

constantly on a machine using mostly her index finger. Appellant stated that she was last exposed to the identified work factor on December 24 1985. On November 21, 1988 the Office accepted the claim for aggravation of bilateral carpal tunnel syndrome and authorized bilateral release.

On April 12, 2002 the Office accepted that appellant sustained a recurrence of total disability in January 1998 causally related to her accepted employment-related injury and authorized physical therapy.

On February 3, 2005 appellant filed a claim for compensation (Form CA-7) for the period commencing April 1994. She submitted a June 28, 2004 medical report of Dr. Jacob E. Tauber, an attending Board-certified orthopedic surgeon, which stated that appellant's recurrent carpal tunnel syndrome resulted in a 30 percent impairment of each hand based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (5th ed. 2001). Dr. Tauber further determined that her spinal stenosis at C5-6 resulted in an additional eight percent impairment based on the A.M.A., *Guides*. In a February 8, 2005 report, he recommended that appellant undergo EMG/nerve conduction and velocity (NCV) studies.

On appellant's claim form, the employing establishment stated that she retired effective June 7, 1996.¹

By letters dated February 23, 2005, the Office addressed the additional factual and medical evidence appellant and the employing establishment needed to submit regarding her work stoppage on April 1, 1994.

In several reports covering the period March 15 through June 21, 2005, Dr. Tauber addressed, among other things, appellant's continuing symptoms related to her accepted employment injury and her disability. In a March 15, 2005 report, he stated that her work-related carpal tunnel syndrome had worsened over time and her grip strength had decreased. In reports dated March 22, April 19 and 29, 2005, Dr. Tauber opined that appellant was totally disabled. He stated that she sustained carpometacarpal arthritis of the hands based on x-rays. In a May 31, 2005 report, Dr. Tauber stated that appellant had been disabled since April 1, 1994. He related that, when carpal tunnel surgery is performed, it can only be determined whether a patient has sustained a recurrence of disability by reporting the patient's symptomatology. Dr. Tauber stated that appellant experienced increased numbness, tingling and pain. He further stated that, even when no specific activity occurred that is responsible for the recurring carpal tunnel syndrome, the condition can and frequently does recur on its own. Dr. Tauber recommended EMG/NCV studies based on his clinical findings of positive Tinel's and Phalen's signs, carpal compression testing and weakness. He opined that these findings were significant as they correlated to a finding of recurrent carpal tunnel syndrome.

By letter dated June 22, 2005, appellant stated that she was forced to leave her employment and file for disability retirement because she was unable to perform her clerk work duties. The employing establishment constantly threatened to fire her. Appellant was unaware

¹ In a letter dated June 7, 1996, the Office of Personnel Management approved appellant's application for disability retirement.

that she could file a workers' compensation claim and she did not know what was causing her pain. She believed that her work-related carpal tunnel syndrome was dormant. Appellant stated that her pain became intolerable and was due to her repetitive employment duties. She received physical therapy and medical treatment. Appellant stated that a work-related eye injury for which she underwent surgery made it impossible for her to continue working on a machine.

In reports dated July 5, August 2 and 30, and October 7, 2005, Dr. Tauber stated that appellant suffered from worsening grip strength, and increasing pain, tingling and numbness. He reiterated his prior opinion that she remained totally disabled. In reports dated November 2 and December 7, 2004, Dr. Tauber stated that appellant sustained spondylolithesis at L4-5 as demonstrated by x-ray.

By decision dated October 31, 2005, the Office denied appellant's recurrence of disability claim. The evidence of record was insufficient to establish that she sustained a recurrence of disability commencing on May 17, 1994 due to her accepted employment-related bilateral carpal tunnel syndrome.² In a letter dated November 9, 2005, appellant, through counsel, requested an oral hearing before an Office hearing representative.

In reports covering the period November 17, 2005 through June 13, 2006, Dr. Tauber stated that EMG/NCV studies revealed carpal tunnel syndrome despite appellant's prior decompressive surgery.³ Appellant also sustained minor first carpometacarpal (CMC) degeneration of the left hand based on an x-ray. Dr. Tauber opined that appellant was totally disabled since she stopped work on May 17, 1994 due to her accepted employment-related condition. In the November 17, 2005 report, he stated that, when carpal tunnel syndrome was recurrent, particularly in light of prior surgery, the condition was effectively worse than it was initially. Dr. Tauber recommended additional EMG/NCV studies due to appellant's continuing symptoms.

On June 15, 2006 Dr. Aaron Coppelson, a Board-certified physiatrist, performed EMG/NCV studies which demonstrated moderate right carpal tunnel syndrome and no evidence of cervical radiculopathy in the bilateral upper extremities.

