

benefits based on her capacity to earn wages as an information clerk.¹ The facts and circumstances of the case as set forth in the Board's prior decision are adopted herein by reference.

Following the September 18, 2000 decision of the Board and the denial of appellant's petition for reconsideration on January 17, 2001, she requested reconsideration before the Office on June 1, 2001. By decision dated September 26, 2001, the Office declined to reopen appellant's claim for consideration of the merits on the grounds that her request for reconsideration was not timely filed and did not contain clear evidence of error. Appellant requested review of this decision by the Board. In response to a motion by the Director, the Board issued an Order dated January 2, 2003 setting aside the September 26, 2001 decision and granting remand for the Office to issue a *de novo* decision.

By decision dated May 20, 2003, the Office reviewed appellant's claim on the merits and accepted the additional conditions of right wrist strain, right shoulder contusion and right arm reflex sympathetic dystrophy as a consequence of her December 20, 1982 employment injury.² However, the Office found that she had not established any period of total disability as a result of these conditions. The Office also found that the medical evidence was insufficient to warrant modification of appellant's wage-earning capacity determination.

Appellant requested reconsideration on August 7, 2003 and submitted additional medical evidence. By decision dated October 31, 2003, the Office reviewed her claim on the merits and denied modification of her wage-earning capacity determination.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employee's Compensation Act³ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴

ANALYSIS -- ISSUE 1

Appellant has alleged that she was totally disabled as a result of the accepted consequential injuries of right wrist strain, right shoulder contusion and right arm reflex

¹ Docket No. 98-2066 (issued September 18, 2000).

² The Office found that these conditions resulted from a fall out of a bath tub on October 4, 2000 because appellant lacked the strength to grab a hand rail due to the effects of her employment injury.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

sympathetic dystrophy occurring in October 2000. In its May 20, 2003 decision, the Office stated: “[Y]ou have not proved that your continuing disability for work has been caused by these conditions.”

In support of her claim, appellant submitted a series of medical reports from her attending physician, Dr. Mayo Friedlis, a Board-certified physiatrist, diagnosing acute sprain, right thumb and wrist and aggravation of reflex sympathetic dystrophy right upper extremity. Dr. Friedlis found that appellant was totally disabled on October 4, 2000. On December 4, 2000 he diagnosed reflex sympathetic dystrophy syndrome right upper extremity continuing with residuals. Dr. Friedlis opined that appellant’s work status remained the same. On January 8, 2001 He diagnosed reflex sympathetic dystrophy, right upper extremity continuing with residuals. Dr. Friedlis next examined appellant on March 12, 2001 and diagnosed reflex sympathetic dystrophy, right upper extremity continuing with residuals. He stated: “It does not appear that [appellant] is available for work now; however, this will be reevaluated....” In a report dated April 30, 2001, Dr. Friedlis diagnosed reflex sympathetic dystrophy right upper extremity with chronic and significant right upper quadrant pain. He stated: “[Appellant’s] pain has resulted in decreased functional capabilities to the point that she is unable to work at this time.” Although she reported additional lower extremity pains on May 30, 2001 Dr. Friedlis also noted that her upper extremity condition continued. On June 18, 2001 he again diagnosed reflex sympathetic dystrophy in the right upper extremity “with flare.” In a report dated October 17, 2001, Dr. Friedlis repeated his diagnosis and did not provide a disability assessment.

Dr. Friedlis completed a narrative report on October 24, 2001 noting that in 1997 he believed that appellant was capable of light-duty work. However, he stated that her condition had substantially worsened on or after March 15, 2001. Dr. Friedlis stated that appellant could not work since then due to the severity of her pain and loss of function related to both her pain and her worsened physical condition. He stated: “[Appellant] is totally disabled and unable to work in any capacity.” In an August 7, 2002 report, Dr. Friedlis reiterated that appellant “remains unable to work because of her pain and dysfunction in the right upper extremity.”

In a note dated July 23, 2003, Dr. Friedlis stated that appellant had severe pain in the right upper extremity and shoulder area as residuals from her reflex sympathetic dystrophy, myofascial dysfunction and shoulder contusion. He noted that she was not working and stated: “Given the severe disuse of the right upper extremity and [appellant’s] level of pain that she is having, I do not believe that she is employable at this time in any capacity. I do not expect this to change in the future. Her disability for work is permanent.”

