



**FACTUAL HISTORY -- File Number 03-2006734**

On March 8, 2002 appellant, then a 50-year-old clerk, filed an occupational disease claim alleging that she suffered from carpal tunnel syndrome in both hands as a result of the duties of keying and lifting in her federal employment. On June 7, 2002 the Office accepted appellant's claim for bilateral carpal tunnel syndrome.

On July 8, 2002 appellant underwent a right carpal tunnel release. Appellant returned to full-duty work on October 15, 2002. On December 18, 2002 the Office authorized left carpal tunnel release surgery scheduled for January 13, 2003. This surgery did not take place.

Appellant was evaluated by Dr. Scott Fried, an osteopath, on February 26, 2003, when he listed his impressions as:

- “1. Repetitive strain injury secondary to keying and repetitive activity as data entry clerk for the [employing establishment].
- “2. Median neuropathy with flexor tenosynovitis bilaterally, right status post carpal tunnel release [July 2002] Dr. Rafael with recurrence.
- “3. Proximal radiculitis with brachial plexitis bilaterally.”

Dr. Fried further noted, “This lady has classic cumulative trauma, repetitive strain pathology and there is no doubt that there is a direct cause and effect relationship between her repetitive activities at work and the present symptomatology.” He recommended that she “come out of her present job.” Dr. Fried suggested nerve sliding exercises and modalities aimed proximally as well as distally in order to calm her symptoms along with further functional capacity testing. He noted that, if she did not improve, a more aggressive approach may be reasonable.

On February 27, 2003 appellant filed a claim alleging a recurrence of her accepted injury on February 26, 2003. She noted that the symptoms of carpal tunnel syndrome returned after her return to work full duty.

By letter dated March 10, 2003, the Office informed appellant that, if she wished to be treated for brachial neuritis, cervical radiculopathy, carpal tunnel decompression and flexor tenosynovitis, she should file a claim for a new occupational disease. The Office advised appellant that it could not authorize treatment for these conditions under the claim for carpal tunnel syndrome.

By letter dated April 18, 2003, the Office referred appellant to Dr. Anthony Salem, a Board-certified orthopedic surgeon, for a second opinion. In a report dated May 13, 2003, he opined that he did not see any evidence of the work-related condition being active or causing any objective findings. Dr. Salem opined that the current findings were preexisting problems unrelated to her work. He also noted that appellant's wearing of the splint was contraindicated as appellant should move her fingers. Dr. Salem stated that appellant was not totally disabled as a result of the accepted condition, and work would be good therapy for her. He believed that the period of total disability should have ceased about September or October 2002, two months after the time of her surgery.

By letter dated May 29, 2003, the Office referred appellant to Dr. John S. Taras, a Board-certified orthopedic surgeon, for an impartial medical examination. The Office asked Dr. Taras to resolve the conflict between Drs. Fried and Salem with regard to whether appellant's disability effective February 26, 2003 is due to residuals of the accepted work injury. In a medical report dated June 12, 2003, Dr. Taras listed his impression as bilateral subjective hand pain. He noted:

“Based on my examination of both subjective and objective criteria, I see no evidence of ongoing carpal tunnel syndrome that is restricting this woman's function. Her subjective abnormalities do not fit a pattern of peripheral pathology and are consistent with symptom magnification. I see no evidence of an ongoing work injury. I do see evidence of some early osteoarthritis of her right, index and middle fingers that restricts her motion. I believe that this would cause her a level of mild discomfort in the hand, but would not be responsible for her generalized tenderness to palpation everywhere on the upper extremity. Even regardless of causation, I do not believe that mild osteoarthritis would significantly restrict her hand function and prevent her from performing her standard work duties.

“All opinions are offered within a reasonable degree of medical certainty.”

Dr. Taras also indicated that he reviewed the reports of Dr. Salem and Dr. Fried and that he was in agreement with Dr. Salem and would disagree with the findings of Dr. Fried.

On September 2, 2003 the Office denied appellant's claim for a recurrence of disability.

By letter dated September 4, 2003, appellant requested a hearing which was held on May 25, 2004. On August 18, 2004 the hearing representative affirmed the Office's September 4, 2003 decision finding that appellant had not established a recurrence of disability.

**LEGAL PRECEDENT -- File Number 03-2006734**

Section 10.5(x) of the Office's regulations defines a recurrence of disability in part as follows:

“[A]n 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.<sup>1</sup>

“An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician, who on the basis of a complete and accurate factual and medical history concludes that the disabling condition is causally related to the

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<sup>1</sup> 20 C.F.R. § 10.5(x).

employment injury and who supports that conclusion with sound medical reasoning.<sup>2</sup>

Where a claimant alleges a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of the substantial, reliable and probative evidence that the subsequent disability for which she claims compensation is causally related to the accepted injury.<sup>3</sup> In addition, medical evidence of bridging symptoms between the recurrence and the accepted injury must support the physician's conclusion of a causal relationship.<sup>4</sup>

### **ANALYSIS -- File Number 03-2006734**

The Board finds that appellant has failed to establish that she sustained a recurrence of her accepted work-related injury. For this reason, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment injury.

