

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

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**Y.M., Appellant**

**and**

**U.S. POSTAL SERVICE, GENERAL MAIL  
FACILITY, Denver, CO, Employer**

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**Docket No. 11-730  
Issued: October 5, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 31, 2011 appellant filed a timely appeal from a December 17, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) finding that she did not establish a recurrence of a medical condition. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a recurrence of a medical condition on September 2, 2009 causally related to her accepted employment injury.

**FACTUAL HISTORY**

On July 26, 2003 appellant, then a 52-year-old clerk, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome in the performance of duty. She did not stop

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

work. OWCP accepted the claim for bilateral carpal tunnel syndrome and bilateral tenosynovitis of the forearms.

On September 19, 2009 appellant filed a recurrence of disability claim on September 2, 2009 causally related to her accepted employment injury. She did not stop work. Appellant related that she experienced the same symptoms as her original injury while casing mail at work. The employing establishment indicated on the form that it had not modified her duties due to her original work injury.

By letter dated December 4, 2009, OWCP requested further factual and medical information from appellant regarding the alleged recurrence of disability.

In a report dated December 14, 2009, Dr. Kelly Jeong, a Board-certified internist, discussed appellant's complaints of carpal tunnel syndrome beginning in 2003. She indicated that she treated appellant on October 19, 2009 "for another exacerbation starting about September 2, 2009." Dr. Jeong noted that 2003 diagnostic studies confirmed carpal tunnel syndrome. She stated, "[Appellant] describes pain in both wrist and forearm with tingling and numbness consistent with carpal tunnel. [She] states that her carpal tunnel syndrome started in 2003 due to repetitive motion related to her job."

On December 15, 2009 appellant related that she had experienced wrist numbness, tingling and pain continually since 2003. Her symptoms varied in intensity and improved somewhat with physical therapy. Appellant stated, "Over the years I have been doing the same job as before and my injury has started bothering me again." She submitted a June 23, 2003 nerve conduction study (NCS) which revealed bilateral carpal tunnel syndrome.

By decision dated February 17, 2010, OWCP found that appellant failed to establish that she sustained an employment-related recurrence of disability beginning September 2, 2009. It noted that she began working modified duty on March 21, 2003. OWCP concluded that there was no evidence showing that appellant's light duty was withdrawn or that she was unable to perform its duties due to her accepted employment injury.

On October 4, 2010 appellant requested reconsideration. She submitted an October 4, 2010 NCS and electromyogram (EMG) showing bilateral carpal tunnel syndrome worse on the right. In an accompanying letter dated October 5, 2010, appellant related that she did not work in a modified-duty capacity due to her accepted employment injury.<sup>2</sup>

In a report dated October 5, 2010, Dr. James J. Bachman, Board-certified in family and emergency medicine, provided an impairment evaluation for appellant's upper extremities.

By decision dated December 17, 2010, OWCP denied modification of its February 17, 2010 decision.

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<sup>2</sup> Appellant indicated that the March 21, 2003 modified-duty assignment was for a nonwork-related condition.

On appeal appellant argues that the employing establishment did not offer her a limited-duty assignment. She maintains that Dr. Backman's December 23, 2010 report establishes that she continues to have carpal tunnel syndrome.

### **LEGAL PRECEDENT**

The Office's procedure manual defines a recurrence of medical condition as follows:

"This term is defined as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment."<sup>3</sup>

The Office's procedure manual further provides:

"*After 90 days of Release from Medical Care* (Again, this should be based on the physician's statement or instruction to return PRN (per as needed), or computed by the [claims examiner] from the date of last examination.) The claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury."<sup>4</sup>

### **ANALYSIS**

OWCP accepted that appellant sustained bilateral carpal tunnel syndrome and bilateral tenosynovitis of the forearms due to factors of her federal employment. On September 19, 2009 appellant alleged that she sustained a recurrence of a medical condition on September 2, 2009 due to her accepted work injury. She did not stop work or allege an increase in disability due to her work injury. Instead, appellant maintained that she experienced the same symptoms as previously while casing mail. The issue, consequently, is whether she has established the recurrence of a medical condition such that she required further medical treatment.

On December 14, 2009 Dr. Jeong described appellant's history of carpal tunnel syndrome from 2003 onward and complaints of an exacerbation beginning September 2, 2009. She related that appellant currently experienced pain in her wrists and forearms indicative of carpal tunnel syndrome and that she "states that her carpal tunnel syndrome started in 2003 due to repetitive motion related to her job." While Dr. Jeong noted that appellant attributed her carpal tunnel syndrome to repetitive motion at work, the physician did not provide an independent opinion linking the diagnosed condition to her employment duties. A physician's report is of little probative value when it is based on a claimant's belief rather than the doctor's independent judgment.<sup>5</sup> Consequently, Dr. Jeong's report is insufficient to meet appellant's burden of proof. Appellant further submitted diagnostic studies showing carpal tunnel syndrome; however, these

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(a) (January 1998).

<sup>4</sup> *Id.* at Chapter 2.1500.5(b) (September 2003).

<sup>5</sup> *Earl David Seale*, 49 ECAB 152 (1997).

reports do not contain a physician's opinion addressing causal relationship and thus are of little probative value.<sup>6</sup>

On October 5, 2010 Dr. Bachman provided an impairment evaluation. He did not, however, address the relevant issue of whether appellant experienced a recurrence of a medical condition beginning September 2, 2009. 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>7</sup>

On appeal appellant maintains that she did not work limited duty due to her employment injury. While OWCP, in its February 17, 2010 decision, indicated that she worked limited duty following her employment injury, this statement does not affect the adjudication of whether the medical evidence is sufficient to show a recurrence of a medical condition.

Appellant further asserts that Dr. Backman's December 23, 2010 report establishes that she has carpal tunnel syndrome. However, this report was not before OWCP at the time of the last merit decision. The Board has no jurisdiction to review new evidence on appeal.<sup>8</sup> Appellant can submit this evidence with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that she sustained a recurrence of a medical condition on September 2, 2009 causally related to her accepted employment injury.

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<sup>6</sup> See *Conrad Hightower*, 54 ECAB 796 (2003) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

<sup>7</sup> See *C.S.*, 59 ECAB 686 (2008); *G.T.*, 59 ECAB 447 (2008).

<sup>8</sup> 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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