In a July 11, 2006 report, Dr. Tauber recommended that appellant undergo surgery based on his finding that she had positive Tinel's signs of the left wrist and elbow.

At the August 22, 2006 hearing, appellant submitted numerous medical records. Medical reports covering the period March 10 through July 23, 1993 of Dr. Alan M. Singer, a Board-certified podiatrist, stated that appellant sustained capsulitis and tendinitis of the left foot. A May 4, 1988 chest x-ray report of Dr. Joseph Juliano, a Board-certified radiologist, stated that she had mild cardiomegaly. An August 17, 1988 report of Dr. James B. Miller, a Board-certified ophthalmologist, addressed appellant's eye condition. Dr. Miller stated that she had presumed

² The Office found that, although appellant alleged in her CA-7 form that she sustained a recurrence of disability in April 1994, it determined that she meant to allege a recurrence of disability on the actual date she stopped work, which was on May 17, 1994.

³ On September 6, 2005 the Office authorized EMG/NCV studies.

histoplasmic chorioretinitic syndrome with a presumed subretinal neurovascular not secondary to the inflammatory nature of this organism. The July 28 through August 19, 1989 reports of Dr. Thomas A. Hanscom, a Board-certified ophthalmologist, stated that appellant sustained macular degeneration with active subretinal neurovascularization of the right eye.

Disability certificates of Dr. Reuben M. Perloff, a general practitioner, stated that appellant was disabled during intermittent periods from August 12, 1988 through June 4, 1990 due to work-related stress and uncontrollable hypertension. In a March 27, 1989 report, Dr. Tauber stated that appellant was disabled from May 19, 1986 through January 6, 1987 due to her employment-related bilateral carpal tunnel syndrome. He stated that she also sustained bilateral de Quervain's syndrome. In a July 31, 2005 report, Dr. Tauber stated that appellant sustained cervical radiculitis, recurrent carpal tunnel syndrome, cubital tunnel syndrome and left shoulder impingement syndrome.

A July 24, 1990 report of Dr. G.Y. Hadjian, a general surgeon, stated that appellant experienced anxiety at work which aggravated her blood pressure. Dr. Hadjian stated that she had recovered and could resume her regular work duties on August 6, 1990 if she worked in a less stressful environment. A January 3, 1992 report of Dr. Robert A. Gross, a Board-certified internist, stated that appellant's rectal bleeding remained undefined although hemorrhoids and/or a perineal tear were the probable cause. On November 22, 1994 Dr. Gross reported possible gallstones, a small sliding hiatus hernia, internal hemorrhoids, diverticulosis and possible irritable bowel syndrome on physical examination. Treatment notes and a report covering the period March 8, 1993 through October 23, 1995 of appellant's physical therapist addressed the treatment of her left foot tendinitis. A May 20, 1994 mammogram report of Dr. Laura A. Thompson, a Board-certified radiologist, stated that there was no interval change or radiographic evidence of malignancy in appellant's breasts. A May 23, 1994 report of Dr. Ronald P. Karlsberg, a Board-certified internist, stated that appellant had premature ventricular contractions, hyperlipidemia and hypertension. Dr. Karlsberg also stated that she was obese and anemic. In reports dated August 16, 1988 and October 18, 1994, Dr. Andrew I. Caster, a Board-certified ophthalmologist, stated that appellant had macular degeneration and that she was legally blind in the left eye.

Following the August 22, 2006 hearing, appellant submitted Dr. Tauber's reports covering the period July 31, 1995 through July 11, 2006 which noted appellant's ongoing symptoms. Dr. Tauber reiterated his prior opinion that she sustained recurrent bilateral carpal tunnel syndrome and that she was totally disabled. In an October 29, 2004 disability certificate, he stated that appellant was totally disabled from January 1, 2003 through November 23, 2004. In a May 31, 2005 disability certificate, Dr. Tauber stated that she was disabled from that date through July 5, 2005.

