

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

S.K., Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Brooklyn, NY, Employer**

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**Docket No. 07-1185
Issued: January 22, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 29, 2007 appellant filed a timely appeal of the merit decision of the Office of Workers' Compensation Programs dated January 18, 2007 denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability on or after October 19, 2006 due to her accepted employment-related condition.

FACTUAL HISTORY

On June 26, 1999 appellant, then a 44-year-old distribution clerk, filed an occupational disease claim alleging that she developed right wrist tendinitis and right wrist sprain as a result of lifting and sweeping heavy trays. The Office accepted her claim for right wrist sprain, right

ganglion and cyst of synovium, right tendon and bursae, right radial styloid tenosynovitis and right enthesopathy of the wrist.

On July 1, 2004 appellant underwent a right wrist de Quervain's release. In a January 18, 2005 report, Dr. David S. Pereira, an attending Board-certified orthopedic surgeon, indicated that she was "doing nicely" and "may return to full[-]duty unrestricted work." However, in a February 15, 2005 medical report, he indicated that appellant was to return to work with the restriction that she only lift 20 to 30 pounds. Dr. Pereira noted that appellant would gradually increase her maximum lifting to 70 pounds by November 2005. On February 17, 2005 Tanya Bostick of the employing establishment made the decision to not return appellant to full duty until she had reached the intermittent lifting requirement and asked that the job offer to appellant reflect the limitation of 20 to 30 pounds effective February 15, 2005. She indicated that after 90 days at those restrictions she would contact Dr. Pereira for a reevaluation of lifting restrictions.

On November 13, 2006 appellant filed a claim for a recurrence of disability as of October 19, 2006 causally related to her April 19, 1999 employment injury. She noted that, after her right wrist surgery of July 1, 2004, her hand became better. However, during the beginning of 2006, it began getting worse. By October 2006 she was in pain. The employing establishment controverted the claim alleging that appellant was cleared to return to full duty by her doctor in November 2005 but that she continued to advise her supervisor that she was on limited duty. When appellant was notified that she had been on full duty since November 2005, she decided to return to her treating physician and ask him to complete a new duty status report.

In a November 3, 2006 report, Dr. Bondi diagnosed recurrent tenosynovitis of the left lateral compartment of the right wrist. He encouraged appellant to perform stretching exercises and noted that she was "[p]artially disabled working." In a November 1, 2006 report, Dr. Pereira prescribed physical therapy three times a week for five weeks due to recurrent right wrist de Quervain's. He noted that appellant was "presently partially disabled and working her usual duties."

By letter dated November 29, 2006, the Office requested that appellant submit further evidence. Appellant submitted a statement addressing the recurrence of October 19, 2006. On that date, her supervisor told her to start working at the machine operation "because I was on full duty by then." She noted that appellant had been on limited-duty status following her July 1, 2004 surgery, but started to experience pain in her right wrist and thumb again in the beginning of 2006. Appellant alleged that her supervisor assigned her to machine operation, so she filed a claim for recurrence on November 9, 2006. She submitted the recurrence of disability claim because the injury compensation specialist did not extend her limited duty.

In an October 27, 2006 medical report, Dr. Bondi indicated that appellant was complaining of pain in the right wrist lateral compartment and stated that she was unable to use her right hand while working. He diagnosed recurrent tenosynovitis of the right wrist and indicated that she was partially disabled from working. In a December 12, 2006 duty status report, Dr. Pereira limited appellant to intermittent lifting, pushing or pulling of less than 10 pounds a day. In a December 15, 2006 report, he diagnosed right wrist strain and indicated that she was partially disabled and working light duty. In a November 28, 2006 medical report, Dr. Seung K. Kim, a Board-certified physiatrist, diagnosed recurrent de Quervain's tenosynovitis

of the right wrist. He indicated that appellant told him that her surgery had relieved her pain until some heavy lifting at work. Dr. Kim listed appellant's functional status as limited in all daily activities using the right hand due to pain. In a January 11, 2007 opinion, he noted that appellant was limited in all daily activities of using the right hand due to pain and needed more physical therapy.

By decision dated January 18, 2007, the Office denied appellant's recurrence of disability claim.

LEGAL PRECEDENT

To establish a claim for recurrence of disability, a claimant must establish that he experienced a spontaneous material change in the employment-related condition without an intervening injury or new exposure to the work environment that caused the illness.¹ A claimant's burden of proof includes the necessity of furnishing medical evidence from a 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 and supports the conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.²

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability on or after October 19, 2006 causally due to her accepted employment-related condition. The Office accepted appellant's claim for a right wrist sprain, right ganglion and cyst of synovium, right tendon and bursae, right radial styloid tenosynovitis and right enthesopathy of wrist and carpus. She underwent surgery on July 1, 2004, following which she returned to limited-duty work. Appellant returned to full duty on November 15, 2005.

Appellant has submitted no medical evidence indicating that she has sustained a recurrence of disability. Dr. Bondi noted in a November 3, 2006 report that appellant had recurrent tenosynovitis of the right wrist and was partially disabled from work. However, he did not address how this was related to appellant's accepted injury. Dr. Pereira also indicated that appellant was partially disabled from her usual work duties due to recurrent right wrist de Quervain's and provided work restrictions; however, he did not provide any explanation as to how this was related to the accepted injury. In a November 28, 2006 report, Dr. Kim diagnosed appellant with recurrent de Quervain's tenosynovitis of the right wrist. He noted that appellant told him that she had surgery which relieved her pain until she engaged in heavy lifting at work. Dr. Kim's comments indicate a new injury caused by heavy lifting at work. This would not constitute a spontaneous recurrence of the accepted injury.³ There is insufficient rationalized

¹ *Carlos A. Marrero*, 50 ECAB 117 (1998); *Philip L. Barnes*, 55 ECAB 426 (2004); 20 C.F.R. § 10.5(x).

² *Mary A. Ceglia*, 55 ECAB 626 (2004).

³ *Philip L. Barnes*, *supra* note 1.

medical opinion evidence to establish that appellant sustained a recurrence of her accepted condition on October 19, 2006.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of disability on or after October 19, 2006 due to her accepted employment condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 18, 2007 is affirmed.⁴

Issued: January 22, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁴ On appeal, appellant submitted new evidence. The Board has no jurisdiction to review this report. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).