

The issue is whether appellant has established that she sustained recurrences of total disability on and after December 8, 2003 from her light-duty position due to her accepted May 1, 2001 employment injury.

FACTUAL HISTORY

On May 8, 2001 appellant, a 40-year-old mailhandler, filed a claim for a recurrence of disability beginning May 1, 2001 due to a March 29, 1994 employment injury.¹ On August 30, 2001 the Office converted her recurrence claim into a claim for a new occupational injury. The Office accepted appellant's claim for right shoulder impingement and neck strain on December 10, 2001.² On January 14, 2002 she accepted a limited-duty job assignment. On January 9, 2003 the Office authorized payment of appellant's claims for intermittent wage-loss compensation for the period September 23 to January 8, 2003. Appellant accepted limited-duty job offers on March 1 and May 11, 2003. On July 29, 2003 the employing establishment offered her a limited-duty job offer which restricted her lifting to no more than five pounds and no repetitive work.

Appellant filed claims for compensation for the period December 8, 2003 to January 8, 2004 and January 8 to February 8, 2004.

In a letter dated February 9, 2004, the Office notified appellant that the medical evidence was insufficient to support her claim for compensation from December 8, 2003 to January 8, 2004 and January 8 to February 8, 2004. The Office informed her of the definition of a recurrence of disability and requested additional factual and medical evidence in support of her claim.

On February 9, 2004 the Office received reports from Dr. Eugene P. Lopez, a treating Board-certified orthopedic surgeon, which included disability notes dated December 18, 2003 and January 26, 2004 and an attending physician's report dated January 27, 2004. The December 18, 2003 disability note stated that appellant was unable to work pending an evaluation by another physician. The January 26, 2004 note stated that she could not work for one month. In the January 27, 2004 Form CA-20, Dr. Lopez diagnosed bilateral cubital tunnel/carpal tunnel and stated appellant "will remain off work" and that "When/If patient returns to work, she will have periods of pain and she will have to adjust her work duties or remain off."

On February 26, 2004 the Office received a February 19, 2004 report by Dr. Lopez, who noted his history of treating appellant. In summarizing his report, Dr. Lopez stated:

"[Appellant] has been following with me for these severe upper extremity neck, shoulder, carpal tunnel and cubital tunnel problems. She has had bilateral carpal tunnel release, but has recurrence of her carpal tunnel when [appellant] overuses her hands at her job. Currently, [appellant's] cubital tunnel syndrome, her shoulder and her neck have been successfully treated conservatively. As long as she maintains her work restrictions within the functional capacity evaluation with a 5 [to] 10 pounds maximum, nonrepetitive work, [appellant] will be capable of

¹ The Office accepted appellant's 1994 claim for bilateral carpal tunnel syndrome and assigned it Claim No. 10-433041.

² This was assigned Claim No. 10-2003451.

gainful employment. [She] has sustained significant permanent partial disability as a result of these work[-]related ailments and will require permanent activity modification at home and at work. She is to see me on an as needed basis.”

On March 8, 2004 the Office received a February 23, 2004 treatment note by Dr. Lopez. A physical examination was unchanged and showed minimally positive Tinel’s sign and normal vascular examination and normal sensation to light touch. Dr. Lopez stated that, appellant “does well with her light duty.”

On March 9, 2004 the Office received appellant’s CA-7 form claiming wage-loss compensation for the period February 9 to March 4, 2004 and a February 25, 2004 Form CA-20 by Dr. Lopez. He indicated that she had partial disability for the period February 10, 2002 to September 23, 2004 due to her bilateral carpal tunnel syndrome.

On March 10, 2004 the Office received a letter dated March 4, 2004 from appellant. She alleged that she was assigned to work in the Nixie Unit on February 9, 2004 and the duties of “stuffing damaged flats and damaged letters into envelopes for 8 hours a day” aggravated her condition.

By decision dated April 21, 2004, the Office denied appellant’s claim for a recurrence of disability beginning December 8, 2003. The Office found that there was no medical evidence which explained that her condition had worsened or provided any opinion supported by objective evidence.

On May 3, 2004 the Office received appellant’s Form CA-7 claiming wage-loss compensation for the period March 20 to April 24, 2004, an April 8, 2004 disability note by Dr. Lopez and a Form CA-20 dated April 8, 2004 by him. He diagnosed bilateral carpal tunnel syndrome and stated that appellant would be off work from March 20 to April 29, 2004 and will return to light-duty work on April 30, 2004. In the April 8, 2004 disability note, Dr. Lopez stated that appellant was “unable to work due to severe pain and discomfort.” He indicated that she would return to light-duty work on April 30, 2004.

