

**United States Department of Labor
Employees' Compensation Appeals Board**

E.M., Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Bellmawr, NJ, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 06-2118
Issued: March 15, 2007**

Appearances:

Thomas R. Uliase, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 18, 2006 appellant, through counsel, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated September 27, 2005 and March 23, 2006, denying her claim for recurrences of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained recurrences of disability during the period May 3, 2000 through August 26, 2005, causally related to her accepted employment injury.

FACTUAL HISTORY

On December 13, 1990 appellant, then a 52-year-old clerk, filed a claim for an occupational disease (Form CA-2) and assigned Office file number A2-625960.

On December 12, 1990 appellant realized that her carpal tunnel syndrome of the left hand was caused by factors of her federal employment.¹ She stated that her job required typing approximately four to five hours per day. Appellant was evaluated by a physician on December 12, 1990. On July 3, 1991 the Office accepted her claim for a left carpal tunnel syndrome. On January 14, 1995 appellant filed a CA-2 form assigned Office file number A2-69211 attributing her right hand numbness to her federal employment. The Office accepted appellant's claim for right carpal tunnel syndrome. On April 19, 1995 it authorized left carpal tunnel release which was performed on June 22, 1995 by Dr. Thomas G. Stackhouse, an attending Board-certified orthopedic surgeon. Dr. Stackhouse performed a right carpal tunnel surgery on March 2, 1986 with trigger a finger release on January 27, 2000.

On February 27, 1996 the Office doubled the cases assigned file numbers A2-625960 and A2-692611 into a master case file assigned number A2-625960.²

On February 14, 2003 appellant filed claims, a CA-2a form dated September 18, 2002 and a CA-7 form dated September 11, 2002 alleging that she sustained a recurrence of disability from January 27, 2000 through September 11, 2002.³ She filed another CA-7 form on February 25, 2003, alleging that she sustained a recurrence of disability from January 27, 2000 through February 25, 2003.

In letters dated April 9, 2003, the Office accepted that appellant sustained recurrences of disability from January 27 through May 2, 2000. It found the medical evidence of record was insufficient to establish disability beyond May 2, 2000.

By letter dated April 25, 2003, appellant's attorney contended that appellant was totally disabled from May 3, 2000 to the present. In a May 3, 2000 report, Dr. Stackhouse utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) 57, Table 16 (4th ed. 1993) to determine that appellant had a 10 percent impairment of the right upper extremity or a 6 percent impairment of the whole person due to her carpal tunnel

¹ Appellant retired from the employing establishment on October 2, 1992.

² By decision dated March 28, 1997, the Office granted appellant a schedule award for a 20 percent impairment of the left upper extremity. In a decision dated February 9, 2001, the Office granted appellant a schedule award for a 10 percent impairment of the right upper extremity. On February 8, 2002 she requested reconsideration of the Office's February 9, 2001 decision. An October 30, 2001 medical report of Dr. David Weiss, a Board-certified orthopedic surgeon, stated that appellant had an 18 percent impairment of the right upper extremity. By letter dated April 22, 2002, the Office referred appellant, along with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Howard Zeidman, a Board-certified orthopedic surgeon, for a second opinion medical examination based on an Office medical adviser's opinion that the medical opinions of Drs. Stackhouse and Weiss differed regarding the extent of appellant's permanent impairment of the right upper extremity. In a May 9, 2002 report, Dr. Zeidman determined that appellant had a five percent impairment each of the right and left upper extremity. On June 17, 2002 an Office medical adviser agreed with Dr. Zeidman's findings. By decision dated June 19, 2002, the Office denied modification of the February 9, 2001 decision. Appellant failed to establish that she had more than a 10 percent impairment of the right upper extremity.

³ In a letter dated November 19, 2002, appellant's attorney informed the Office that, on September 18, 2002, he filed CA-7 and CA-2a forms, alleging that appellant sustained recurrences of disability. By letter dated January 15, 2003, he inquired about the status of these claims. On January 23, 2003 the Office advised counsel that it had not received either a CA-7 or CA-2a form. It then advised him to submit copies of these forms for review.

syndrome. A January 11, 1995 nerve conduction study and electromyogram (EMG) performed by Dr. David Levy, a Board-certified neurologist, was positive for bilateral carpal tunnel syndrome. No other peripheral nerve entrapment at the wrist, elbow or brachial plexus was present. In addition, there was no cervical radiculopathy. A December 12, 1990 nerve conduction study and EMG report of Dr. George A. Knod, a physiatrist, stated that appellant sustained moderate left carpal tunnel syndrome. There was no evidence of left cervical radiculopathy, left ulnar neuropathy or polyneuropathy. On February 23, 2003 Dr. Ted Gallagher, a physiatrist, performed a nerve conduction study and EMG, which found evidence of moderate left carpal tunnel syndrome, mild right carpal tunnel syndrome and borderline ulnar neuropathy at the left elbow level. In a January 26, 2000 EMG report, Dr. Francis J. Bonner, Jr., a Board-certified physiatrist, stated that appellant had bilateral distal median motor sensory neuropathy suggestive of and compatible with carpal tunnel syndrome.

