U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERLINDA S. DILL and DEPARTMENT OF THE NAVY, MARINE CORPS LOGISTICS BASE, Barstow, CA

Docket No. 02-797; Submitted on the Record;
Issued September 18, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON, WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability.

On July 13, 1998 appellant, then a 40-year-old medical clerk (typing), filed an occupational disease claim, alleging that computer work caused bilateral de Quervains tenosynovitis. She did not stop work. By letter dated August 21, 1998, the Office of Workers' Compensation Programs accepted that appellant sustained employment-related bilateral de Quervain's stenosing tenosynovitis.[1] On April 1, 1999 she underwent authorized surgical release on the left and received appropriate wage-loss compensation. Appellant returned to light duty on June 7, 1999 and subsequently returned to full duty.

Because of continued complaints, on October 19, 1999 appellant underwent arthroscopy with chondral shaving and synovial resection on the left and returned to modified duty on November 30, 1999. She stopped work on February 28, 2000 and on March 27, 2000 filed a recurrence claim, stating that she could not work due to the intense pain in her left wrist and increased pain in both upper extremities.[2]

By decision dated May 20, 2000, the Office denied the claim, finding the medical evidence insufficient to establish that appellant sustained a recurrence of disability. On May 16, 2000 she requested a hearing before the Branch of Hearings and Review of the Office and on June 19, 2000 revised her request to a review of the written record. In a February 8, 2001

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[1] De Quervain's tenosynovitis is defined as a painful condition of the wrist, marked by thickening and narrowing of the tendon sheath of the extensor brevis and abductor longus pollicis. *Dorland's Illustrated Medical Dictionary*, 29th edition (2000).

[2] The record indicates that appellant had previously filed a Form CA-7 claim for compensation. By letter dated March 14, 2000, the Office forwarded appellant a recurrence claim form and informed her of the type evidence needed to support such a claim.

decision, an Office hearing representative affirmed the prior decision. The instant appeal follows.[3]

The Board finds that this case is not in posture for decision.

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or 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 or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.[4]

Causal relationship is a medical issue[5] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

The relevant medical evidence in the instant case includes reports from appellant's treating Board-certified orthopedic surgeon, Dr. Samuel Rice, who performed both surgical procedures. In a treatment note dated January 12, 2000, Dr. Rice noted that appellant was 12 weeks post arthroscopy and was working modified duty and attending physical therapy. He noted that, while her left wrist was improving, she complained of worsening symptoms on the right. On examination carpal compression and Tinel's tests were positive.

In a January 26, 2000 memorandum, the employing establishment advised that it could not accommodate the restrictions provided by Dr. Rice.

Dr. Waseem N. Ibrahim, a Board-certified neurologist, performed electromyography (EMG) and nerve conduction studies (NCS) on January 27, 2000, which demonstrated probable

[3] The record further indicates that, by decision dated May 25, 2001, the Office granted appellant a schedule award for a 25 percent permanent impairment of the right upper extremity and a 23 percent impairment of the left upper extremity, for a total of 152.88 weeks of compensation, to run from April 26, 2000 to April 1, 2003. Appellant has not filed an appeal of this decision with the Board.

[4] *Mary A. Howard*, 45 ECAB 646 (1994); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

[5] *Mary J. Briggs*, 37 ECAB 578 (1986).

[6] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

left ulnar sensory neuropathy and normal nerve conduction and EMG examinations. In a consultation report also dated January 27, 2000, Dr. Ibrahim advised:

> "From a neurologic standpoint, [appellant's] EMG/[NCS] does not show a severe entrapment that would account for [her] marked symptoms and especially the tenderness and the positive Tinel['s] sign that she exhibits bilaterally at the wrists and elbows. She also does not have signs to suggest reflex sympathetic dystrophy. By exclusion, I, therefore, feel that tendinitis or soft tissue inflammation is still the most likely explanation for appellant's ongoing symptoms."

In a duty status report dated February 16, 2000, Dr. Rice provided restrictions to appellant's physical activity and stated:

> "[Appellant] may not return to the work she has been doing due to the injuries to her arm/wrists/hands. She will need to be retrained for a different job. [Appellant] is [temporarily totally disabled] at this time."

In reports dated February 16 and March 27, 2000, Dr. Rice advised that he believed appellant's pain and weakness were a result of "an overuse type syndrome" due to the repetitive nature of her work. He recommended that she stop her current job. He also submitted a number of disability slips in which he advised that appellant could not work.

In a report dated April 26, 2000, Dr. Rice stated that he had been treating appellant since January 1999, reviewed her medical history including testing performed and diagnosed overuse syndrome, both upper extremities, status post release of left first dorsal extensor compartment and left wrist arthroscopy with chondral shaving of hamate and synovium. He advised that appellant's condition was permanent and stationary and noted subjective factors of constant slight wrist pain involving the entire wrist and radial border of the thumb bilaterally with an increase of pain to moderate with pushing, pulling, typing, grasping, lifting, using scissors, twisting the wrist and in writing with the right wrist. Objective factors included decreased right wrist range of motion compared to the left and bilateral decrease in grip strength estimated at approximately 50 percent, a positive Watson's test on the left and a positive proximal row compression test on the right. He further noted tenderness over the scapholunate joint, the snuffbox, lunotriquetral joint and triangular fibrocartilage complex bilaterally with a positive Tinel's sign over the median nerve at the wrist and the ulnar nerve at the elbow bilaterally. Regarding work restrictions, Dr. Rice stated:

> "[Appellant's] job involves a great deal of writing and typing which she is unable to do and she can, therefore, not continue to perform her usual occupation. Were [appellant] to compete in the open labor market, [she] would be precluded from jobs that require repetitive pushing, pulling, typing, grasping, lifting, twisting of the wrist, writing or cutting motions."

By report dated September 24, 2000, Dr. Rice further advised that, if appellant were required to return to her previous occupation, "it is expected that her symptoms will worsen and her disability will increase ... based on my evaluation and examination...." In a treatment note

dated October 25, 2000, he advised that her condition was unchanged and reiterated his conclusion that appellant could not work at her previous occupation.

The accepted condition in the instant case is a bilateral wrist condition. In that regard, the Board finds that the reports of Dr. Rice constitute sufficient evidence in support of appellant's claim to require further development by the Office as he consistently advised that appellant's continuing bilateral wrist condition was employment related and that she could not perform her modified duty. While his reports lack detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that she sustained a recurrence of disability on February 28, 2000, this does not mean that these reports may be completely disregarded by the Office. It merely means that their probative value is diminished.[7] In the absence of medical evidence to the contrary, Dr. Rice's reports are sufficient to require further development of the record.[8] It is well established that proceedings under the Federal Employees' Compensation Act are not adversarial in nature[9] and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[10] On remand the Office should compile a statement of accepted facts and refer appellant, together with the complete case record and questions to be answered, to a Board-certified specialist for a detailed opinion regarding whether appellant sustained a recurrence of disability on February 28, 2000. After such development as the Office deems necessary, a *de novo* decision shall be issued.

[7] *See Delores C. Ellyet*, 41 ECAB 992 (1990).

[8] *John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation

[9] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

[10] *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The decision of the Office of Workers' Compensation Programs dated February 8, 2001 is hereby vacated and the case is remanded to the Office for further proceedings.

Dated, Washington, DC
September 18, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member