

authorized treatment for a major depressive episode that followed appellant's third cervical fusion in March 1998. Approximately six months after her last surgery, appellant returned to work in a part-time, limited-duty capacity. On March 28, 2000 the Office found that her actual earnings as a part-time, modified clerk effective October 23, 1998, fairly and reasonably represented her wage-earning capacity. Accordingly, appellant's wage-loss compensation was adjusted to reflect her part-time weekly wages of \$373.20.

Appellant stopped working on June 9, 2003 and filed a claim for recurrence of disability on September 30, 2003. She attributed her disability to a combination of medical conditions including, bilateral carpal tunnel syndrome, serious emotional stress and extreme neck and head pain. Appellant explained that she was having severe problems with carpal tunnel syndrome and the employing establishment was preparing to assign her new job duties so her doctor took her off work completely.

Approximately six months prior to appellant's June 9, 2003 work stoppage, the employing establishment advised her that the modified clerk position would be phased out in the near future. Appellant was part of a two-man operation and it was anticipated that her supervisor would retire later in the year and that his position would be abolished. In the months that followed, she expressed her displeasure over being denied the level of seniority that she previously attained in her date-of-injury position as a letter carrier. Appellant indicated that the prospect of being reassigned to a lower-paying position as either a mail handler or janitor was beyond her physical capabilities. A few days prior to her work stoppage, appellant's supervisor underwent bypass surgery. Between June 5 and 6, 2005, appellant exchanged numerous e-mails with Donna Kay, an employing establishment injury compensation specialist. She expressed frustration about the lack of available work and not knowing when and where she would be reassigned. On Friday, June 6, 2003, appellant advised Ms. Kay that she would not be reporting for work the following Monday, June 9, 2003, because she was completely depleted of emotional strength.

In a May 30, 2003 report, Dr. Rey Ximenes, a Board-certified anesthesiologist specializing in pain management, advised that he had been treating appellant for chronic cervical radiculopathy with associated myofascial pain. He described appellant's condition as stable, but also noted that the condition caused considerable dysfunction and interfered with appellant's work. Dr. Ximenes stated that appellant seemed able to carry on with her part-time job, and in fact, had been doing so for some time. However, because of appellant's injury and her part-time status, it appeared that there had been some emotional trauma, which he identified as mild depression and post-traumatic stress disorder (PTSD). Dr. Ximenes indicated that these conditions appeared to be related to appellant's employment injury. He also stated that the current situation made it difficult for appellant to remain at work.

In a June 8, 2003 letter, Marilyn M. Bradford, appellant's therapist, stated that she had been seeing appellant for weekly psychotherapy since January 24, 1995.¹ She noted that prior to appellant's work injury there was no history of mental difficulties. But since then, appellant suffered from depression, anxiety and PTSD. Ms. Bradford stated that appellant's mental

¹ Ms. Bradford is a licensed master social worker-advanced clinical practitioner (LMSW-ACP).

difficulties were the result of her injury, the subsequent repeated injury-related surgeries, and their ramifications for appellant in the workplace and beyond. She indicated that she was gravely concerned by a recent escalation of appellant's symptoms. Ms. Bradford advised that appellant should no longer work for the employing establishment, and to continue to do so would cause her serious emotional and mental harm.

In August 2003, the Office authorized a change of treating physicians. Dr. Rebecca J. McKown, a general practitioner, first examined appellant on September 26, 2003. In a report of that date, she diagnosed bilateral carpal tunnel syndrome, sequelae of stress fracture at C2 and occipital neuralgia. Dr. McKown attributed the diagnosed conditions to appellant's employment and found her totally disabled as of June 9, 2003. In a November 5, 2003 report, she referenced the recent reports from Ms. Bradford and Dr. Ximenes and noted that her findings were consistent with Dr. Ximenes. Dr. McKown explained that appellant experienced radiculopathy consistent with her injury, which resulted in cervical neck pain and bilateral arm weakness and pain. She also noted that appellant displayed the diagnostic symptoms of PTSD and depression. Dr. McKown further indicated that appellant should not return to work at the employing establishment. According to her, appellant was debilitated to a degree that justified placing her on permanent disability.

Dr. McKown referred appellant for a consultation with Dr. David C. Savage, a Board-certified orthopedic surgeon. In a March 29, 2004 report, Dr. Savage noted complaints of bilateral hand and elbow pain, left greater than right. He addressed appellant's recent electromyography (EMG), which demonstrated some evidence of carpal tunnel syndrome in the left hand.² Dr. Savage diagnosed left hand arthralgia, left upper extremity radicular pain, left hand carpal tunnel syndrome, and elbow pain left, greater than right. He also noted appellant's history of cervical spine pathology with multiple surgeries. Dr. Savage administered a cortisone injection into the left carpal tunnel and recommended a cervical magnetic resonance imaging scan. He would later attribute appellant's carpal tunnel syndrome to her "repetitive motion" job duties, but not her previously accepted cervical injury.

