's complaints as bilateral wrist and hand pain. He noted no sensory deficit but weakness bilaterally and a positive Tinel's sign over the carpal tunnel. However, no period of disability was identified or described.

On April 2, 2003 the Office accepted that appellant sustained bilateral carpal tunnel syndrome due to the repetitive use of his hands and wrists in the performance of his mail handling duties. It advised appellant to submit a Form CA-7 for compensation and advised that the medical evidence must clearly explain how his previously nondisabling carpal tunnel syndrome was the cause of his disability and not his nonwork-related car accident.

On April 29, 2003 appellant underwent electromyographic testing and was found by Dr. Naomi Z. Waldbaum, Board-certified in physical medicine, to have mild median neuropathies at or distal to the wrist, consistent with early carpal tunnel syndrome. Also found was right ulnar motor neuropathy with mild axonal loss and minimal slowing through the cubital tunnel. However, no impairment from these mild neural symptoms was described.

Appellant worked partial shifts from January 25 to 28 and 30 to 31, from February 1 to 11, 14 to 18, 21 to 25 and 28 and from March 1 to 4, 6 to 11, 14 to 18, 21 to 26 and 28 to 31, 2003 due to his accepted condition. He also worked partial shifts on April 1, 4 to 8, 11 to 15, 18 to 21, 24 to 28, May 1 to 5, 8 to 12, 15 to 20, 23 and 25, 2003. Appellant filed a claim for compensation for the hours not worked these dates.

On May 1, 2003 Dr. Morley opined that appellant's cervical sprain/strain was causally related to an accident that occurred on January 25, 2003.

Appellant accepted a limited-duty work assignment on May 9, 2003. He was given new activity limitations on June 11, 2003. Appellant continued to work six hours per day and take two hours sick or annual leave or leave without pay.

On July 31, 2003 Dr. Morley opined that appellant could work eight hours a day sitting, four hours walking and four hours standing, with restrictions on pulling, pushing, lifting and climbing and repetitive wrist movements.

By decision dated August 14, 2003, the Office denied appellant's claim for intermittent periods of disability finding that the medical evidence of record did not establish that he was disabled on the dates claimed due to his carpal tunnel syndrome.

On October 24, 2003 appellant filed a claim for recurrence of disability alleging that he sustained a recurrence on October 14, 2003 and was out of work until October 16, 2003. Appellant claimed that he had to take daily medications for pain, that he developed cluster headaches, dizziness, sleeplessness, stress, depression and swollen hands with redness.

Appellant requested an oral hearing before an Office hearing representative which was held on April 20, 2004, at which appellant testified and was represented by counsel.

By decision dated April 22, 2004, the Office rejected appellant's claim for compensation for intermittent periods from May 31 to October 13, 2003. The Office found that the medical evidence was insufficient to support appellant's claim as it did not address the issue of whether his carpal tunnel syndrome disabled him at any time during that period.

On April 27, 2004 appellant, through his representative, requested an appeal of the April 22, 2004 decision.

By decision dated May 26, 2004, the Office hearing representative denied appellant's claim finding that the medical evidence of record was insufficient to establish that he sustained a recurrence of disability due to his accepted carpal tunnel syndrome. The hearing representative noted that the employing establishment sent appellant home when he could not perform specific work tasks, and that he testified that he could not drive tow motors or forklifts and therefore could not work an eight-hour shift on various occasions. The hearing representative found that appellant had not demonstrated a change in the nature and extent of his carpal tunnel condition or a change in the nature and extent of his limited-duty job requirements.

### **LEGAL PRECEDENT -- ISSUE 1**

Under the Federal Employees' Compensation Act the term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>1</sup>

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<sup>1</sup> See, e.g., *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (injured but no loss of wage-earning capacity).

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 a preponderance of the reliable, probative and substantial medical evidence.<sup>2</sup>

Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.<sup>3</sup>

### **ANALYSIS -- ISSUE 1**

Appellant was cleared by Dr. Morley to work eight hours light duty beginning February 1, 2003 which would not yield any loss of wages he was receiving prior to the development of carpal tunnel syndrome. Therefore, the occurrence of periods of disability during that time span has not been demonstrated, nor has appellant submitted reliable, probative and substantial medical evidence demonstrating that he had disability for intermittent periods from February through May 2003. Dr. Morley merely diagnosed his condition but did not discuss his disability status or provide any rationalized medical opinion finding that he was disabled for intermittent periods claimed. As Dr. Morley did not address the issue at hand, appellant has not demonstrated by reliable, probative and substantial medical evidence that he had intermittent disability during that time span.