In the instant case, appellant submitted a report from her treating physician, Dr. Fried, wherein he opined that appellant's repetitive strain injury was causally related to the keying and repetitive activity associated with her federal employment. He did not specifically state that appellant suffered a spontaneous return of her accepted condition. The Office referred appellant to Dr. Salem for a second opinion. Dr. Salem opined that there was little in the way of objective evidence to conclude that appellant had any ongoing work-related injury. In order to resolve the conflict between the opinions of Drs. Fried and Salem with regard to whether appellant had sustained a recurrence of her work-related injury, the Office referred appellant to Dr. Taras, who opined that appellant had no evidence of any residual or any evidence of carpal tunnel syndrome that would restrict appellant's function and accordingly no recurrence. He opined that the "subjective abnormalities do not fit a pattern of peripheral pathology" and that these abnormalities were consistent with symptom magnification. Dr. Taras further opined that the presence of early osteoarthritis of her right index and middle fingers restricted her motion and was the cause of the mild discomfort of the hand but was not "responsible for her generalized tenderness to palpation everywhere on the upper extremity." He pointed out, however, that the osteoarthritis would not "significantly" restrict her function thereby preventing her from performing her work duties. Dr. Taras concluded that appellant was fully recovered from her work-related injuries and able to resume her normal preaccident activities and duties without any restrictions.

Where there exist opposing reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background,

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<sup>2</sup> *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

<sup>3</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988).

<sup>4</sup> For the importance of bridging information in establishing a claim for a recurrence of disability, see *Robert H. St. Onge*, 43 ECAB 1169 (1992); *Shirlyn J. Holmes*, 39 ECAB 938 (1988).

must be given special weight.<sup>5</sup> As Dr. Taras was appointed as the impartial medical examiner to resolve the conflict between the opinions of Drs. Fried and Salem, and as his opinion is well rationalized and based on a proper factual background, the Office properly found that his opinion represented the special weight of the medical evidence and denied appellant's claim for a recurrence of disability causally related to the accepted employment injuries.

**ISSUE -- File Number 03-2016429**

The issue is whether appellant has established that she had any disability commencing February 26, 2003 causally related to her accepted proximal radiculitis with bilateral brachial plexitis.

**FACTUAL HISTORY -- File Number 03-2016429**

On March 13, 2003 appellant filed a claim for an occupational disease for bilateral carpal tunnel syndrome, brachial neuritis, cervical radiculopathy, carpal tunnel decompression and flexor tenosynovitis. In a statement dated June 17, 2003, she indicated that she worked six or more days a week doing data entry and prepping mail. Appellant noted that these duties required her to use her hands, wrist, arms, shoulders, neck and back. She noted that her "fingers get numb and tingling constant pain in [her] hands, wrist, arms, shoulder and neck."

On July 14, 2003 the Office accepted this claim for proximal radiculitis with bilateral brachial plexitis and accepted an orthopedic neurological referral and electromyogram.

On July 21, 2003 appellant filed a claim for disability from February 26 to July 18, 2003. Appellant stopped work on February 27, 2003. In support thereof, appellant submitted additional medical reports by Dr. Fried. In a report dated May 15, 2003, Dr. Fried indicated that appellant was still to remain off work as she was still symptomatic and had not yet been approved for a therapy program. In a medical report dated October 1, 2003, Dr. Fried reiterated his opinion that appellant continued to be symptomatic due to her repetitive strain injury secondary to keying and repetitive activity as data entry clerk for the employing establishment.

On November 6, 2003 the Office referred appellant to Dr. William Wasserstrom, a Board-certified neurologist, for a second opinion. In a report dated November 21, 2003, he opined that appellant had mild partial disability from carpal tunnel syndromes. Dr. Wasserstrom opined that the current condition and complaints were related to repetitive flexion movements of the fingers and wrists which potentially could be found at her federal employment. He noted that "The affects of the work injury appears still present as per her history." Dr. Wasserstrom noted that one would expect that the symptoms would improve following carpal tunnel surgery on the right but would not be expected to improve on the nonoperated left side.

On November 14, 2003 the Office also referred appellant to Dr. Robert Allen Smith, a Board-certified orthopedic surgeon, for a second opinion, who opined that there was little in the way of objective findings to conclude that appellant has any ongoing work-related injury. He noted absolutely no objective evidence of plexitis. Dr. Smith noted that an adequate

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<sup>5</sup> David W. Pickett, 54 ECAB 272, 275 (2002).

decompression would take care of any condition that might be ongoing and, following the procedure, she could return to work in a regular-duty capacity.

In a report dated December 3, 2003, Dr. Fried indicated that appellant was finally approved for therapy which began about a month prior, and that, although she has not noticed much improvement at this point, it was still early in the treatment program.