In a January 30, 2002 report, Dr. Marshall L. Grode, a Board-certified neurosurgeon, stated that appellant sustained possible entrapment of the ulnar and median nerves at the wrist. A February 27, 2002 report of Dr. Jay Jurkowitz, a Board-certified neurologist, opined that appellant sustained mild to moderate bilateral carpal tunnel syndrome, an abnormality on the left side and possible mild compression of both ulnar nerves at the elbow. The May 31, 2002 and October 17, 2005 EMG/NCV studies performed by Dr. A. Kevin Aminian, a Board-certified neurologist, demonstrated bilateral carpal tunnel syndrome that was electrically moderate on the

right side and mild to moderate on the left side. A November 24, 2003 magnetic resonance imaging (MRI) scan of Dr. Siamak Dardashti, a Board-certified radiologist, demonstrated mild spinal stenosis and bilateral neural foraminal narrowing due to degenerative changes and congenital short pedicles at C3-4. A one to two millimeter disc protrusion was found along with congenital short pedicles and degenerative changes with mild spinal stenosis and mild left neural foraminal narrowing at C4-5. A two to three millimeter right paracentral disc protrusion was found along with congenital short pedicles at C5-6 that caused moderate spinal stenosis and moderate right and mild left neural foraminal narrowing.

By decision dated October 16, 2006, an Office hearing representative affirmed the October 31, 2005 decision. The evidence of record was insufficient to establish that commencing on May 17, 1994 appellant sustained a recurrence of disability causally related to her accepted employment-related injury.

The Office received Dr. Tauber's reports covering the period October 31, 2006 through May 1, 2007. Dr. Tauber reiterated his prior opinion that appellant was totally disabled. An ultrasound of appellant's wrists was performed on March 20, 2007 by Dr. T. Eric Yokoo, a Board-certified physiatrist, who found scar tissue/edema in the bilateral carpal tunnel region, bilateral flexor/extensor tenosynovitis and left radiocarpal degenerative joint disease. Also on March 20, 2007 Dr. Yokoo reported a normal ultrasound of appellant's elbows.

In a June 5, 2007 letter, appellant requested reconsideration of the October 16, 2006 decision. She submitted Dr. Tauber's June 5, 2007 report which stated that his findings on physical examination remained the same regarding appellant's hand condition. Dr. Tauber recommended a second opinion medical examination by a hand specialist.

By decision dated July 16, 2007, the Office denied modification of the October 16, 2006 decision. The evidence of record was insufficient to establish that appellant sustained an employment-related recurrence of disability commencing on May 17, 1994.

The Office received Dr. Tauber's August 7, 2007 report in which he opined that appellant was permanently totally disabled due to her continuing pain, numbness and tingling, positive electrical studies, recurrence of the employment-related carpal tunnel syndrome and loss of grip strength. Dr. Tauber also stated that appellant had reached maximum medical improvement. In a September 18, 2007 report, he reiterated that his findings on physical examination remained unchanged.

On October 16, 2007 appellant requested reconsideration of the July 16, 2007 decision. She submitted reports dated August 2 and December 10, 2007 of Dr. D. Levi Harrison, a Board-certified surgeon specializing in hand surgery, which stated that appellant sustained bilateral recurrent carpal tunnel syndrome, de Quervain's stenosing tenosynovitis which was more severe on the right than the left and ulnar nerve compression at the elbow and cubital tunnel syndrome which was more severe on the left than the right.

By decision dated January 23, 2008, the Office denied modification of the July 16, 2007 decision.⁴

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.⁵

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.⁶ 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.⁷ 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.⁸ Moreover, the physician's conclusion must be supported by sound medical reasoning.⁹

ANALYSIS

The Office accepted that appellant sustained aggravation of bilateral carpal tunnel syndrome causally related to her federal employment. On February 3, 2005 appellant sought compensation for her right and left hand conditions. The Board finds that she has failed to submit sufficiently rationalized medical evidence establishing that her claimed recurrent hand condition was caused or aggravated by her accepted employment-related aggravation of bilateral carpal tunnel syndrome.

The medical reports dated prior to the alleged recurrence of disability are not relevant to the issue of whether appellant's disability after May 17, 1994 is causally related to her accepted employment-related injury.

⁴ Following the issuance of the Office's January 23, 2008 decision, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

⁵ 20 C.F.R. § 10.5(x).

⁶ *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

⁷ *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

⁸ *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

⁹ *Alfredo Rodriguez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

Appellant submitted numerous reports of Dr. Tauber, an attending physician. In a June 28, 2004 report, Dr. Tauber stated that appellant's recurrent carpal tunnel syndrome resulted in a 30 percent impairment of each hand and that her spinal stenosis at C5-6 resulted in an additional 8 percent impairment based on the A.M.A., *Guides*. He did not explain how or why appellant's continuing residuals and impairment were caused by her accepted employment-related aggravation of bilateral carpal tunnel syndrome and the Board notes that appellant's claim has not been accepted for a cervical condition. Causal relationship must be substantiated by reasoned medical opinion evidence.¹⁰

