United States Department of Labor
Employees' Compensation Appeals Board

CATHERINE M. MARRANO, Appellant	)	
and	)	**Docket No. 04-2043**
	)	**Issued: October 6, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Cambridge, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 12, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' October 6, 2003 merit decision, denying her recurrence of disability claim and a June 24, 2004 merit decision terminating her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a recurrence of total disability on or after January 14, 2003 due to her accepted employment injury; and (2) whether the Office properly terminated appellant's compensation effective June 24, 2004 on the grounds that she refused an offer of suitable work.

FACTUAL HISTORY

On December 3, 2002 appellant, then a 44-year-old clerk, filed an occupational disease claim alleging that she sustained a right elbow injury due to the repetitive duties of her job which included sorting and delivering mail. Appellant did not stop work but continued to work in a

limited-duty position. The Office accepted that appellant sustained employment-related lateral epicondylitis of her right elbow.

Appellant stopped work on January 14, 2003 and claimed that she sustained a recurrence of total disability due to her accepted employment injury. She returned to limited-duty work for 20 hours per week on February 25, 2003 and claimed that she sustained an employment-related recurrence of disability when she stopped work again on March 4, 2003.[1]

Appellant received treatment for her right elbow condition from Tammy L. Wheeler, a physician's assistant, who submitted numerous reports dated beginning in November 2002 describing appellant's treatment visits.[2] In early 2003, appellant reported experiencing increased tenderness in the area of her right epicondyle and her attending physicians recommended additional diagnostic testing. The results of April 29, 2003 electromyogram (EMG) testing of her right upper extremity revealed normal results.

In a report dated May 14, 2003, Dr. George E. Silver, Jr., an attending Board-certified orthopedic surgeon, stated that appellant did not exhibit radial tunnel syndrome, cervical radiculopathy, brachial plexopathy or any other structural abnormality. He indicated that he had nothing further to offer appellant and recommended referral to a neurologist. In a report dated May 29, 2003, Dr. Valmore A. Pelletier, an attending Board-certified neurosurgeon, indicated that he doubted appellant had a "central or neurosurgical source" of her pain and posited that it was "more in keeping with the repetitive type of epicondylar inflammation which normally is treated either by a physical therapist or an orthopedic surgeon." He concluded that there was no evidence of neurosurgical dysfunction that would require job limitations.[3]

In a report dated August 20, 2003, Dr. Vinodrai M. Parmar, an attending Board-certified neurosurgeon, noted that appellant's sensory examination was normal, that her upper extremity strength was 5/5, that she had a negative Tinel's sign at the elbows and that she had a negative Phalen's sign at the wrists. Dr. Parmar stated that appellant had signs and symptoms suggestive of lateral humeral epicondylitis or tennis elbow, but indicated that he did not think she had a radial or ulnar neuropathy. He stated: "If the job she is doing is making her pain worse then I do think she may need to change her job." In an August 20, 2003 form report, Dr. Parmar recommended various work restrictions, indicating that appellant could intermittently engage in

[1] Appellant's limited-duty work required sorting mail for up to 1 hour per day and lifting up to 15 pounds. In a statement dated January 6, 2004, appellant argued that she sustained a recurrence of total disability on February 28, 2003 because her limited-duty work was withdrawn on the date. She indicated that she experienced pain after sorting mail for an hour at work on February 26, 2003 and claimed that the tasks she performed on February 26, 2003 were more "difficult" for her to perform than the tasks she performed on February 25, 2003.

[2] The record contains a February 21, 2003 form report of Ms. Wheeler which, in the signature block, makes reference to Dr. Richard L. Farrell, an attending Board-certified family practitioner. However, the report was not signed by Dr. Farrell.

[3] Appellant again underwent an orthopedic evaluation of her condition. In a report dated July 10, 2003, Dr. Robert J. Hedderman, an attending Board-certified orthopedic surgeon, stated that he did not "really have any answer for her symptoms" and noted that they did not "fit into a particular diagnosis."

fine manipulation for up to six hours, grasp for up to eight hours per day, and reach above the shoulders for up to two hours.[4]

In a report dated September 15, 2003, Dr. Shawn P. Jorgensen, an attending physician Board-certified in physical medicine and rehabilitation, stated that appellant's complaints of numbness in the distal medial portion of her right arm were vague and inconsistent. Dr. Jorgensen noted that her complaints were difficult to explain and were likely nonneurological in origin, but indicated that it was difficult to rule out a right medial brachial cutaneous neuropathy. He indicated that the chair test for epicondylosis was normal and posited that appellant did not have active epicondylosis. Dr. Jorgensen stated that appellant should not engage in repetitive wrist flexion or extension or sort mail for more than one hour at a time or four hours per day.[5]

