

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCELEN M. DECUIR and DEPARTMENT OF THE ARMY,
ARMY HEALTH SERVICES, TRIPLER REGIONAL MEDICAL CENTER,
Tripler, HI

*Docket No. 03-1793; Submitted on the Record;
Issued September 10, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a recurrence of disability on or after June 8, 1999 causally related to her accepted September 12, 1997 employment injury

Appellant, a 51-year-old patient representative, filed a notice of traumatic injury on September 12, 1997 alleging that she injured her right arm when her left leg and crutch slipped on an oily surface at the employing establishment. In a medical report dated September 26, 1997, Dr. Ronald H. Gackle, a physician Board-certified in preventative medicine, reported that appellant, who had been wheelchair bound since age six due to polio, was attempting to get out of her vehicle on September 12, 1997, when her left crutch slipped out from her side. To avoid falling, appellant attempted to maneuver herself back into her vehicle with her right arm and sustained a strain to the right lateral upper arm area.

Appellant filed a notice of recurrence of disability on January 19, 2000 alleging that she stopped work on June 8, 1999 due to continuing weakness in her right shoulder as well as pain and swelling in her left wrist. Appellant attributed her left wrist condition to her September 12, 1997 employment injury as the swelling of her left wrist and hand began after the slip. The Office of Workers' Compensation Programs accepted appellant's claim for right arm strain in a letter dated November 17, 2000. The Office also advised appellant that her left wrist claim was more properly an occupational disease claim and would be developed accordingly. The Office requested additional medical evidence from appellant addressing the causal relationship between

her current medical condition and her federal employment.¹ By decision dated March 27, 2001, the Office denied appellant's claim. In this decision, the Office concluded that, based on the factual evidence submitted, that appellant believed that her left wrist condition was due to her September 12, 1997 employment injury rather than to the additional work exposures which occurred from her return to full duty on September 29, 1997 until her work stoppage on June 8, 1999. The Office therefore denied appellant's claim on the grounds that she failed to establish that she sustained a recurrence of disability causally related to her September 12, 1997 employment injury on or after June 8, 1999.

Appellant disagreed with this decision and requested an oral hearing by letter dated April 13, 2001. Due to appellant's mobility issues, the hearing representative conducted a telephone hearing on October 30, 2001. By decision dated January 22, 2002, the hearing representative affirmed the Office's March 27, 2001 decision finding that appellant had not submitted the necessary medical evidence to establish a causal relationship between her current condition and her accepted employment injury.

Appellant requested reconsideration on June 26 and December 16, 2002 and submitted new medical evidence. By decision dated April 8, 2003, the Office reviewed appellant's claim on the merits and denied modification of its prior decisions.²

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a recurrence of disability on or after June 8, 1999 causally related to her September 12, 1997 employment injury.

Appellant attributed her left wrist condition to her September 12, 1997 employment injury. She stated that she was exiting her vehicle with her left leg³ and left crutch, which entailed most of her weight on her left arm, while holding the steering wheel with her right arm, when she felt herself slip and in attempt to prevent a fall, pushed with her left arm to hold her entire body weight. Appellant pulled with her right arm and pushed with her left landing on the running board of her vehicle. Appellant stated that she immediately felt pain in her right

¹ While the Office did not specifically provide appellant with 30 days to respond to this request for evidence, the Board notes that the Office did not issue its March 27, 2001 decision until more than four months after the November 17, 2000 letter allowing more than 30 days for appellant to respond; *see* 20 C.F.R. § 10.121. Appellant alleged on April 13, 2001 that she had not received the November 17, 2000 letter. However, the Board notes that this letter shares the same address as the March 27, 2001 decision which appellant did receive. The Board has found that, in the absence of evidence to the contrary, a letter properly addressed and mailed in the due course of business is presumed to have arrived at the mailing address in due course. There is no evidence that the letter was returned as undeliverable and consequentially the November 17, 2000 letter is entitled to the presumption of receipt. Appellant has not submitted any evidence to rebut that presumption. *See Dorothy Yonts*, 48 ECAB 549, 550-52 (1997).

² The Board notes that the April 8, 2003 notice of decision improperly states that appellant's employment injury occurred on November 23, 1999, that her claim was accepted for abrasion and contusion of her "right left knee," that she filed a notice of recurrence of disability on August 9, 2000, and that the Office denied her claim on January 10, 2002 and that appellant requested reconsideration on May 1, 2002. The Office further refers to a Board decision, *Karen C. Schaffer*, 39 ECAB 1219 (1988) in reciting appellant's factual background for no discernable reason.