The Office subsequently received treatment notes dated April 7 and May 13, 2004 by Dr. Lopez. In the April 7, 2004 treatment note, he stated that appellant had “been off work but plans to return as long as she can (sic) provided with light duty.” A physical examination revealed a positive Tinel’s sign and minor tenderness. Dr. Lopez, in the May 13, 2004 treatment note, stated that appellant “continues to have recurrence of her cubital tunnel” and that she could not “tolerate the discomfort.” A physical examination revealed a positive Tinel’s sign. Under plan, the physician stated that appellant “has been off work” and indicated that she “may need to change her job description” as appellant has a “permanent partial disability as a result of this work-related problem.”

On June 14, 2004 the Office received a May 4, 2004 letter from appellant requesting reconsideration of the denial of her recurrence claim.

On June 16, 2004 the Office received a May 13, 2004 disability note by Dr. Lopez stating that appellant was to be off work for one month and a June 9, 2004 duty status report (Form CA-17), indicated that she was totally disabled due to her bilateral carpal tunnel syndrome.

The Office subsequently received disability notes dated June 9, 2004 by Dr. Lopez, which stated that appellant was off work from May 13 to June 17, 2004 and could return to work on June 18, 2004 with restrictions. The restrictions included no repetitive work and no lifting more than five pounds. Dr. Lopez indicated that appellant's total disability for the period May 13 to June 17, 2004 was due to her carpal tunnel and cubital tunnel syndromes.

On June 23, 2004 the Office received a June 9, 2004 report by Dr. Lopez. He diagnosed bilateral cubital tunnel syndrome and noted that appellant had a recurrence of this condition. Dr. Lopez reported that she had "improved since being off work." He indicated that he was releasing appellant to work in a week, with restrictions which included no repetitive work and no lifting more than five pounds.

Subsequently the Office received an April 28, 2004 report by Dr. Lopez. He noted that appellant had been treated for a severe employment-related wrist/arm injury and "that there has been some confusion with her work restrictions." Dr. Lopez reported that she had "been on permanent light-duty restrictions for quite some time." He stated that appellant would have frequent flareups due to the severity of her condition and that the severity of these flare-ups would "require [her] to be off work for extended periods of time." Dr. Lopez alleged that appellant's "job has not followed the light-duty protocol, which has caused her to sustain severe and profound discomfort as well as disability."

On July 23, 2004 the Office received a CA-7 form from appellant claiming wage-loss compensation for the period May 13 to June 17, 2004.

On August 27, 2004 the Office received an August 20, 2004 Form CA-20 and an August 19, 2004 treatment note from Dr. Lopez. He noted that appellant had an unchanged examination in his August 19, 2004 treatment note. Dr. Lopez indicated that he planned to "keep her on permanent light-duty restrictions, 5 [to] 10 pounds maximum, elbows close to her body, nonrepetitive work." In August 20, 2004 Form CA-20, he diagnosed bilateral cubital tunnel syndrome and indicated that appellant had partial periods of disability for the periods February 10, 2002 through July 22, 2004 and periods of total disability for the period April 23, 2002 to the present.

By decision dated September 22, 2004, the Office denied appellant's request for modification of the denial of her recurrence claim.³

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations provides in part, that a recurrence of disability is an inability to work after an employee has returned to work, caused by a spontaneous change

³ Following issuance of the Office's September 22, 2004 decision, appellant submitted additional evidence. The Board may not consider new evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

in a medical condition, which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴

When an employee who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee 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 she 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.⁵

The Office's procedure manual provides that a recurrence of disability includes a work stoppage caused by an objective, spontaneous, material change in the accepted condition, a recurrence or worsening of disability due to an accepted consequential injury or withdrawal of a light-duty assignment made to accommodate the work-related condition, for reasons other than misconduct or nonperformance.⁶

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁷

ANALYSIS

It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence and for continuing disability. The Board finds that the record does not contain a medical report providing a reasoned medical opinion that she sustained a recurrence beginning December 8, 2003 causally related to the May 1, 2001 employment injury.

