

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

BEVERLY DARK, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Las Vegas, NV, Employer**

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**Docket No. 04-140
Issued: May 4, 2004**

Appearances:
Joseph James, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 22, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 22, 2003, denying her claim for a recurrence of disability.¹ Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ The Board notes that the record contains additional final decisions which are not the subject of the current appeal. In a decision dated September 24, 2003, on remand from the Board, the Office denied appellant's claim for an employment-related emotional condition. In a decision dated October 9, 2003, the Office denied appellant's claim for an increased schedule award. These decisions were issued within one year prior to appellant's appeal to the Board. *Shakeer Davis*, 52 ECAB 448 (2001). However, on appeal appellant's attorney specifically stated that appellant wished to appeal the Office's August 22, 2003 decision. Therefore, the Office's decisions dated September 24 and October 9, 2003 will not be addressed in the instant decision.

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability on September 30, 2002 due to her accepted bilateral carpal tunnel syndrome.

FACTUAL HISTORY

On July 10, 1996 appellant, then a 33-year-old data conversion operator (DCO), filed an occupational disease claim, Form CA-2, alleging that she developed carpal tunnel syndrome as a result of her employment duties. On September 10, 1996 the Office accepted appellant's claim for bilateral carpal tunnel syndrome and carpal tunnel release. Appellant stopped work on June 9, 1997. Appellant underwent release surgery on the right wrist in June 1997, and surgery on the left wrist in September 1997. She returned to light-duty work on January 28, 1998. In a decision dated December 10, 1998, the Office found that appellant had no loss of wage-earning capacity and terminated her entitlement to compensation. On February 3, 1999, however, appellant again stopped work and filed a claim for a recurrence of disability. The Office accepted appellant's claim for a recurrence of disability and returned appellant to the compensation rolls until October 14, 1999, when she accepted a full-time light-duty job offer and returned to work.

In a decision dated December 23, 1999, the Office granted appellant schedule awards for a 20 percent permanent impairment of both her right and left upper extremities.

On September 7, 2001 appellant accepted the employing establishment's offer of a new position as a modified DCO, in accordance with the restrictions set forth by her treating physician. The position was to be performed between 2:30 p.m. and 11:00 p.m. on Mondays, and from 1:00 p.m. to 9:30 p.m. Tuesday through Friday. The position involved the following duties and responsibilities: "Strikeout barcodes at modified case; do breaker cards at automation desk; process outgoing letter mail at modified case; other duties as assigned within strict confines of physician's limitations." The physical requirements of the limited-duty position included: "Sit at modified case, drawing a line through the barcode with the use of a black magic marker; pick up one breaker card at a time putting in rack according to color and zone; work with letter mail into letter case one letter at a time."

After performing the light-duty job for a year, on September 19, 2002, appellant filed a claim for a recurrence of disability beginning October 27, 2002. Appellant subsequently filed a Form CA-7 claim for compensation beginning September 30, 2002 and continuing, indicating that she stopped work on that date. Appellant asserted that while she was on limited duty she was not to perform anything repetitious and was to be allowed frequent breaks, but that management refused to honor her physical restrictions since 1999. Appellant added that she sustained a right knee contusion due to a fall which resulted from management's refusal to follow her restrictions. Appellant experienced the same symptoms of pain, numbness, tingling and weakness since her original injury. She submitted a portion of a September 13, 2002 grievance settlement which she stated proved that management had violated her medical restrictions, and also submitted medical evidence from her treating physicians, Dr. Larry D. Brown, a Board-certified family practitioner, and Dr. Michael G. Brown, a Board-certified hand surgeon. Appellant asserted that since December 2001 her limited-duty position had gotten

harder, and she was required to perform tasks outside of her current job offer and outside of her medical restrictions, specifically fine manipulative work such as cutting addresses off magazines and addressing envelopes with a pen. Appellant asserted that she had witnesses to her receiving a direct order to perform this work.

In a decision dated November 21, 2002, the Office denied appellant's claim. Appellant requested reconsideration and submitted additional medical evidence in support of her request. In a decision dated December 5, 2002, the Office denied modification of the November 21, 2002 decision.

On January 9, 2003 appellant requested reconsideration and submitted additional evidence in support of her request. In a decision dated March 3, 2003, the Office denied modification of the December 5, 2002 decision. By letter dated April 24, 2003, appellant again requested reconsideration and submitted additional evidence in support of her request. In a decision dated June 26, 2003, the Office denied modification of the March 3, 2003 decision.

By letter dated August 6, 2003, appellant requested reconsideration and submitted additional evidence in support of her request. In a decision dated August 22, 2003, the Office denied modification of the June 26, 2003 decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or 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 he or 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.² This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³ Causal relationship is a medical issue⁴ and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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

² *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ *Ricky S. Storms*, 52 ECAB 349 (2001).