In a September 15, 2003 form report, Dr. Jorgensen indicated that appellant could intermittently lift up to 20 pounds for up to 4 hours per day, intermittently engage in fine manipulation for up to 4 hours, intermittently grasp for up to 4 hours per day, reach above the shoulders for up to 2 hours, bend and stoop for up to 4 hours and push and pull for up to 2 hours.[6]

By decision dated October 6, 2003, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of total disability on or after January 14, 2003 due to her accepted employment injury.

On October 10, 2003 the employing establishment offered appellant a job as a modified distribution window clerk. The position involved sorting mail for up to four hours per day, helping customers with their mailing needs, filing documents and answering telephones.[7] The physical requirements included intermittent lifting of up to 20 pounds for up to 4 hours per day, engaging in fine manipulation for up to 2 hours, engaging in intermittent simple grasping for up to 4 hours per day, reaching above the shoulders for up to 2 hours, bending and stooping for up to 4 hours, pushing and pulling for up to 2 hours and sitting and walking for up to 8 hours.

By letter dated October 21, 2003, the Office advised appellant of its determination that the modified distribution window clerk position offered by the employing establishment was suitable. The Office informed appellant that she had 30 days to either accept the position or provide good cause for not doing so and discussed statutory provisions pertaining to the termination of compensation for refusal of suitable work.

[4] Dr. Parmar also suggested that appellant could not engage in lifting, pushing or pulling. In another August 20, 2003 form report, Dr. Parmar indicated that appellant might need to change her job to one that did not require lifting, pushing or pulling.

[5] Dr. Jorgensen stated that, despite these restrictions, appellant could answer telephone calls.

[6] In another August 20, 2003 form report, Dr. Parmar stated that appellant had total disability beginning September 16, 1999. He indicated that appellant might need to change her job to one that did not require lifting, pushing or pulling.

[7] The work hours for the position totaled approximately 30 hours per week.

On October 22, 2003 appellant indicated that she was "medically unable to accept the position at this time."

Appellant submitted an October 31, 2003 report in which Dr. Jorgensen indicated that she possibly had a "very subtle ulnar neuropathy at the elbow" and recommended the performance of EMG, nerve conduction and magnetic resonance imaging (MRI) scan testing of her right upper extremity. He indicated that appellant had findings on examination which were not localized to the right elbow and noted that she placed limits on the internal and external rotation that she would allow of her right arm. Dr. Jorgensen stated that appellant should not engage in repetitive extension or flexion of her right elbow or wrist and should not engage in mail sorting for more than one hour at a time or four hours per day. She also submitted an October 23, 2003 report in which Dr. Farrell indicated that she reported that her right upper extremity symptoms had worsened by the time she was seen on February 28, 2003. Dr. Farrell noted that appellant sustained an employment-related right lateral epicondylitis injury and stated that "[t]his would be a recurrence of her previous injury from 1999."[8]

The findings of EMG and nerve conduction testing obtained on January 15, 2004 revealed normal findings of the right upper extremity with no evidence of a right ulnar neuropathy at the wrist or elbow.[9] The findings of MRI scan testing obtained on January 19, 2004 revealed edema in the right ulnar nerve at the cubital tunnel and a minimally abnormal signal in the origin of the common extensor tendon.[10]

By letter dated March 9, 2004, the Office advised appellant that she had not provided good cause for refusing the position offered by the employing establishment and informed her that she had 15 days to accept the position.

Appellant submitted February 17 and April 12, 2004 reports in which Dr. James J. Cole, an attending physician Board-certified in physical medicine and rehabilitation, stated that she had right medial epicondylitis with clinical suspicion of ulnar neuropathy and/or cervical radiculopathy and recommended that she undergo hand therapy.[11] She did not accept the position offered by the employing establishment.

By decision dated June 24, 2004, the Office terminated appellant's compensation effective that date on the grounds that she refused an offer of suitable work.

[8] Dr. Farrell indicated that he did not personally evaluate appellant.

[9] In an accompanying note, Dr. Jorgensen stated that the testing showed that appellant did not have any peripheral neuropathic cause for her symptoms.