Dr. George Pazdral, a Board-certified psychiatrist, saw appellant on April 23, 2004 and diagnosed PTSD, which he attributed to "multiple sequelae" of her employment injury. Dr. Pazdral indicated that appellant's psychiatric status alone rendered her totally disabled.

In an August 2, 2004 report, Dr. William C. Nemeth, a Board-certified orthopedic surgeon, indicated that appellant continued to suffer significant physical restrictions, chronic pain and significant PTSD as a result of her employment injury. According to Dr. Nemeth, appellant's symptoms were exacerbated with the institution of new job demands. Appellant had been doing quite well until the employing establishment decided to change her job duties. Dr. Nemeth further noted that her treating physicians advised her not to work because the employing establishment had been unable to satisfactorily accommodate her work restrictions. He stated that the employing establishment had created a hostile work environment by placing appellant in roles that flagrantly defied her medical restrictions and limitations.

² Appellant underwent electrodiagnostic testing on February 9, 2004.

On September 15, 2004 Dr. McKown advised that appellant would require bilateral carpal tunnel releases. She explained that the change in appellant's body mechanics from her neck fracture, which included limited neck and shoulder mobility, caused appellant to utilize her upper body differently, including the increased use of both wrists. As such, the initial neck injury was an exacerbating factor in appellant's current carpal tunnel injury. Dr. McKown encouraged the Office to assist appellant in obtaining the recommended surgery.

In the prior appeal, the Office had denied appellant's September 30, 2003 claim for recurrence of disability. However, the Office continued to pay her wage-loss compensation for partial disability in accordance with the March 28, 2000 loss of wage-earning capacity determination. By order dated August 8, 2005, the Board found that the Office applied an incorrect standard in reviewing appellant's claim. Instead of adjudicating the matter as a recurrence of disability, the Office should have considered appellant's September 30, 2003 filing as a request for modification of the March 28, 2000 wage-earning capacity determination. Accordingly, the Board set aside the Office's November 8, 2004 decision and remanded the case for a determination of whether appellant established a basis for modification of the March 28, 2000 decision.³

In a January 16, 2005 statement, appellant indicated that concerns about her upcoming reassignment and frustration from having to seek out work following her supervisors June 3, 2003 surgery were factors leading to her June 9, 2003 work stoppage.

In a January 17, 2005 report, Ms. Bradford attributed appellant's PTSD to "ongoing and chronic stress she experienced while working at the [employing establishment]." Ms. Bradford noted that appellant described herself as feeling "paranoid" about what the employing establishment would do to her next. The psychological healing process was reportedly stymied because of what Ms. Bradford described as appellant being "continually retraumatized" by the employing establishment. Ms. Bradford believed there was a strong possibility that appellant would be pushed to death if she continued working for the employing establishment. She noted that she had advised appellant not to return to the employing establishment for any reason.

In an October 26, 2005 report, Dr. McKown indicated that as of June 6, 2003 appellant was totally and permanently disabled due to her ongoing PTSD, neck fracture, occipital neuralgia, carpal tunnel syndrome and lateral epicondylitis.

By decision dated March 27, 2006, the Office denied modification of the March 28, 2000 wage-earning capacity determination.

LEGAL PRECEDENT

A wage-earning capacity decision is a determination that a specific amount of earnings, either actual earnings or earnings from a selected position, represents a claimant's ability to earn wages. Compensation payments are based on the wage-earning capacity determination and it remains undisturbed until properly modified.⁴ Once the wage-earning capacity of an injured

³ Docket No. 05-591 (issued August 8, 2005). The August 8, 2005 order is incorporated herein by reference.

⁴ See *Katherine T. Kreger*, 55 ECAB 633, 635 (2004).

employee 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 erroneous.⁵ The burden of proof is on the party seeking modification of the wage-earning capacity determination.⁶

ANALYSIS

Appellant did not allege that she was retrained or otherwise vocationally rehabilitated or that the original March 28, 2000 wage-earning capacity determination was erroneous. Appellant's claim is that, beginning June 9, 2003, she was unable to continue working. For appellant to prevail she must demonstrate a material change in the nature and extent of the injury-related condition, accepted for os odontoideum (spina bifida) with instability at C1-2 and the three related surgeries.⁷

The Board finds that the medical evidence does not establish that appellant's accepted condition materially changed such that it precluded her from performing the part-time, modified-clerk position she held at the time of her June 9, 2003 work stoppage. A week prior to her work stoppage, Dr. Ximenes described appellant's cervical condition as stable. He noted that appellant seemed able to carry on with her part-time job, and had been doing so for some time. What made it difficult for appellant to remain at work was the reported emotional trauma she had suffered, which manifested itself in the form of mild depression and PTSD. Dr. Ximenes indicated that these conditions appeared to be related to appellant's employment injury. His May 30, 2003 report noted that, from a purely orthopedic standpoint, appellant was not precluded from performing her duties as a part-time, modified clerk. Dr. Ximenes did not identify a material change in her accepted condition.

