



The Office accepted that she sustained a sprain, neuroma and ganglion of her right wrist.<sup>1</sup> Appellant sustained recurrences of her ganglion in 1983, 1984, 1986 and 1991 and another right wrist sprain due to lifting a tray of mail on July 25, 1984. The Office authorized the performance of right wrist surgeries in 1982, 1983, 1986 and 1991.<sup>2</sup> Between 1989 and 1994, appellant received schedule awards for a 19 percent permanent impairment of her right arm.<sup>3</sup>

On May 18, 2007 appellant filed a claim alleging that she sustained a recurrence of total disability on July 16, 2006 due to her accepted work injuries. She described her employment for various private employers since retiring from the employing establishment in 1985, including her work for a company called Better Solution in June to July 2006. Appellant indicated that she continued to have difficulties with her diagnosed conditions and noted that, as of March 30, 2006, she experienced extreme pain in her right thumb.

Appellant submitted a July 20, 2006 report in which Dr. David M. Kupfer, an attending Board-certified plastic surgeon, provided an extensive summary of medical records and physical examination findings. Dr. Kupfer noted that on examination appellant had tenderness over the flexor sheath of her thumb and the dorsal aspect of her wrist.<sup>4</sup> He diagnosed history of ganglionectomies, history of right wrist triangular fibrocartilage complex (TFCC) injury status post debridement and residual tenosynovitis of the right hand and wrist. Dr. Kupfer stated:

“[Appellant] has been provided with a lengthy course of medical treatment. I have reviewed a large volume of medical records which have been summarized above. [Appellant] has been treated for a TFCC injury as well as a ganglion affecting the wrist; however, she did experience an aggravation of her wrist symptoms and returned for reevaluation. Given the chronicity of her symptoms and the lack of new evidence for significant pathology involving the wrist, I do not believe that further medical attention is indicated now. In the future, medical treatment should be limited to the use of anti-inflammatory medication. Based on this reflection, [appellant] is released from my active care. Note, although [she] does have evidence of recurrent ganglion involving the wrist seen on an MRI [magnetic resonance imaging] [scan] of this extremity, clinically the ganglion is not obvious and is not associated with localized tenderness.<sup>5</sup> This is the basis for my decision that further surgery is not warranted due to this recurrent ganglion.”

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<sup>1</sup> The Office later accepted that appellant sustained work-related torn triangular fibrocartilage of her right wrist and mononeuritis of her right arm.

<sup>2</sup> Appellant returned to light-duty work after her periods of total disability. She resigned from the employing establishment in 1985 and began working in positions for private employers.

<sup>3</sup> In mid 2003, appellant filed a claim alleging that she sustained a recurrence of total disability beginning August 31, 2004 due to her accepted work injuries. In a June 29, 2004 decision, the Office denied her claim. This matter is not the subject of the present appeal.

<sup>4</sup> Dr. Kupfer indicated that the tenderness was in appellant’s left thumb. It would appear that he meant to reference the right thumb as he recommended right hand restrictions in the same report.

<sup>5</sup> The findings of April 17, 2006 MRI scan testing showed a right wrist ganglion measuring two centimeters in the transverse dimension and two millimeters in the anteroposterior dimension.

In terms of work capacity, Dr. Kupfer opined that appellant was restricted from activities that require forceful strength activities such as lifting, pushing, pulling, grasping, pinching, holding and torquing with the right hand. Appellant was also restricted from lifting or carrying more than 20 pounds with her right arm. Dr. Kupfer stated, “It is my opinion that [her] present level of disability is 100 percent attributable to the industrial accident that occurred on July 25, 1984.”<sup>6</sup>

The Office requested that appellant submit additional factual and medical evidence in support of her claim. In an August 3, 2007 letter to Dr. Kupfer, appellant advised that his report conflicted with her “present date hand condition.” She requested that he state, “separately to the ESA my present date conditions are resulting from the July 25, 1984 Injury and no other Jobs or Employment worked related sustained or obtained.” Appellant repeated her belief that her current wrist and thumb conditions were work related.

In an August 11, 2009 decision, 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 disability on or after March 3, 2006 due to her accepted work injuries.