[10] In a note dated February 6, 2004, Dr. Jorgensen indicated that the MRI scan testing seemed to show a neuropathy at the right elbow and recommended orthopedic therapy for the elbow.

[11] Dr. Cole arranged for EMG and nerve conduction testing to be performed on appellant's right upper extremity. The results of the May 20, 2004 testing showed an ulnar neuropathy at the cubital tunnel.

LEGAL PRECEDENT -- ISSUE 1

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[12]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained employment-related lateral epicondylitis of her right elbow. Appellant stopped work on January 14, 2003 and claimed that she sustained a recurrence of total disability due to her accepted employment injury. She returned to limited-duty work for 20 hours per week on February 25, 2003 and claimed that she sustained an employment-related recurrence of disability when she stopped work again on March 4, 2003. At the time she stopped work, appellant's limited-duty work required sorting mail for up to 1 hour per day and lifting up to 15 pounds.

Appellant claimed that her employment-related right elbow condition prevented her from performing her limited-duty work, but she did not submit sufficient medical evidence to show that she sustained a recurrence of total disability on or after January 14, 2003, due to her accepted employment injury. She submitted an August 20, 2003 report in which Dr. Parmar, an attending Board-certified neurosurgeon, noted that she had signs and symptoms suggestive of lateral humeral epicondylitis or tennis elbow, but indicated that he did not think she had a radial or ulnar neuropathy. He stated: "If the job she is doing is making her pain worse then I do think she may need to change her job," and suggested that appellant should not engage in lifting, pushing or pulling.[13]

Dr. Parmar's reports are of limited probative value on the relevant issue of the present case in that they contain opinions on appellant's ability to work which are equivocal and speculative in nature.[14] Dr. Parmar did not provide a clear opinion that appellant could not perform her limited-duty position on or after January 14, 2003. He merely indicated that appellant "may" need to change her job and this statement appears to be based on her pain complaints rather than any objective worsening of her employment-related right elbow condition.[15] Dr. Parmar did not provide any detailed explanation of such a worsening of appellant's condition. He suggested that

[12] *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[13] Dr. Parmar also indicated that appellant could intermittently engage in fine manipulation for up to six hours, grasp for up to eight hours per day, and reach above the shoulders for up to two hours.

[14] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal or speculative is of limited probative value).

[15] Dr. Parmar noted that appellant's sensory examination was normal, that her upper extremity strength was 5/5, that she had a negative Tinel's sign at the elbows and that she had a negative Phalen's sign at the wrists.

appellant should not engage in lifting, pushing or pulling, but he did not provide any explanation for this apparent restriction. Such rationale is particularly necessary as Dr. Parmar reported that appellant had extremely limited right upper extremity findings on examination.[16]

Moreover, the record contains reports from several other attending physicians who did not indicate that appellant's employment-related right elbow condition changed such that she was unable to perform her limited-duty work on or after January 14, 2003. For example, Dr. Pelletier, an attending Board-certified neurosurgeon, indicated in a May 29, 2003 report that appellant exhibited no evidence of neurosurgical dysfunction that would require job limitations. In reports dated September 15, 2003, Dr. Jorgensen, an attending physician Board-certified in physical medicine and rehabilitation, stated that appellant's complaints were vague, inconsistent and difficult to explain and posited that she was able to lift 20 pounds and sort mail for 4 hours per day.[17] The Board notes that these restrictions would not prevent appellant from performing the limited-duty job she held she stopped work in early 2003.

Appellant also argued that she sustained a recurrence of total disability because her light-duty work was withdrawn in February 2003. She stated that she experienced pain after sorting mail for an hour at work on February 26, 2003 and claimed that the tasks she performed on February 26, 2003 were more "difficult" for her to perform than the tasks she performed on February 25, 2003. However, she did not provide any indication that her duties actually changed such that her medical condition prevented her from being physically able to perform her work and the evidence of record does not otherwise support such a claim.

Therefore, appellant did not meet her burden of proof to show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements and the Office properly denied her claim for an employment-related recurrence of total disability.