On May 29, 2003 appellant filed a CA-7 form alleging that she sustained a recurrence of disability from May 3, 2000 through May 29, 2003.

By letter dated June 18, 2003, the Office advised appellant that she did not submit medical evidence sufficient to establish disability beyond May 2, 2000. It addressed the medical evidence she needed to submit to establish her claim. On July 25, 2003 appellant stated that she had already submitted sufficient medical evidence and that she did not have any additional evidence to submit.

On August 31, 2005 appellant filed a CA-7 form alleging that she sustained a recurrence of disability during the period October 12, 2002 through August 26, 2005.

By decision dated September 27, 2005, the Office found that appellant did not sustain recurrences of total disability after May 2, 2000 through August 26, 2005 causally related to the accepted employment-related injury. Appellant failed to submit sufficient medical evidence to establish her claims. In an October 3, 2005 letter, through counsel, she requested an oral hearing before an Office hearing representative.

By decision dated March 23, 2006, an Office hearing representative affirmed the September 27, 2005 decision. The hearing representative found the medical evidence of record insufficient to establish that appellant sustained disability after May 2, 2000 through August 26, 2005 causally related to her employment-related bilateral carpal tunnel syndrome.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁴

⁴ 20 C.F.R. § 10.5(x).

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which she claims compensation is causally related to the accepted employment injury.⁵ Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her employment injury.⁶ This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.⁷ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁸

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁹ In this regard, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.¹⁰ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹¹

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome while in the performance of duty. On April 9, 2003 the Office accepted that she sustained recurrences of disability from January 27 through May 2, 2000. Appellant sought additional compensation for her ongoing wrist problems, contending that she was disabled on and after May 3, 2000. The Board finds that she has failed to submit rationalized medical evidence establishing that she has disability causally related to her accepted employment-related bilateral carpal tunnel syndrome.

Dr. Stackhouse's April 18, 1995 medical report stated that appellant's carpal tunnel syndrome symptoms were related to her federal employment. Dr. Levy's January 11, 1995 nerve conduction study and EMG report stated that appellant sustained bilateral carpal tunnel syndrome but found no other peripheral nerve entrapment at the wrist, elbow or brachial plexus or cervical radiculopathy. Dr. Knod's December 12, 1990 nerve conduction study and EMG report demonstrated moderate left carpal tunnel syndrome and found no evidence of left cervical

⁵ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁶ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁷ *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

⁸ *Alfredo Rodriquez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

⁹ *See Ricky S. Storms*, *supra* note 7; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

¹⁰ For the importance of bridging information in establishing a claim for a recurrence of disability, *see Richard McBride*, 37 ECAB 748 at 753 (1986).

¹¹ *See Ricky S. Storms*, *supra* note 7; *Morris Scanlon*, 11 ECAB 384, 385 (1960).

radiculopathy, left ulnar neuropathy or polyneuropathy. Dr. Bonner's January 26, 2000 EMG report found that appellant had bilateral distal median motor sensory neuropathy suggestive of and compatible with carpal tunnel syndrome. This evidence predates the alleged disability commencing on or after May 3, 2000 and is not relevant to that issue.

Dr. Stackhouse's May 3, 2000 report stated that appellant had a 10 percent impairment of the right upper extremity or a 6 percent impairment of the whole person due to her carpal tunnel syndrome A.M.A., *Guides* 57, Table 16. However, he failed to address whether appellant was totally disabled as of that date or thereafter due to her employment-related bilateral carpal tunnel syndrome.¹² The Board finds that Dr. Stackhouse's report is insufficient to establish appellant's claim.

Dr. Gallagher's February 23, 2003 nerve conduction study and EMG report found evidence of moderate left carpal tunnel syndrome, mild right carpal tunnel syndrome and borderline ulnar neuropathy at the left elbow level. This report is insufficient to establish appellant's claim because the physician did not address whether appellant had total disability May 3, 2000 through August 26, 2005 due to her accepted employment-related injury.

Appellant failed to submit rationalized medical evidence establishing that her total disability from May 3, 2000 through August 26, 2005 resulted from the effects of her employment-related bilateral carpal tunnel syndrome. The Board finds that she has not met her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a recurrence of disability during the period May 3, 2000 through August 26, 2005 due to her accepted employment injury.

¹² See *Leslie C. Moore*, 52 ECAB 132 (2000).

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2006 and September 27, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 15, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board