Appellant's claim was accepted for bilateral carpal tunnel syndrome, right shoulder impingement and neck strain condition. She filed claims requesting compensation for total disability from December 8, 2003 to January 8, 2004, January 8 to February 8, 2004, February 9 to March 4, 2004, March 20 to April 8, 2004 and May 13 to June 17, 2004. The issue, therefore, is whether appellant sustained a recurrence of disability during these periods causally related to her May 1, 2001 employment injury.⁸ On February 9, 2004 the Office advised her of the type of

⁴ 20 C.F.R. § 10.5(x).

⁵ *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); *see also Terry R. Hedman*, 38 ECAB 222 (1986).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *See also Steven A. Andersen*, 53 ECAB 367 (2002).

⁷ *James H. Botts*, 50 ECAB 265 (1999).

⁸ Although appellant did not specifically file a claim for a recurrence of disability (Form CA-2a), Office regulations defining a recurrence of disability are applicable to this situation and the Office has properly treated it as such. *See* 20 C.F.R. § 10.5(x).

medical and factual evidence needed to establish her claim for a recurrence of disability. However, she did not submit any medical reports which contained a rationalized opinion from a physician who, on the basis of a complete and accurate factual and medical history, concluded that appellant had a condition which was causally related to the employment injury and supported that conclusion with sound medical reasoning.⁹ The Board also notes that there is no evidence showing a change in the nature and extent of the light-duty job requirements.

The medical reports with respect to the period December 28, 2003 to June 17, 2004 include several reports, various Form CA-20's, treatment notes and disability notes from Dr. Lopez. He stated, in an April 8, 2004 Form CA-20, that appellant was unable to work due to "severe pain and discomfort," that she was totally disabled and would return to work on April 30, 2004. The Board has held that a diagnosis of "pain," without supporting medical rationale, does not constitute the basis for the payment of compensation.¹⁰ Thus, this report is insufficient to support her claim for compensation for total disability. Dr. Lopez also provided disability notes dated December 18, 2003 and April 8, May 13 and June 9, 2004 and Form CA-20's dated January 27 and August 20, 2004 regarding appellant's disability. In the disability notes he opined that she was totally disabled from work. Dr. Lopez also provided various Form CA-20's, in which he diagnosed bilateral cubital tunnel/carpal tunnel syndrome and periods of partial and total disability from 2002. The disability slips and January 27 and August 20, 2004 Form CA-20's are insufficient to support appellant's claim for disability as they do not address causal relationship.

In his February 19, 2004 report, Dr. Lopez opined that appellant "sustained significant permanent partial disability" due to her employment injuries. In treatment notes dated February 23, 2004, he stated that she "does well with her light duty" and that appellant's physical examination was unchanged. Dr. Lopez, in an April 28, 2004 report, stated that appellant had a severe wrist/arm employment injury and there had been some confusion regarding her work restrictions. He indicated that she would have frequent flareups due to the severity of her condition and that this would "require her to be off work for extended periods of time." In a June 9, 2004 report, Dr. Lopez opined that appellant had a recurrence of disability due to her accepted bilateral carpal tunnel syndrome. He noted that she had "improved since being off work." Dr. Lopez, in none of his treatment notes or reports, provided any explanation regarding the causal relationship between appellant's disability and her accepted employment injuries. He provides no explanation or rationale regarding the cause of how her employment caused her disability. Thus, Dr. Lopez's opinion on causal relationship is of little probative value since it contains a conclusory statement on causal relationship.¹¹ He also failed to provide an opinion as to how appellant's condition had worsened such that she was no longer able to perform her limited-duty work. As noted previously, Dr. Lopez merely noted that she was totally disabled without further explanation. As he failed to provide an opinion supported by objective evidence

⁹ See *Helen K. Holt*, 50 ECAB 279 (1999).

¹⁰ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

¹¹ *Albert C. Brown*, 52 ECAB 152 (2000).

and rationale explaining how appellant's disability beginning December 8, 2003 was causally related to her accepted employment injuries, his opinion is of limited probative value.¹²

As appellant has not submitted rationalized medical evidence supporting that she was totally disabled from her light-duty job during the claimed period of disability as a result of her employment injury, the Board finds that the Office properly denied her claim for compensation beginning December 8, 2003.

CONCLUSION

The Board finds that appellant failed to provide rationalized medical evidence establishing that her claimed recurrence of total disability for the period December 8, 2003 was causally related to her accepted employment injuries. Therefore, the Office properly denied her claim for compensation.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 22 and April 21, 2004 are affirmed.

Issued: July 8, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

¹² *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004) (the Board has held that a medical opinion not fortified by medical rationale is of little probative value).