

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

A.G., Appellant	)	
	)	
and	)	<b>Docket No. 08-206</b>
	)	<b>Issued: May 12, 2008</b>
U.S. POSTAL SERVICE, Carolina, PR,	)	
Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 30, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 16, 2007 which denied his recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>1</sup>

**ISSUE**

The issue is whether appellant sustained a recurrence of disability on or about June 16, 2006 causally related to his accepted employment injury.

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<sup>1</sup> On May 7, 2007 appellant filed a schedule award claim. The Office has not issued a decision regarding the schedule award claim therefore the Board does not have jurisdiction to review this claim.

## **FACTUAL HISTORY**

On May 13, 2005 appellant, then a 62-year-old rural carrier, filed a traumatic injury claim alleging that on May 12, 2005 he fell in the performance of duty injuring his left hand. The Office accepted his claim for a left wrist sprain.

On December 19, 2005 appellant filed a claim alleging that on October 18, 2005 he sustained a recurrence of disability as he was under constant pain and unable to use his left wrist or work normally.

Additional information was submitted. In August 22 and September 14, 2005 duty status reports, Dr. Margarita Correa-Perez, Board-certified in physical medicine and rehabilitation and pain medicine, provided light-duty restrictions for appellant's left hand with no restrictions for the right hand. Other duty status reports were also submitted. An October 18, 2005 surgical report recorded that appellant had surgery on his left wrist. In a December 2, 2005 note, Dr. Jose Santiago Figueroa stated that appellant needed to continue light duty for two months. In a December 21, 2005 physician's report, Dr. Correa-Perez diagnosed wrist sprain and stated that appellant underwent surgery on October 18, 2005. In a December 21, 2005 letter, she stated that an orthopedic surgeon performed internal fixation for stabilization of the left scaphoid-lunate joint on October 18, 2005.

In a February 23, 2006 letter, the Office indicated that appellant was on light duty at that time. It requested additional factual and medical information from appellant to support his recurrence claim.

The Office received additional information. In a March 15, 2006 work capacity evaluation, Dr. Correa-Perez stated that appellant can work eight hours a day with permanent restrictions. Progress notes dated August 22 and December 21, 2005 and February 8, 2006 were submitted. The Office also received a March 9, 2006 report from the Office-appointed nurse who noted that appellant was working full time performing limited duty.

In an April 4, 2006 decision, the Office denied appellant's recurrence claim on the grounds that there was no medical documentation to support the recurrence claim.

On May 1, 2006 appellant requested an oral hearing. The hearing was held on April 30, 2007. Additional medical reports were submitted. The Office received a December 11, 2006 report written in Spanish from Dr. Iban Perez Munoz.

In a July 16, 2007 decision, the Office affirmed the previous denial of appellant's recurrence claim on the grounds that the medical evidence did not establish that appellant sustained a recurrence of disability.

## **LEGAL PRECEDENT**

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this

burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>2</sup>

Claimants who are performing light duty are not considered fully recovered from their work-related injuries.<sup>3</sup> The burden of proof is mainly to establish that any increase in disability for work is due to the accepted injury rather than another cause.<sup>4</sup>

### ANALYSIS

The Board finds that this case is not in posture for a decision.

Appellant has an accepted left wrist sprain injury and was performing light duty at the time of his claimed recurrence. He did not claim that his light-duty position changed but rather that there was a change in the nature and extent of his condition. A change in a medical condition and the issue of whether or not such a change was due to appellant's accepted work-related injury is a medical issue which must be decided based on a review of all the medical evidence. After the hearing appellant submitted a lengthy report from Dr. Munoz which was written in Spanish. There is no English translation of the report in the record. In the July 16, 2007 decision, the Office stated that there was a careful review of the evidence of record but did not specifically address any reports including the one from Dr. Munoz. For the Office and the Board to consider all medical evidence of record, an accurate translation of Dr. Munoz's report is needed. The Office must base its decision on a complete analysis of the medical evidence. As the Office did not seek a translation of the medical evidence included in the record and as there is no other indication that the report was evaluated, the case will be remanded to the Office for this purpose.<sup>5</sup>

### CONCLUSION

The Board finds that this case is not in posture for a decision. The Board finds that the record does not establish that the Office reviewed all of the relevant evidence in this case and therefore remands the case in order for the Office to seek a translation of the medical report and the issuance of an appropriate final decision.

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<sup>2</sup> *Terry Hedman*, 38 ECAB 222 (1986).

<sup>3</sup> Procedure Manual §2-1500-7(a)(1)

<sup>4</sup> *Id.* See *Hedman*, *supra* note 2.

<sup>5</sup> *Ana D. Pizarro*, 54 ECAB 430, 434 (2003) (the Board remanded the case in order to seek an accurate translation); see *Armando Colon*, 41 ECAB 563, 566 (1990) (the Board found that the Office abused its discretion in denying appellant's request for reconsideration on the grounds that the evidence submitted lacked probative value because it was written in a foreign language. Cf. *Lorraine E. Schroeder*, 44 ECAB 323, 330 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 16, 2007 decision of the Office of Workers' Compensation Programs is hereby set aside and remanded for further proceedings consistent with this decision of the Board.

Issued: May 12, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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