⁴ *Roger Williams*, 52 ECAB 468 (2001).

⁵ *Albert C. Brown*, 52 ECAB 152 (2000).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

Appellant alleged that there was a change in the nature and extent of the light-duty job requirements, in that she was required to perform fine manipulative work outside of the physical restrictions as set forth by her physicians. The record shows that following her initial work stoppage and surgery on October 15, 1999 appellant returned to work in a limited-duty capacity with specified work restrictions. On September 7, 2001 she began performing her most recent limited-duty position as a modified DCO clerk. Appellant worked until September 30, 2002, when she stopped work and alleged that she continued to experience symptoms of pain, tingling and numbness which she attributed to the accepted carpal tunnel syndrome. She alleged that she had been required to perform fine manipulative tasks in violation of her medical restrictions.

The Board finds, however, that the record does not contain any evidence that appellant was required to work outside of her medical restrictions. The September 13, 2002 settlement agreement provides, in relevant part: "In an effort to resolve this grievance at the lowest level, the Union and Management resolve that the USPS honor the grievant's medical restrictions." As this agreement does not contain any admission of error on the part of the employing establishment, it is insufficient to establish that appellant was being required to perform tasks outside of her medical restrictions. Moreover, the settlement agreement is predicated on activity which is alleged to have occurred prior to September 13, 2002, which does not lend support to appellant's work stoppage on September 30, 2002.⁷ While appellant stated that a colleague witnessed her being ordered to perform fine manipulative work, appellant did not provide a statement from any witness to support her allegation. The record contains several statements from appellant in which she asserted that she should not be required to work past 9:30 p.m., which her limited-duty position required on Mondays. The Board notes that appellant had performed this shift since accepting the light-duty position on September 7, 2001. Appellant did not allege, either on her claim form or in her various narrative statements that she stopped work on September 30, 2002 due to her inability to continue to perform work past 9:30 p.m. on Monday nights. The record contains statements from Dr. Larry D. Brown, dating from August 2001, prior to appellant's acceptance of her limited-duty position, to May 8, 2003, in which the physician noted that, as she was required to take medication which could cause drowsiness, it was recommended that she work a day shift. Dr. Brown did not state that appellant stopped work on September 30, 2002 as a result of her late Monday night shift. The record does not establish that the claimed September 30, 2002 recurrence of total disability was caused by a change in the nature or extent of the light-duty job requirements.

In support of her claim that she suffered a worsening of her accepted injury-related conditions such that she could no longer perform her light-duty work beginning September 30,

⁶ *Claudio Vazquez*, 52 ECAB 496 (2001); *Manuel Gill*, 52 ECAB 282 (2001).

⁷ See *Ricky S. Storms*, *supra* note 3.

2002, appellant submitted numerous medical reports from her treating physicians.⁸ The most relevant of these reports are those of Dr. Michael G. Brown, appellant's hand surgeon. The most contemporaneous reports include treatment notes dated September 16, 2002 in which the physician noted that appellant's carpal tunnel release might have to be surgically redone and ordered nerve conduction studies. He released appellant to return to work, noting that she would return for an evaluation on September 30, 2002, and that surgery was planned for October 1, 2002. Electrodiagnostic testing, including nerve conduction studies (NCS) and electromyography (EMG) was performed on September 23, 2002 and revealed normal results, with no ulnar, radial or median neuropathy of the right or left upper extremities, and no electrodiagnostic evidence of right or left cervical radiculopathy. Therefore, surgery was cancelled.⁹ On September 30, 2002 Dr. Michael Brown recommended that appellant not return to work and receive therapy for palmar wound tenderness. The physician noted that she would return for an evaluation on August 28, 2002. Dr. Michael Brown prescribed therapy 1 to 3 times per week for 12 weeks with a goal of desensitizing appellant's scar tissue. An accompanying undated and unsigned attending physician's report from Dr. Michael Brown's office contained a diagnosis of employment-related bilateral carpal tunnel syndrome and indicated that she was totally disabled for the period September 30 through October 28, 2002. However, neither the treatment notes nor the accompanying form contains any discussion of the reason for appellant's September 30, 2002 work stoppage.

On October 28, 2002 Dr. Michael Brown indicated that appellant remained totally disabled and would return for further evaluation on November 25, 2002, but did not address the cause of appellant's disability for work. On October 28, 2002 Dr. Steven Schierman, a plastic surgeon and Dr. Michael Brown's associate, diagnosed employment-related tenosynovitis and indicated that appellant was totally disabled for the period October 28 to November 28, 2002. However, this report did not discuss the cause of appellant's inability to work. Moreover, Dr. Schierman made a diagnosis of a condition not accepted by the Office as causally related to appellant's federal employment.