In an August 25, 2009 letter, appellant requested an oral hearing with an Office hearing representative. A telephone hearing was scheduled for November 24, 2009 at 10:30 a.m. Eastern Time. Appellant failed to call at the designated time for the hearing, but the Office received a document which suggested that she was at a hospital at “8:00 a.m. Pacific Time” (which would be 11:00 a.m. Eastern Time). In a December 17, 2009 report, Dr. Kupfer stated that her “work status” was unchanged since July 20, 2006. He did not provide any further opinion regarding the cause of appellant’s medical condition.

The Office hearing representative found that appellant had not presented evidence which would require postponement of the telephone hearing and he undertook an examination of the written record.<sup>7</sup> In a February 1, 2010 decision, the hearing representative affirmed the Office’s August 11, 2009 decision.

### **LEGAL PRECEDENT**

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

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<sup>6</sup> The record also contains another July 20, 2006 report of Dr. Kupfer, which contains similar content but does not contain an extensive review of medical records.

<sup>7</sup> Under the Office regulations at 20 C.F.R. § 10.622(b) and (c), a scheduled oral hearing may only be postponed, upon presentation of proper documentation, when it is shown that the claimant was hospitalized for nonelective surgery or experienced the death of a parent, spouse or child. Where the request does not meet these criteria, the hearing must then, at the discretion of the Office hearing representative, take the form of an examination of the written record or telephone conference. The evidence in the record review decision to the written record.

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.<sup>8</sup>

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between a work-related injury and the claimed disability. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the work-related injury and the claimed disability.<sup>9</sup>

### ANALYSIS

The Office accepted that appellant sustained neuroma and ganglion of her right wrist, two right wrist sprains, torn triangular fibrocartilage of her right wrist and mononeuritis of her right arm due to two lifting incidents on July 8, 1980 and July 25, 1984.<sup>10</sup> On May 18, 2007 appellant filed a claim alleging that she sustained a recurrence of total disability on July 16, 2006 due to her accepted work injuries.

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 July 16, 2006 due to her accepted work injuries.

Appellant submitted a July 20, 2006 report in which Dr. Kupfer, an attending Board-certified plastic surgeon, provided a summary of medical records and reported physical examination findings. Dr. Kupfer diagnosed history of ganglionectomies, history of right wrist TFCC injury status post debridement and residual tenosynovitis of the right hand and wrist and indicated that these conditions were 100 percent related to the July 25, 1984 work injury.

The Board finds that Dr. Kupfer's report is of limited probative value on the relevant issue of the present case, *i.e.*, appellant's claim of a recurrence of total disability beginning July 16, 2006 due to her work injuries. Although Dr. Kupfer indicated in his July 20, 2006 report that she experienced an aggravation of her right wrist symptoms, he did not provide any periods of aggravation and/or explain if and how that aggravation rendered her totally disabled from any work. He did not provide any objective findings to support an aggravation or change in appellant's accepted work conditions. Dr. Kupfer's opinion is not based on a complete and accurate factual and medical history in that he did not describe the July 8, 1980 and July 25, 1984 work incidents (and resulting injuries) in any detail. He did not explain the medical process through which appellant's accepted medical conditions could have worsened to the point that she could no longer perform any work.

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<sup>8</sup> *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>9</sup> *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>10</sup> Appellant returned to light-duty work after several periods of total disability. She resigned from the employing establishment in 1985 and periodically worked for private employers thereafter.

In fact, Dr. Kupfer indicated that there was a lack of evidence for significant pathology involving the right wrist. In terms of work capacity, he opined that appellant was able to work with certain restrictions. However, Dr. Kupfer provided no explanation of how these restrictions were necessitated by a work-related condition and he did not indicate that she was totally disabled as a result of her accepted work conditions.

Appellant did not show a change in the nature and extent of her injury-related condition or a change in the nature and extent of her light-duty job requirements. She did not submit medical evidence showing work-related total disability on or after July 16, 2006 and the Office properly denied her recurrence of disability claim.<sup>11</sup>

### **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 July 16, 2006 due to her accepted work injuries.

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<sup>11</sup> On appeal, appellant argued that the employing establishment was “liable” and that she suffered economic loss due to “medical malpractice negligence.” She did not provide any further explanation for this argument. Appellant asserted that she could not get work with her work restrictions but she did not submit sufficient medical evidence to show that her alleged inability to work was work related. She asserted that the Office erred when it stated that she worked for the employment establishment in San Diego but she did not explain the relevance of this argument to the main issue of the present case.

**ORDER**

**IT IS HEREBY ORDERED THAT** from the February 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 20, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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