

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ORA L. MAYNARD and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 02-646; Submitted on the Record;
Issued October 17, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a recurrence of disability beginning March 5, 2001 due to her July 31, 1989 employment injury.

On July 31, 1989 appellant, then a 49-year-old clerk, filed a claim alleging she developed a bilateral wrist condition as a result of casing mail. The Office of Workers' Compensation Programs accepted that appellant sustained bilateral, chronic myotenosynovitis of the forearms and wrists and paid appropriate compensation.¹ Appellant stopped work on June 17, 1991 and returned to light duty, four hours per day on June 5, 1995.

On July 19, 1991 appellant filed a claim for a schedule award. In a decision dated March 21, 1996 the Office granted appellant a schedule award for seven percent permanent impairment of both arms.

Appellant submitted various treatment notes from Dr. David Wren, an orthopedist, dated May 31, 1996 to October 31, 1997. Dr. Wren diagnosed appellant with severe bilateral myotendinitis in the arms and hands and cervical strain. He noted that appellant's condition was aggravated by her work activities dating back to June 1997. Dr. Wren noted that appellant could return to work light duty four hours per day starting November 1997.

On November 3, 1997 appellant filed a CA-2a, notice of recurrence of disability. She indicated a recurrence on October 17, 1997, noting that she experienced discomfort in her hands, wrists and shoulder since the employment-related injury of July 31, 1989. The Office accepted that appellant sustained a recurrence of injury and paid leave buy back for the period of October 17 to November 24, 1997.

¹ The record reflects that appellant filed a previous traumatic injury claim, No. A13-719252, for an injury sustained to her right shoulder on October 7, 1983. The claim was accepted for aggravation of cervical degenerative disc disease and facet joint disease and appropriate compensation was paid. It appears that claim No. A13-719252 was consolidated with the current claim No. A13-0899504.

The employing establishment offered appellant a light-duty position, four hours per day, commencing November 25, 1997 which complied with the medical restrictions set forth by her treating physicians. Appellant returned to work on light duty, four hours per day, five days a week.

Appellant continued to submit treatment notes from Dr. Wren indicating that her condition worsened and that she was permanently partially disabled.

On June 29, 2000 appellant filed a CA-2a, notice of recurrence of disability. She indicated a recurrence on June 19, 2000, noting that she experienced discomfort in her hands, wrists and shoulder since the employment-related injury of July 31, 1989. The Office accepted that appellant sustained a recurrence of injury. Appellant returned to light duty four hours per day on July 31, 2000.

Thereafter appellant filed various medical records including an electromyograph (EMG) dated October 26, 2000; and treatment notes from Dr. Wren dated October 26, 2000 to March 5, 2001. The EMG revealed left median neuropathy at the wrist. Dr. Wren's notes from October 26 to December 4, 2000 indicated that appellant continued to experience bilateral upper extremity pain in the hands and forearm and diagnosed her with bilateral upper extremity myotendinitis. He noted that appellant could continue her light-duty, four hours per day, schedule. Dr. Wren's note of February 5, 2001 noted appellant's complaints of persistent upper extremity pain and diagnosed appellant with bilateral upper extremity myotendinitis. He noted that appellant could return to her modified position. Dr. Wren's March 5, 2001 note indicated that appellant was experiencing right shoulder discomfort; numbness and tingling in her right wrist and hand; and a right swollen wrist and hand. He indicated that the Tinel's and Phalen's signs were positive. Dr. Wren diagnosed appellant with carpal tunnel syndrome and tenosynovitis of the wrist and hands. He noted that appellant could return to modified work, four hours per day, with limited use of her hand on April 3, 2001.

On March 5, 2001 appellant filed a CA-2a, notice of recurrence of disability. She indicated a recurrence on March 5, 2001, noting that she experienced discomfort in her hands, wrists and shoulder since the employment-related injury of July 31, 1989.

By letter dated March 27, 2001, the Office informed appellant that she must provide a statement regarding any possible change in her light-duty job such that appellant would be unable to perform these duties and a narrative report from a physician which describes objective findings which show that appellant's condition prohibits appellant from performing the light-duty job.

Appellant submitted treatment notes from Dr. Wren dated April 2 to 19, 2001. Dr. Wren's treatment notes indicated that appellant was slowly improving although she was still experiencing pain in both hands and wrist. He diagnosed appellant with bilateral carpal tunnel syndrome cervical myofascitis and upper extremity myotendinitis. Dr. Wren noted that appellant could return to modified work, four hours per day, "same as previous" on April 9, 2001. In a work capacity evaluation dated April 2, 2001, he indicated restrictions on lifting of 10 pounds; hand restrictions on grasping, pushing, pulling; fine manipulation; and reaching above the shoulder. Dr. Wren's treatment note from April 19, 2001 indicated that there was no change in

appellant's condition and noted appellant still experienced upper extremity tenderness in the hands, wrist and forearms. He noted that appellant retired from the employing establishment.