Dr. Morley repeated appellant's complaints of pain and diagnosed symptoms of carpal tunnel syndrome including weakness and positive Tinel's signs. However, the physician did not describe any disability resulting from these symptoms. Therefore, he has not established that the objective symptoms and signs present caused appellant any resulting disability for work.

Dr. Waldbaum diagnosed mild median neuropathies at or distal to the wrist, consistent with early carpal tunnel syndrome. She found right ulnar motor neuropathy with mild axonal loss and minimal slowing through the cubital tunnel. However, no disability from these mild neural symptoms was described, and they were noted as being early, mild and minimal. As she did not discuss the issue of disability for work due to these mild symptoms, Dr. Waldbaum has not presented a medical opinion supporting a basis for the payment of compensation.

Appellant was found to have fully recovered from the results of his December 2, 2002 motor vehicle accident and cleared to return to full duty in January 2003. The record is unclear that any of his symptoms were still causally related to the accident. However, even with his carpal tunnel syndrome he was cleared to return to work full-time light duty effective February 2, 2003. Therefore he has no demonstrable loss of wage-earning capacity due to the carpal tunnel syndrome, and many of the days he claimed two or three hours of compensation were already compensated by sick leave or annual leave pay.

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<sup>2</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001) (periods of intermittent disability due to herniated disc); *Donald E. Ewals*, 51 ECAB 428 (2000) (disability due to an emotional condition).

<sup>3</sup> *Id.*

Appellant claimed that he could not drive motor transports and forklifts but he successfully drove his automobile to get to and from work on the days he claimed disability because he could not drive. This inconsistency was not addressed by any medical reports. Appellant's treating physicians have not presented adequate medical opinion on the issue of disability.

Appellant made a second claim for intermittent hours of disability from May 31 through October 2003. He continued to work six hours or so a day and take two hours of sick or annual leave or leave without pay. No medical evidence was submitted, however, which addressed how he was disabled for these intermittent hours or the issue of disability during this time span.

On July 31, 2003 Dr. Morley opined that appellant could work eight hours a day sitting, four hours walking and four hours standing, with the previous restrictions on pushing, pulling and lifting. This recommendation, therefore, does not support that appellant had any disability for employment as claimed. Appellant has not submitted probative medical evidence demonstrating that he had disability for intermittent periods from May 31 through October 2003. Dr. Morley merely diagnosed appellant's condition but did not discuss his disability status or provide any rationalized medical opinion finding that he was disabled for intermittent periods during this period. As Dr. Morley did not address the issue at hand, appellant has not demonstrated by reliable, probative and substantial medical evidence that he had intermittent disability during the period May 31 through October 2003.

#### **CONCLUSION -- ISSUE 1**

Appellant has not established his claim of intermittent disability due to his accepted carpal tunnel syndrome. He has not submitted sufficient medical evidence which addresses the issue of disability or correlated the periods of claimed disability to the findings of his attending physicians. Therefore appellant has not established his intermittent disability claim.

#### **LEGAL PRECEDENT -- ISSUE 2**

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 establishes that he 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 to show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>4</sup>

#### **ANALYSIS -- ISSUE 2**

On October 24, 2002 appellant claimed a recurrence of disability on October 14, 2003, causally related to his carpal tunnel syndrome.

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<sup>4</sup> *Albert C. Brown*, 52 ECAB 152 (2000); *Barry C. Peterson*, 52 ECAB 120 (2000).

Appellant based his claimed recurrence of disability on having work activity restrictions and taking daily pain medication. He noted that he was working in a high stress environment and developed cluster headaches, dizziness, sleeplessness, stress, depression and swollen, red hands. However, he submitted no probative medical evidence which addressed the issue of his disability on October 14, 2003 or the reason for his disability on that date. Appellant indicated that his recurrence lasted four days and that his employer sent him home after six hours of work because he could not drive. However, he has failed to provide any medical evidence supporting his claim of disability.

Appellant has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he cannot perform light duty. He has submitted no medical evidence which addresses any change in the nature and extent of his injury-related condition or change in the nature and extent of his light-duty job requirements. Therefore he has not met his burden of proof to establish a recurrence of disability from working in the light-duty position.

**CONCLUSION -- ISSUE 2**

Appellant has failed to establish that he sustained a change in the nature and extent of his injury-related condition or in his light-duty job requirements on October 14, 2003. Further he has not submitted medical evidence which establishes a recurrence of disability on that date. Therefore appellant has failed to meet his burden of proof to establish an recurrence claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 22 and May 26, 2004 and August 14, 2003 are affirmed.

Issued: August 12, 2005  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board

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