LEGAL PRECEDENT -- ISSUE 2

Section 8106(c)(2) of the Federal Employees' Compensation Act provides in pertinent part, "A partially disabled employee who ... (2) refuses or neglects to work after suitable work is offered ... is not entitled to compensation."[18] However, to justify such termination, the Office must show that the work offered was suitable.[19] An employee who refuses or neglects to work

[16] Appellant submitted numerous reports of Ms. Wheeler, a physician's assistant, but the reports of a nonphysician cannot be considered by the Board in adjudicating medical issues. *Arnold A. Alley*, 44 ECAB 912, 920-21 (1993). She also submitted an October 23, 2003 report in which Dr. Farrell, an attending Board-certified family practitioner, indicated that she reported that her right upper extremity symptoms had worsened by the time she was seen on February 28, 2003. However, Dr. Farrell did not provide a clear opinion that appellant could not perform her limited-duty work.

[17] In a report dated October 31, 2003, Dr. Jorgensen stated that appellant should not engage in repetitive wrist flexion or extension, but he indicated that her sorting of mail for four hours per day would be acceptable and would not be contrary to this restriction.

[18] 5 U.S.C. § 8106(c)(2).

[19] *David P. Camacho*, 40 ECAB 267, 275 (1988); *Harry B. Topping, Jr.*, 33 ECAB 341, 345 (1981).

after suitable work has been offered to her has the burden of showing that such refusal to work was justified.[20]

ANALYSIS -- ISSUE 2

In October 2003, the employing establishment offered appellant a position as a modified distribution window clerk and the Office determined that the position was suitable. The position involved such physical requirements as sorting mail for up to 4 hours per day, intermittent lifting of up to 20 pounds for up to 4 hours per day, engaging in fine manipulation for up to 2 hours, intermittent simple grasping for up to 4 hours per day, reaching above the shoulders for up to 2 hours, bending and stooping for up to 4 hours and pushing and pulling for up to 2 hours.

The evidence of record shows that appellant was capable of performing the modified distribution window clerk position offered by the employing establishment and determined to be suitable by the Office in October 2003. In determining that appellant was physically capable of performing the modified distribution window clerk position, the Office properly relied in the opinion of Dr. Jorgensen. In reports dated September 15, 2003, Dr. Jorgensen detailed appellant's limited findings on examination and posited that she likely did not have active epicondylosis. He stated that appellant could sort mail for 4 hours per day, intermittently lift up to 20 pounds for up to 4 hours, intermittently engage in fine manipulation for up to 4 hours, intermittently engage in simple grasping for up to 4 hours per day, reach above the shoulders for up to 2 hours, bend and stoop for up to 4 hours and push and pull for up to 2 hours. The Board notes that these work restrictions would allow appellant to perform the modified distribution window clerk position offered by the employing establishment.[21]

The Board finds that the Office has established that the modified distribution window clerk position offered by the employing establishment is suitable. As noted above, once the Office has established that a particular position is suitable, an employee who refuses or neglects to work after suitable work has been offered to her has the burden of showing that such refusal to work was justified. Appellant submitted other medical evidence of attending physicians, but none of this evidence showed that she was unable to perform the modified distribution window clerk position, first offered by the employing establishment on October 10, 2003.[22] Therefore, appellant did not submit sufficient evidence to justify her refusal of the position. For these

[20] 20 C.F.R. § 10.124; *see Catherine G. Hammond*, 41 ECAB 375, 385 (1990).

[21] As noted above, Dr. Jorgensen's determination that appellant could sort mail for four hours per day would not be contrary to his indication that she should not engage in repetitive wrist flexion or extension. In February 2004, Dr. Jorgensen recommended orthopedic therapy for the right elbow, but he did not indicate that appellant could not perform the modified distribution window clerk position.

[22] She submitted reports from early 2004 in which Dr. Cole, an attending physician Board-certified in physical medicine and rehabilitation, indicated that she had right medial epicondylitis with clinical suspicion of ulnar neuropathy and/or cervical radiculopathy and recommended that she undergo hand therapy. Dr. Cole did not indicate that appellant could not perform the position offered by the employing establishment.

reasons, the Office properly terminated appellant compensation effective June 24, 2004 on the grounds that she refused an offer of suitable work.[23]

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of total disability on or after January 14, 2003, due to her accepted employment injury. The Board further finds that the Office properly terminated appellant's compensation effective June 24, 2004 on the grounds that she refused an offer of suitable work.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 24, 2004 and October 6, 2003 decisions are affirmed.

Issued: October 6, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[23] The Board notes that the Office complied with its procedural requirements prior to terminating appellant's compensation, including providing appellant with an opportunity to accept the file clerk position after informing her that her reasons for initially refusing the position were not valid; *see generally Maggie L. Moore*, 42 ECAB 484 (1991); *reaff'd on recon.*, 43 ECAB 818 (1992).