



## **FACTUAL HISTORY**

On January 25, 1991 appellant, then a 32-year-old letter sorting machine clerk, filed an occupational disease claim (case number 9-352855), alleging that she sustained upper extremity injuries due to repetitively typing and handling mail for 8 to 10 hours per day at work. She alleged that she first developed these injuries on November 21, 1990. The Office accepted that she sustained left wrist tendinitis, left medial epicondylitis, left trapezius and shoulder strains, left shoulder impingement, myofascial pain syndrome and bilateral carpal tunnel syndrome. Appellant received compensation for various periods of partial and total disability. On September 3, 1991 she filed an occupational disease claim alleging injury to her right upper extremity. The claim was accepted for right wrist and forearm tendinitis.<sup>1</sup> In November 1998, appellant underwent left shoulder decompression and left carpal tunnel release surgery which was authorized by the Office.<sup>2</sup>

After working in part-time positions for the employing establishment, appellant started working full time as a modified general clerk in June 1999.<sup>3</sup> The job involved such tasks as answering telephones, engaging in light filing and making photocopies. It did not require lifting more than 5 pounds, typing more than one half hour in the morning and one half hour in the evening or engaging in overhead work, reaching, repetitive hand motions, pushing and pulling.

Appellant stopped work on October 8, 2001 and claimed that she sustained a recurrence of total disability due to her accepted employment injuries.<sup>4</sup>

In support of her recurrence of disability claim, appellant submitted several reports of Dr. Margaret R. Atterbury, an attending Board-certified internist. In a report dated December 12, 2001, she stated that appellant had bilateral shoulder tendinitis, epicondylitis, wrist tendinitis and carpal tunnel syndrome due to her past work as a postal clerk. She stated, "I am writing this letter because [appellant] has been unable to work due to her work[-]related conditions since October 8, 2001." Dr. Atterbury indicated that appellant had experienced continuous pain, numbness and tingling in both hands with more symptoms in the right hand than the left hand for the past two years.

In a report dated February 20, 2002, Dr. Atterbury indicated that appellant's hand condition had improved although she reported continued pain, numbness and tingling in both hands. She diagnosed bilateral epicondylitis, shoulder tendinitis, wrist tendinitis and carpal

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<sup>1</sup> This claim was give the separate case number of 9-359554.

<sup>2</sup> By decision dated October 20, 1998, the Office granted appellant a schedule award for an eight percent permanent impairment of her right arm. By decision dated April 9, 2001, the Office granted her a schedule award for an additional 4 percent permanent impairment of her right arm and a 45 percent permanent impairment of her left arm. On June 24, 2003 the Office determined that appellant was not entitled to any additional schedule award. She did not appeal the Office's June 24, 2003 decision to the Board and this matter is not currently before the Board.

<sup>3</sup> Appellant began working in a limited-duty job at the employing establishment for four hours per day in December 1998 and then increased to working six hours per day in March 1999.

<sup>4</sup> Appellant retired from the employing establishment effective June 24, 2002.

tunnel syndrome which was “ongoing and precipitated by past work as a postal clerk.” In a report dated May 13, 2002, Dr. Atterbury stated that even with appellant’s light-duty jobs “her right hand pain became so severe in October 2001, that she was unable to return to work at all.” She indicated that appellant exhibited symptoms such as pain on abduction and internal rotation of the right shoulder and tenderness over the volar aspects of the wrists and the medial epicondyles and indicated that her current problems began when she was a letter sorting machine operator. In a form report dated May 29, 2002, Dr. Atterbury stated that appellant’s bilateral epicondylitis, shoulder tendinitis, wrist tendinitis and carpal tunnel syndrome were due to the “November 21, 1990 injury” and indicated that she had been totally disabled since October 8, 2001.

In an August 19, 2002 report, Dr. Atterbury stated that, while appellant’s condition had improved slightly since she stopped work, she continued to have pain and tingling in her hands and pain and numbness in her left shoulder which awakened her at night. She noted that the pain in appellant’s hand, especially on the right, “became so severe in October of 2001 that she was unable to continue her job even on restricted duty.”

By decision dated July 9, 2002, 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 total disability on or after October 8, 2001 due to her employment injuries.

Appellant requested a hearing before an Office hearing representative which was held on February 26, 2003. By decision dated and finalized June 25, 2003, the Office hearing representative affirmed the Office’s July 9, 2002 decision.<sup>5</sup>

On July 22, 2003 appellant filed an occupational disease claim alleging that, at some point prior to October 8, 2001, she sustained a new upper extremity injury due to her job duties which caused her to stop work on October 8, 2001.<sup>6</sup> By decision dated September 16, 2003, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a new injury as alleged.

On September 30, 2003 appellant submitted a September 3, 2003 report in which Dr. Atterbury stated that she had a history of left shoulder tendinitis, bilateral epicondylitis, wrist tendinitis and carpal tunnel syndrome which were diagnosed in 1990 as a result of her work as a postal clerk. She indicated that appellant had been totally disabled since October 2001 at which time she was unable to tolerate even light-duty work due to her upper extremity pain. Dr. Atterbury noted that appellant continued to have symptoms in her upper extremities such as pain upon internal and external rotation of the right shoulder and tenderness over the medial and lateral epicondyles. She generally noted that typing can result in upper extremity tendinitis and carpal tunnel syndrome.