In a decision dated June 13, 2001, the Office denied appellant's claim for recurrence of disability on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of disability on or about March 5, 2001 which was causally related to the accepted employment injury sustained July 31, 1989.

In a letter dated July 3, 2001, the Office informed appellant that she was entitled to Office benefits and also Office of Personnel Management (OPM) benefits under the Civil Service Retirement System. The Office indicated that annuity benefits paid by OPM and benefits for wage loss paid by OWCP are not payable for the same period of time. The Office requested appellant to make an election as to which benefits she would like to receive.²

By an election form dated September 4, 2001 appellant elected to receive OWCP benefits.

On February 25, 2002 the Office made a preliminary finding that appellant had been overpaid benefits in the amount of \$1,933.71. The Office noted that the overpayment occurred because appellant received compensation for wage loss from FECA and OPM retirement benefits concurrently for the period of May 1 through June 16, 2001. The Office also determined appellant was without fault in the matter of the overpayment. The Office indicated that appellant had the right to submit, within 30 days, evidence or arguments regarding the overpayment and her eligibility for waiver of the overpayment.

The Board finds that the evidence fails to establish that appellant sustained a recurrence of disability beginning on March 5, 2001 as a result of her July 31, 1989 employment injury.

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 requirements.³

Appellant has not submitted sufficient evidence to support a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty

² Appellant submitted a report from Dr. Wren dated August 13, 2001 and treatment notes from Dr. H. Clark Deriso, dated December 17, 2001 to March 26, 2002. However, appellant did not submit a reconsideration request or an appeal at this time. In a letter dated September 17, 2000, the Office notified appellant that it was in receipt of Dr. Wren's latest report and the attached treatment notes and indicated that these reports were insufficient to establish a recurrence on March 5, 2001. The Office informed appellant that should she disagree with the Office's decision on June 13, 2001 she must exercise her rights as described in the Office decision. This evidence is not before the Board in this appeal.

³ *Terry R. Hedman*, 38 ECAB 222 (1986).

requirements. On March 27, 2001 the Office advised appellant of the type of medical evidence needed to establish her claim.

Appellant submitted several reports from Dr. Wren dated February 5 to April 19, 2001. Dr. Wren's February 5, 2001 note indicated appellant's complaints of persistent upper extremity pain and diagnosed appellant with bilateral upper extremity myotendinitis. His March 5, 2001 note indicated that appellant was experiencing right shoulder discomfort; numbness and tingling in her right wrist and hand; and a right swollen wrist and hand. Dr. Wren indicated the Tinel's and Phalen's signs were positive. He diagnosed appellant with carpal tunnel syndrome and tenosynovitis of the wrist and hands. Dr. Wren noted that appellant could return to modified work, four hours per day, with limited use of her hand on April 3, 2001. His note of April 2, 2001 indicated that appellant was slowly improving although she was still experiencing pain in both hands and wrist. Dr. Wren diagnosed appellant with bilateral carpal tunnel syndrome cervical myofascitis and upper extremity myotendinitis. He noted that appellant could return to modified work, four hours per day, "same as previous" on April 9, 2001. In a work capacity evaluation dated April 2, 2001, Dr. Wren indicated restrictions on lifting of 10 pounds; hand restrictions on grasping, pushing, pulling; fine manipulation; and reaching above the shoulder. His treatment note from April 19, 2001 indicated that there was no change in appellant's condition and noted appellant still experienced upper extremity tenderness in the hands, wrist and forearms. Dr. Wren noted that appellant retired from employment. However, none of his reports, most contemporaneous with the recurrence of injury noted a specific date of a recurrence of disability nor did he note a particular change in the nature of appellant's physical condition, arising from the employment injury, which prevented appellant from performing her light-duty position.⁴ Rather these notes indicated appellant's condition was unchanged. These notes are vague regarding the time of the onset of the claimed recurrence of disability and are unrationalized regarding how the 1989 employment injury would have caused a particular period of disability beginning on March 5, 2001.⁵ Dr. Wren neither addresses whether appellant was totally disabled due to her work injury on or after March 5, 2001 nor does he offer any reasoned support for causal relationship of the claimed condition or disability to the accepted work-related injury of July 31, 1989.

Other reports from Dr. Wren provided no specific opinion on causal relationship between conditions diagnosed and appellant's claimed recurrence of total disability.

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit her from performing the light-duty position she assumed after she returned to work.

⁴ The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence; see *Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

⁵ See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

The decision of the Office of Workers' Compensation Programs dated June 13, 2001 is hereby affirmed.

Dated, Washington, DC
October 17, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member