³ Due to her preexisting condition of polio, appellant has no use of her left leg and only 30 percent use of her right. She utilizes a left leg brace.

shoulder. She did not notice a problem with her left upper extremity until a month after the injury at which time her left hand began to swell. Appellant stated that she used a manual wheelchair at the employing establishment after her return to work on September 29, 1997 and that she developed a lump on her left wrist approximately one half the size of an egg.

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing June 8, 1999 and her September 12, 1997 employment injury.⁴ This burden 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 disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

The first mention of appellant's left wrist in the medical evidence of record occurs on September 24, 1998 at which point appellant reported swelling of her left hand, pain in her left wrist area and a rash on her left arm. There is no opinion regarding the cause of these conditions and no mention of appellant's employment injury or activities. Therefore this report is not sufficient to meet appellant's burden of proof.

On June 25, 1999 a physician, whose signature is illegible, signed nursing notes which reported that appellant had experienced wrist pain on and off for two months duration. Appellant's attending physician, Dr. Suzanne Yokoyama, stated that appellant complained of ongoing left wrist pain which had not improved in a note dated April 8, 1999. An x ray report of the same date found marked widening of the intercapral space between the navicular and lunate consistent with intercarpal ligamental tear. These reports do not provide a history of injury including appellant's accepted employment injury and do not mention any employment duties. These reports are not sufficient to establish a causal relationship between appellant's employment and her diagnosed left wrist condition.

Dr. David G. Mathews, a Board-certified orthopedic surgeon, completed a report on June 1, 1999 and stated that appellant injured her left wrist in a fall approximately one year previously. He diagnosed dorsal intercalated segmental instability of the left wrist following an old scapholunate ligament tear with subsequent radiocarpal arthritis. Dr. Mathews stated, "It may be that the arthritic changes developed in just the past year, but it may be even older than that." Although Dr. Mathews noted that appellant had a fall, he did not clearly attribute appellant's left wrist condition to her September 12, 1997 employment injury. Furthermore, Dr. Mathews indicated that appellant's arthritic changes could predate her employment injury. For these reasons, this report is not sufficient to meet appellant's burden of proof.

Dr. Yokoyama, completed a report on April 16, 1999 and stated that physical facilities at appellant's job site had resulted in chronic left wrist pain. She reported the x-ray findings diagnosing intercarpal ligamental tear. Dr. Yokoyama, attributed appellant's left wrist pain to her employment duties rather than the traumatic injury on September 12, 1997. Although this report supports that appellant's left wrist condition is due to her employment, it does not

⁴ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁵ *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

establish appellant's claim that her left wrist condition was a recurrence of disability due to her September 12, 1997 employment injury. A recurrence of disability is defined as a spontaneous material change in the employment-related condition without an intervening injury.⁶ The attribution of appellant's left wrist condition to the physical facilities at the employing establishment would constitute an intervening injury precluding a recurrence of disability as defined by the Board.

Dr. Yokoyama, completed a report on May 31, 2002 and stated that to her knowledge appellant sustained only one traumatic injury between September 1997 and September 1999. She stated that appellant was not apt to complain and that this stoicism accounted for the lack of medical documentation for her left wrist condition. This report does not meet appellant's burden of proof. Dr. Yokoyama, failed to explain the discrepancies between her April 16, 1999 report in which she attributed appellant's left wrist condition to her employment duties and her current position that the left wrist injury was clearly attributable to appellant's September 12, 1997 employment injury. Without a clear description of how and whether appellant's current left wrist condition is due to her employment, either as a result of an occupational disease or due to her September 12, 1997 employment injury, Dr. Yokoyama's reports are not sufficient to meet appellant's burden of proof.

Appellant also submitted three reports from Dr. Lee R. Schreiber, a Board-certified family practitioner, dated May 26 and August 2, 2000 and January 2, 2002. In his initial report, Dr. Schreiber stated that appellant experienced severe shoulder, arm and leg pain since January 2000. On August 2, 2000 Dr. Schreiber noted appellant's employment injury on September 12, 1997 and diagnosed upper body, shoulder and arm injuries. On January 2, 2002 Dr. Schreiber stated that appellant had injured her left shoulder and left wrist in a fall in 1997. These reports do not provide a detailed history of injury and a description of how appellant's alleged left wrist condition resulted from her fall. As Dr. Schreiber did not treat appellant prior to January 14, 2000 he lacks personal knowledge of her conditions at the time of her employment injury and has not indicated that he reviewed the medical records in reaching his conclusions. Furthermore, Dr. Schreiber apparently believes that appellant injured her left rather than right shoulder and these discrepancies lessen the probative value of his reports. Due to the lack of history, medical findings and medical reasoning these reports are not sufficient to meet appellant's burden of proof.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(B)(1) (January 1995).

The decision of the Office of Workers' Compensation Programs dated April 8, 2003 is hereby affirmed.

Dated, Washington, DC
September 10, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member