On February 20, 2004 the Office referred appellant to Dr. John T. Williams, Sr., a Board-certified orthopedic surgeon, to resolve the conflict as to whether appellant had any continuing disability as a result of her work-related condition. In a medical report dated March 16, 2004, he opined that appellant had bilateral carpal tunnel syndrome by electromyographic studies and on clinical examinations by her physicians, but that appellant had no evidence of any residual or any evidence of carpal tunnel syndrome. Dr. Williams noted that appellant had no evidence of brachial plexitis bilaterally. He then stated:

“To summarize, in the absence of any positive objective findings to correlate to the patient’s complaints, I find no evidence that this patient has any residual referable to her work-related injury. In the absence of any positive objective findings, it is my opinion that [appellant] is fully recovered from said work-related injuries and that she may have sustained and is able to resume her normal preaccident activities and duties without any restrictions.

In a report dated March 24, 2004, Dr. Fried indicated that appellant remained “significantly symptomatic” and that she “has actually noted progression of her symptoms over the past month, particularly on the left hand side.” On April 28, 2004 Dr. Fried performed a median nerve block at the left wrist and cortisone injection at the carpal canal.

On June 8, 2004 Dr. Williams submitted an addendum after reviewing additional documents. He opined that the degenerative disc disease in the cervical spine was not caused or aggravated by the work injury. Dr. Williams reiterated that appellant was fully recovered at the time she had returned to work.

By decision dated September 9, 2004, the Office found that the special weight of the medical evidence was represented by the report of the impartial medical examiner, Dr. Williams, wherein he found no evidence of any ongoing work-related condition. Accordingly, the claim for compensation beginning on February 26, 2003 was denied for the reason that the weight of the medical evidence established that the effects of the work injury had ceased.

On November 4, 2004 appellant, through her attorney, filed a request for reconsideration. Appellant’s attorney noted that she underwent left carpal tunnel release surgery on September 9, 2004. By decision dated December 15, 2004, the Office denied modification of the prior decision. The Office determined that the weight of the medical evidence of record failed to establish that appellant’s disability effective February 26, 2003 was caused by the effects of the accepted employment injuries.

**LEGAL PRECEDENT -- File Number 03-2016429**

Under the Federal Employees' Compensation Act<sup>6</sup> the term disability is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>7</sup> Disability is thus not synonymous with physical impairment which may or may not result in an incapacity to earn the wages.<sup>8</sup> An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in the Act.<sup>9</sup>

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>10</sup> The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>11</sup>

**ANALYSIS -- File Number 03-2016429**

In the instant case, the Office accepted appellant's claim on July 14, 2003 for proximal radiculitis with bilateral brachial plexitis. Appellant then filed a claim for compensation benefits for disability commencing February 26, 2003.

Dr. Fried, appellant's treating physician, opined that appellant continued to be symptomatic and was to remain off work. However, Dr. Smith, the physician to whom the Office referred appellant for a second opinion, opined that there were no objective findings to conclude that appellant has any ongoing work-related injury. To resolve the conflict between these physicians with regard to whether appellant had any ongoing disability causally related to her federal employment, the Office referred appellant to Dr. Williams, who opined in his March 16, 2004 report that appellant was fully recovered from her work-related injuries and was able to resume her normal activities without any restrictions. He explained that he found no objective findings to correlate with appellant's subjective complaints and that there were no residuals referable to the accepted employment injuries. In his supplemental report dated June 8, 2004, Dr. Williams noted that the degenerative disc disease in the cervical spine was not related by cause or aggravation to the accepted employment injuries of proximal radiculitis with bilateral brachial plexitis. He reiterated his conclusion that the accepted employment injuries had fully resolved. The Board finds that the opinion of Dr. Williams is based on a proper factual

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<sup>6</sup> 5 U.S.C. § 8101 *et seq.*

<sup>7</sup> *See Frazier V. Nichol*, 37 ECAB 528 (1986); *Lyle E. Dayberry*, 49 ECAB 369 (1998).

<sup>8</sup> *See Lyle E. Dayberry*, *supra* note 7.

<sup>9</sup> *Gary L. Loser*, 38 ECAB 673 (1987).

<sup>10</sup> *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>11</sup> *Id.*

background and is sufficiently well rationalized. Accordingly, as special weight was properly given to the impartial medical examiner, Dr. Williams, the Office properly found that the weight of the medical evidence rested with the opinion of Dr. Williams that appellant had no continuing residuals from her work-related injury, and the Office properly denied benefits.<sup>12</sup>

### **CONCLUSION**

The Board finds that appellant has not established a recurrence of disability commencing on February 26, 2003 causally related to her work injury in file number 03-2006734. The Board further finds that appellant has not established her claim for disability commencing on February 26, 2003 causally related to her accepted employment injuries in file number 03-2016429.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 15, September 9 and August 18, 2004 are affirmed.

Issued: July 5, 2006  
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

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<sup>12</sup> *David W. Pickett, supra* note 5.