

On March 12, 2005 appellant, then a 46-year-old mail handler, filed an occupational disease claim alleging numbness and pain in her arms due to factors of her federal employment.

On June 15, 2005 the Office accepted appellant's claim for tendinitis of the right shoulder, tendinitis of the right wrist and sprain/strain of both shoulders.

In a report dated June 7, 2005, Dr. Russell I. Abrams, a neurologist, examined appellant and described symptoms of tingling and throbbing in her hands as well as dropping things in the evenings. He found that Tinel's sign was negative at the wrists. Dr. Abrams suggested that appellant's condition was either carpal tunnel syndrome or ulnar neuropathy. He also diagnosed cervical radiculopathy. Dr. Abrams stated, "It is clear that the above mentioned injuries were work related in her capacity as a mail handler." He examined appellant on June 28, 2005 and diagnosed carpal tunnel syndrome based on nerve conduction studies and electromyogram.

In a letter dated September 1, 2005, appellant's attorney requested that her claim be expanded to include bilateral carpal tunnel syndrome. He attributed her condition to repetitive work involving her upper extremities. Appellant submitted a detailed statement describing her employment duties beginning in July 2000. Dr. Abrams completed a report on August 1, 2005 and repeated his diagnoses of carpal tunnel syndrome and cervical sprain/strain. In a letter dated September 15, 2005, the Office accepted bilateral carpal tunnel syndrome.

On January 19, 2006 appellant filed a recurrence of disability claim alleging that on December 11, 2005 she sustained disability due to her March 12, 2005 employment injury. She indicated that she had returned to full-duty work but that she continued to experience numbness in her arms and shoulders. Appellant submitted magnetic imaging (MRI) scans in support of her claim, which diagnosed a disc protrusion at C5-6 and C6-7. She also submitted a report dated August 2, 2005 from Dr. Mark J. Reiner, an osteopath, diagnosing carpal tunnel syndrome, both hands.

The Office requested additional factual and medical evidence by letter dated March 15, 2006 and allowed appellant 30 days to respond. Dr. Peter F. Arino, an osteopath, examined appellant on March 22, 2006 and noted that, beginning in January 2005, she experienced pain in her neck area with paresthesias in both hands. He diagnosed acute/chronic neck pain with cervical radiculitis secondary to cervical spondylosis and disc protrusion with spur formation at C5-6 and C6-7 as well as carpal tunnel syndrome. In a narrative statement dated April 24, 2006, appellant noted that on December 11, 2005 she began to experience shoulder pain while pushing hampers to her worksite. She stated that her pain increased as she turned and pushed in the performance of her job duties.

By decision dated April 26, 2006, the Office denied appellant's claim for recurrence of disability finding that she had not submitted sufficient factual and medical evidence to support her claim.

Appellant, through her attorney requested an oral hearing on May 1, 2006. She submitted a report from Dr. Abrams dated March 20, 2006 diagnosing herniated nucleus pulposus, cervical spine, cervical strain/sprain and carpal tunnel syndrome. Appellant withdrew her request for an oral hearing on October 19, 2006.

In a letter dated February 23, 2007, appellant requested reconsideration. Dr. Abrams completed a report on February 14, 2007 and noted her history of injury and medical treatment.

He stated, “Given the review of her records, it is clear that she has sustained significant injury to wrists resulting in carpal tunnel syndrome as a result of her work. In addition upon review of her records, her being off work from December 11, 2005 to February 23, 2006 was appropriate.”¹

By decision dated May 4, 2007, the Office found that Dr. Abrams’ report was lacking in probative value, as it was not based on any examination or provided reasoning for his opinion.”¹

LEGAL PRECEDENT

A recurrence of disability is the 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 which caused the illness. The term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.² Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury. The burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concluded that the condition is causally related to the employment injury. Moreover, sound medical reasoning must support the physician’s conclusion.³

The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury. In this regard, medical evidence of bridging symptoms between the recurrence of the accepted injury must support the physician’s conclusion of a causal relationship. 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.⁴

ANALYSIS

The Office accepted appellant’s original claim for tendinitis of the right shoulder tendinitis of the right wrist, sprain/strain of both shoulders and bilateral carpal tunnel syndrome.

¹ In a May 4, 2007 decision, the Office indicated that it had not reviewed appellant’s claim on the merits. However, the Board’s review of this decision clearly indicates that the Office considered the probative value of the evidence submitted rather than merely reviewing the relevance of the evidence in accordance with 20 C.F.R. §§ 10.608 and 10.606.

² 20 C.F.R. § 10.5(x).

³ *Ricky S. Storms*, 52 ECAB 349 351-52 (2001).

⁴ *Id.*

Appellant returned to full-duty work and filed a notice of recurrence of disability alleging that she sustained total disability on December 11, 2005. She attributed her disability to pain in her shoulders. Appellant was pushing and lifting in the performance of duty when she experienced pain in her shoulders. Her claim does not fall within the definition of a recurrence of disability. Appellant did not have 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 which caused the illness.⁵ She had additional exposure to her work environment and was performing additional work duties when she found herself totally disabled. Thus, appellant should have filed a claim for a new traumatic injury occurring on December 11, 2005.⁶

The medical evidence submitted by appellant also fails to support her claim for a recurrence of disability due to her accepted shoulder condition as alleged in her factual statements. Dr. Arino examined appellant on March 22, 2006 and diagnosed acute/chronic neck pain with cervical radiculitis. He did not offer any opinion on the causal relationship between her condition and her accepted employment injuries. Therefore, this report is not sufficient to meet appellant's burden of proof in establishing disability due to residuals of her accepted conditions.

On February 14, 2007 Dr. Arino attributed appellant's disability beginning on December 11, 2005 to carpal tunnel syndrome. This finding by him does not appear to coincide with appellant's description of her shoulder symptomatology. Dr. Arino did not explain why he felt that appellant's alleged period of disability beginning on December 11, 2005 was due to carpal tunnel syndrome rather than to her accepted shoulder condition or alleged cervical conditions. His report also lacks any medical explanations describing the condition which resulted in appellant's disability and whether this condition was a new injury or a spontaneous recurrence of her accepted employment injuries. For these reasons, Dr. Arino's report is not sufficient to meet appellant's burden of proof.

CONCLUSION

The Board finds that the factual evidence in the record supports that appellant sustained a new traumatic injury on December 11, 2005 rather than a recurrence of her accepted employment injuries. The Board further finds that the medical evidence submitted does not support appellant's claim for a recurrence of disability.

⁵ 20 C.F.R. § 10.5(x).

⁶ The Board notes that the Office has not issued a final decision regarding appellant's apparent new injury on December 11, 2005 and that this issue, therefore, may not be addressed. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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