These reports contain a history of injury, diagnosis and an opinion that appellant’s disability was due to the accepted consequential injuries of reflex sympathetic dystrophy and right shoulder contusion. While these reports are not sufficient to meet appellant’s burden of proof, they do raise an uncontroverted inference of causal relation between her accepted condition beginning in October 2000 and periods of total disability after that date and are sufficient to require the Office to undertake further development of appellant’s claim.⁵ On remand the Office should prepare a statement of accepted facts, including all accepted conditions

⁵ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

and refer appellant to an appropriate physician to determine whether she experienced any period of total disability causally related to her accepted consequential injuries on or after October 4, 2000.

LEGAL PRECEDENT -- ISSUE 2

Once loss of wage-earning capacity is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was, in fact, erroneous.⁶ The burden of proof is on the party attempting to show modification.⁷

ANALYSIS -- ISSUE 2

In the present case, appellant has alleged that she has sustained a material change in the nature and extent of her injury-related condition. The Office originally accepted her claim for contusion of the right distal phalanges and right carpal tunnel syndrome. In its May 20, 2003 decision, the Office determined that she had sustained additional injuries as a consequence of her December 20, 1982 employment injury: Right wrist strain, right shoulder contusion and right arm reflex sympathetic dystrophy. However, the Office determined that these additional conditions did not warrant a modification of appellant's wage-earning capacity determination.

In a narrative report dated October 24, 2001, Dr. Friedlis noted that in 1997 he believed that appellant was capable of light-duty work. However, he stated that her condition had substantially worsened on or after March 15, 2001. Dr. Friedlis stated that appellant could not work due to the severity of her pain and loss of function related to both her pain and her worsened physical condition. He stated: "[Appellant] is totally disabled and unable to work in any capacity."

In a note dated July 23, 2003, Dr. Friedlis stated that appellant had severe pain in the right upper extremity and shoulder area as residuals from her reflex sympathetic dystrophy, myofascial dysfunction and shoulder contusion. He noted that she was not working and stated: "Given the severe disuse of the right upper extremity and her level of pain that she is having, I do not believe that appellant's is employable at this time in any capacity. I do not expect this to change in the future. [Appellant's] disability for work is permanent."

The Office, in denying appellant's August 7, 2003 request for reconsideration noted that the selected position of information clerk did not require her to use both arms or her dominate arm and that, therefore, appellant's loss of use of her right arm did not prevent her from performing the duties of this position. However, the medical evidence in the record consisting of a series of detailed reports from Dr. Friedlis suggests that appellant's had a material change in her condition due to increased pain which prevented her from performing any work. As Dr. Friedlis noted, he had previously found that she was capable of light-duty work in 1997;

⁶ *Derrick Higgin*, 50 ECAB 213, 216 (1998).

⁷ *Id.*

however, he has opined without controversion that appellant is currently totally disabled due to increased pain from the accepted consequential injury of reflex sympathetic dystrophy. Therefore, his reports, while insufficiently detailed and rationalized to establish that the position of information clerk does not represent appellant's wage-earning capacity are sufficient to require development as to whether she could reasonably perform the duties of this or any position in light of residuals from her employment-related injuries. Accordingly, the Office should undertake additional development of the medical evidence to determine whether a modification of appellant's loss of wage-earning capacity is warranted.⁸

CONCLUSION

As the medical evidence suggests that appellant experienced periods of total disability due to her accepted consequential injuries, the Office should undertake additional development of the medical evidence to determine when and if she was totally disabled. Furthermore, the medical evidence strongly suggests that she has experienced a change in the nature and extent of her injury-related condition such that modification of her wage-earning capacity determination should be considered.

ORDER

IT IS HEREBY ORDERED THAT the October 31 and May 20, 2003 decisions of the Office of Workers' Compensation Programs are hereby set aside and remanded for further development consistent with this opinion of the Board.

Issued: May 6, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁸ *Higgins, supra* note 6 at 216.