Dr. Tauber's reports covering the period November 2, 2004 through September 18, 2007 stated that appellant sustained bilateral carpometacarpal arthritis, work-related cervical spinal stenosis, spondylolithesis at L4-5, cervical radiculitis, cubital tunnel syndrome and left shoulder impingement syndrome. He opined that she was totally disabled. Dr. Tauber failed to explain how or why appellant's disability was caused by her accepted employment-related injury.¹¹ In the May 31, 2005 report, he stated that appellant had been disabled since April 1, 1994. Dr. Tauber related that, when carpal tunnel surgery is performed, it can only be determined whether a patient has sustained a recurrence of disability by reporting the patient's symptomatology. He noted that appellant experienced increased numbness, tingling and pain. Dr. Tauber stated that, even when no specific activity occurred that is responsible for the recurring carpal tunnel syndrome, the condition can and frequently does recur on its own. In the November 17, 2005 report, he stated that, when carpal tunnel syndrome was recurrent, particularly in light of prior surgery, the condition was effectively worse than it was initially. While finding that appellant sustained a recurrence of disability commencing on April 1, 1994, Dr. Tauber did not provide adequate medical rationale explaining how or why her current disability was caused by the accepted employment injury.¹² Such rationale is important given the 19 years between the accepted injury and the physician's statements on causal relation. Further, Dr. Tauber failed to address how the diagnosed conditions, bilateral carpometacarpal arthritis, work-related cervical spinal stenosis, spondylolithesis at L4-5, cervical radiculitis, cubital tunnel syndrome and left shoulder impingement syndrome were caused by the accepted employment injury. As these conditions have not been accepted as employment related, appellant has not established a recurrence.

In an October 29, 2004 disability certificate, Dr. Tauber stated that appellant was totally disabled from January 1, 2003 through November 23, 2004. Dr. Tauber's May 31, 2005 disability certificate stated that appellant was disabled from that date through July 5, 2005. In none of these reports did Dr. Tauber provide a diagnosis or an explanation as to how appellant's condition and disability were causally related to her employment-related injury.

Dr. Thompson's May 20, 1994 mammogram report found no interval change or radiographic evidence of malignancy in appellant's breasts. Dr. Karlsberg's May 23, 1994 report stated that appellant had premature ventricular contractions, hyperlipidemia and hypertension

¹⁰ *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹¹ *Id.*

¹² *See Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Lillian M. Jones*, 34 ECAB 379 (1982).

and that she was obese and anemic. Dr. Gross' October 18 and November 22, 1994 reports stated that appellant had macular degeneration, possible gallstones and irritable bowel syndrome, a small sliding hiatus hernia, internal hemorrhoids and diverticulosis. Dr. Marshall's January 30, 2002 report stated that appellant sustained possible entrapment of the ulnar and median nerves at the wrist. Dr. Jurkowitz's February 27, 2002 report found that she sustained mild to moderate bilateral carpal tunnel syndrome, an abnormality on the left side and possible mild compression of both ulnar nerves at the elbow. Dr. Harrison's August 2 and December 10, 2007 reports stated that appellant sustained bilateral recurrent carpal tunnel syndrome, de Quervain's stenosing tenosynovitis which was more severe on the right than the left, ulnar nerve compression at the elbow and cubital tunnel syndrome which was more severe on the left than the right. Dr. Thompson, Dr. Karlsberg, Dr. Gross, Dr. Marshall, Dr. Jurkowitz and Dr. Harrison failed to provide an opinion that appellant was totally disabled commencing on May 17, 1994 due to her accepted employment injury. Further, the conditions gallstones, irritable bowel syndrome, a small sliding hiatus hernia, internal hemorrhoids, diverticulosis, premature ventricular contractions, hyperlipidemia, hypertension, obesity, anemia, de Quervain's stenosing tenosynovitis and cubital tunnel syndrome have not been accepted by the Office. Thus, appellant has not established disability caused or contributed to by the accepted injury to her wrists.

The diagnostic reports of Dr. Aminian, Dr. Dardashti, Dr. Coppelson and Dr. Yokoo regarding appellant's wrist and cervical conditions do not specifically address whether her claimed recurrence of disability commencing on May 17, 1994 is causally related to her accepted employment-related condition.

The treatment notes and report of appellant's physical therapist do not constitute probative medical evidence. A physical therapist is not a physician as defined under the Federal Employees' Compensation Act.¹³

Appellant failed to submit rationalized medical evidence establishing that her disability commencing on May 17, 1994 resulted from the effects of her employment-related aggravation of 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 total disability commencing on May 17, 1994 causally related to her accepted employment-related injury.

¹³ 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 (2000) (a physical therapist is not a physician under the Act).

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2008 and July 16, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 18, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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