Four months later, Dr. McKown assumed responsibility for appellant's care. She diagnosed bilateral carpal tunnel syndrome, sequelae of stress fracture at C2 and occipital neuralgia. In a September 26, 2003 report, Dr. McKown attributed the diagnosed conditions to appellant's employment and found her totally disabled as of June 9, 2003. In subsequent reports, she continued to express her belief that all of appellant's orthopedic and psychiatric maladies were employment related.

Regarding appellant's carpal tunnel syndrome, Dr. McKown attributed the condition to a change in appellant's body mechanics following her employment-related cervical injury. She explained that appellant's limited neck and shoulder mobility affected how she used her wrists. However, Dr. McKown's opinion on causation was refuted by the orthopedic specialist she consulted with in March 2004. Dr. Savage, a Board-certified orthopedic surgeon, attributed appellant's carpal tunnel syndrome to repetitive job duties, and dismissed the notion that

⁵ *Tamra McCauley*, 51 ECAB 375, 377 (2000).

⁶ *Id.*

⁷ Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury. *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

appellant's upper extremity condition was associated with her prior cervical injury.⁸ The probative evidence of record refutes Dr. McKown's assertion that appellant's upper extremity condition is a sequela of the accepted cervical condition. Dr. McKown has not otherwise identified any physical limitations attributable to the accepted cervical injury that precluded appellant from performing her part-time, modified clerk duties.

Dr. Nemeth, another orthopedic specialist, found that appellant had significant physical restrictions, chronic pain and significant PTSD as a result of her July 10, 1990 employment injury. In an August 2, 2004 report, he noted that appellant had been doing quite well until the employing establishment decided to change her job duties. Appellant's symptoms reportedly were exacerbated with the institution of new job demands. From an orthopedic perspective, Dr. Nemeth's opinion does not provide any insight on whether appellant's accepted cervical condition physically precluded her from performing her duties as a part-time, modified clerk. To the extent that he believed that appellant performed "new job demands," he was mistaken. Although it was highly likely that appellant would be reassigned in the near future, appellant was not subjected to any new job demands or requirements prior to her June 9, 2003 work stoppage.

The opinions of Drs. Ximenes, McKown, Savage and Nemeth do not establish that appellant's July 10, 1990 cervical injury materially changed such that she was no longer physically capable of performing her part-time, modified duties on or after June 9, 2003. Dr. McKown's opinion is insufficient to establish that appellant's carpal tunnel syndrome is causally related to the accepted cervical condition.⁹

With respect to appellant's diagnosed psychiatric conditions, several physicians of record have attributed her depression and ongoing PTSD to her employment. Drs. Ximenes, McKown, Nemeth and Pazdral each diagnosed an employment-related psychiatric condition. However, it is not entirely clear whether the diagnosed conditions arose as a result of the accepted cervical condition and subsequent surgeries or because of incidents that occurred in the workplace subsequent to appellant's 1990 cervical injury. There is also the possibility that appellant's psychiatric conditions were the result of a combination of factors, however, the medical evidence is unclear on this particular point. What is clear is that appellant's June 9, 2003 work stoppage was unrelated to her accepted cervical condition.

By her own admission, appellant stopped work on June 9, 2003 because of stress she attributed to the job reassignment process initiated by the employing establishment in January 2003. She stated that she was frustrated from having to find tasks to perform following her supervisor's June 3, 2003 absence due to medical reasons. The identified circumstances, although ostensibly job related, are unrelated to appellant's accepted cervical injury and subsequent surgeries.¹⁰ Although there is some suggestion that appellant's PTSD may have originally emanated from the July 10, 1990 cervical injury and related surgeries, the medical

⁸ Appellant did, in fact, file a separate occupational disease claim for bilateral carpal tunnel syndrome (File No. 16-2093790), which the Office denied as untimely.

⁹ See *Jaja K. Asaramo*, *supra* note 7.

¹⁰ Much like her claimed carpal tunnel syndrome, appellant's current psychiatric condition and associated disability would appear to be the subject of a separate occupational disease claim.

evidence of record does not clearly address any causal link between the diagnosed psychiatric conditions and the accepted employment injury. Ms. Bradford, appellant's therapist, diagnosed employment-related PTSD, and in her latest report, dated January 17, 2005, she attributed appellant's PTSD to "ongoing and chronic stress ... experienced while working...." However, her reports do not constitute probative medical evidence as Ms. Bradford is not a physician as defined under the Act.¹¹

Appellant has not demonstrated that her carpal tunnel syndrome and PTSD are related to her accepted cervical condition. She has also failed to establish that her accepted condition has materially worsened such that she was no longer capable of performing her part-time, modified duty assignment on or after June 9, 2003. Accordingly, appellant failed to establish a material change in the nature and extent of the injury-related condition and, therefore, modification is unwarranted.

CONCLUSION

The Board finds that appellant has not established a basis for modifying the Office's March 28, 2000 wage-earning capacity determination.

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 2, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹¹ See *Ernest St. Pierre*, 51 ECAB 623 (2000).