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<sup>5</sup> By decision dated September 9, 2003, the Office denied appellant’s July 16, 2003 request for reconsideration of her claim. She did not appeal this decision to the Board and the matter is not currently before the Board.

<sup>6</sup> The case was given the case number 9-2036527. Appellant suggested that she improperly characterized her October 2001 claim as a claim for recurrence of disability and indicated that she should have filed a claim for a new injury. The files for case numbers 9-352855, 9-359554 and 9-2036527 have all been combined under the master case number 9-352855.

By decision dated December 10, 2003, the Office affirmed its September 16, 2003 decision on the grounds that appellant did not submit sufficient medical evidence to establish that she sustained a new injury as alleged.<sup>7</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

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 job requirements.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

In the present case, the Office accepted that appellant sustained bilateral wrist tendinitis, right forearm tendinitis, left medial epicondylitis, left trapezius and shoulder strains, left shoulder impingement, myofascial pain syndrome and bilateral carpal tunnel syndrome in 1990 and 1991, during a period when she was required to type for 8 to 10 hours per day. In August 1999, appellant began working a light-duty clerical job for the employing establishment which did not require lifting more than five pounds, typing more than one half hour in the morning and one half hour in the evening, or engaging in overhead work, reaching, repetitive hand motions, pushing and pulling. Appellant later claimed that she sustained a recurrence of total disability on October 8, 2001 due to her accepted employment injuries.

Appellant submitted several reports in which Dr. Atterbury indicated that she sustained a recurrence of total disability on October 8, 2001 due to her accepted employment injuries. For example, in a report dated December 12, 2001, Dr. Atterbury stated that appellant was unable to work due to her work-related conditions since October 8, 2001. In a form report dated May 29, 2002, she stated that appellant's bilateral epicondylitis, shoulder tendinitis, wrist tendinitis and carpal tunnel syndrome were due to the "November 21, 1990 injury" and indicated that she had been totally disabled since October 8, 2001. In reports dated May 13 and August 19, 2002, Dr. Atterbury noted that, even with her light-duty jobs, appellant's bilateral hand pain became so severe in October 2001 that she was unable to return to work.

These reports, however, are of limited probative value regarding appellant's claimed recurrence of disability in that Dr. Atterbury did not provide adequate medical rationale in

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<sup>7</sup> The Office indicated that it was affirming its September 16, 2003 decision as modified to reflect that the basis of denial of appellant's claim was changed from the grounds of failure to establish fact of injury to the grounds of failure to present medical evidence establishing causal relationship between employment factors and the claimed conditions. In fact, the September 16, 2003 decision denied appellant's claim due to her failure to submit medical evidence establishing causal relationship.

<sup>8</sup> *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986). The medical evidence must contain medical rationale explaining how the recurrence of total disability was related to the accepted employment injury. See *Judd* at 250.

support of her conclusions on causal relationship.<sup>9</sup> Although she noted that appellant continued to have symptoms, including pain and numbness in her hands and shoulders which caused her to awake at night, she did not detail the medical process through which appellant's medical condition worsened such that she was no longer able to perform her light-duty work. Dr. Atterbury did not describe the light-duty position appellant held on October 8, 2001 in any detail or explain why appellant could not perform its physical tasks which only required very limited use of the upper extremities. She emphasized appellant's continued symptoms but did not present sufficient objective medical findings on examination or diagnostic testing to show that her upper extremity condition had worsened in any significant manner. Dr. Atterbury appears to have relied heavily on appellant's subjective assertion that the pain in her upper extremities prevented her from performing her light-duty work. Therefore, appellant has not shown a change in the nature and extent of her injury-related condition. Moreover, she has not shown a change in the nature and extent of her light-duty job requirements.

### **LEGAL PRECEDENT -- ISSUE 2**

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>10</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

In the present case, appellant also alleged that she sustained a new occupational injury, *i.e.*, an injury other than the injuries that were accepted as occurring in 1990 and 1991 that caused her to stop work on October 8, 2001. However, she did not submit sufficient medical

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<sup>9</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>10</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>11</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). The medical evidence must contain a rationalized medical opinion explaining how the accepted employment factors caused or contributed to the claimed occupational injury. *See id.*

evidence to establish that she sustained such a new occupational injury. In support of this claim, appellant submitted a September 3, 2003 report in which Dr. Atterbury stated that she had a history of left shoulder tendinitis, bilateral epicondylitis, wrist tendinitis and carpal tunnel syndrome which were diagnosed in 1990 as a result of her work as a postal clerk. Dr. Atterbury indicated that appellant had been totally disabled since October 2001 at which time she was unable to tolerate even light-duty work due to her upper extremity pain. Although Dr. Atterbury generally noted that typing can result in upper extremity tendinitis and carpal tunnel syndrome, she did not provide any indication that the extremely limited duties appellant performed in the years prior to her work stoppage on October 8, 2001 caused or contributed to a new occupational injury. Dr. Atterbury made note of appellant's continuing upper extremity symptoms, but the fact that a condition manifests itself or worsens during a period of employment<sup>12</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>13</sup> does not raise an inference of causal relationship between a claimed condition and employment factors.

### **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 October 8, 2001 due to her employment injuries. The Board further finds that appellant did not meet her burden of proof to establish that she sustained a new occupational injury prior to October 8, 2001, other than those which had been previously accepted.

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<sup>12</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>13</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 10, September 16 and June 25, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 14, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member