⁸ In addition to the medical reports discussed herein, the record contains numerous treatment notes and form reports which are not germane to the specific issue in this claim, *i.e.*, whether appellant suffered a recurrence of disability on September 30, 2002, causally related to her accepted carpal tunnel syndrome, such that she could no longer perform her light-duty job. The majority of these reports are either not contemporaneous to appellant's September 30, 2002 claimed recurrence or are completely undated, do not discuss her ability to work, discuss one of her other claimed medical conditions, were not prepared by a physician, are illegible, or were received subsequent to the Office's August 22, 2003 final decision on the instant claim. *Ricky S. Storms, supra* note 3; *Brady L. Fowler*, 44 ECAB 343 (1992) (the opinion of a physician is not relevant or probative in adjudicating a recurrence of disability where the report predated the period of alleged recurrent disability); *Peggy Ann Lightfoot*, 48 ECAB 490 (1997) (section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (a physical therapist's reports are not medical evidence as a physical therapist is not a physician under the Act); *Vicky L. Hannis*, 48 ECAB 538 (1997) (a nurse is not a "physician" under the Act and thus cannot render a medical opinion on the causal relationship between a given physical condition and implicated factors); *Albert C. Brown, supra* note 5; *James A. Long*, 40 ECAB 538 (1989) (medical evidence which fails to address causal relationship and discusses other physical complaints not accepted by the Office as employment related is insufficient to establish a claim for recurrence).

⁹ By telephone call conducted on October 23, 2002, the Office confirmed that appellant did not undergo repeat carpal tunnel surgery as originally planned for October 1, 2002.

In an unsigned November 11, 2002 narrative report from the office of Dr. Michael Brown and Dr. Schierman, the physicians noted that appellant had been taken off work from September 30 through November 4, 2002. Their pertinent treatment notes provided:

“September 16, 2002 initial office visit. Patient complains of bilateral hand pain with numbness and tingling for the past 7 years. EMG/NCS of bilateral upper extremity ordered to rule out recurrent carpal tunnel syndrome. Possible carpal tunnel release, open, redo, if needed. Return to work regular duty.

“September 30, 2002 follow-up visit. Patient continues to complain of bilateral hand pain, numbness and tingling. EMG/NCS results were negative for carpal tunnel syndrome. Patient ordered therapy for palmar wound tenderness for four weeks and anti-inflammatories. Off work, September 30, 2002 -- October 28, 2002. Increasing pain with work activity. I feel the patient would not benefit from therapy, if utilizing the injured area on a daily basis for any time frame.

“October 28, 2002 follow-up visit. Patient continues with bilateral hand pain, worsening. Examination from previous office visit unchanged. Patient continues with limited range of motion. Continue with therapy and anti-inflammatories. Off work, October 28 -- November 4, 2002. Same as previous visit.

“Return to work, light duty. Restrictions -- no use of the left or right hand. Following functional capacity examination, the patient’s functional ability to perform her current job duties should be addressed by her supervisor. I feel this patient may not be able to perform her present job description without causing further injury.”

A functional capacity evaluation was performed on December 11, 2002. The report determined that appellant was able to work at a sedentary-light physical demand level for activities above the waist, and a light physical demand level below the waist. The report noted that appellant was not qualified to return to her job as a postal clerk, which is classified at the light physical demand level by the *Dictionary of Occupational Titles*. The report concluded that appellant was unable to meet the nonmaterial handling demands of constant reaching out, and was also unable to perform frequent walking and standing, which also did not qualify her to return to her previous job.

In form reports dated December 12 and 13, 2002, Dr. Schierman released appellant to return to work within the restrictions set forth in the functional capacity evaluation. On December 13, 2002 Dr. Schierman stated, in pertinent part, that appellant’s care for neuropathy entrapment median and tenosynovitis was completed, that she had reached maximum medical improvement, but that she might experience exacerbations in the future which would require additional care.

The Board has held that generally, findings on physical examination are needed to justify a physician’s opinion that an employee is disabled for work.¹⁰ The Board has also held that the

¹⁰ *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

fact that work activities produced pain or discomfort revelatory of an underlying condition does not raise an inference of causal relation.¹¹ In their narrative report dated November 11, 2002, Dr. Michael Brown and Dr. Schierman indicated that appellant's September 23, 2002 electrodiagnostic studies were negative for carpal tunnel syndrome, and stated that the decision to enroll appellant in physical therapy was based on her continued complaints of pain, numbness and tingling. While the physicians attempted to explain their decision to take appellant off work completely, despite the fact that therapy was only conducted three times a week, by stating that they felt appellant would not benefit from therapy if utilizing the injured area on a daily basis for any time frame, the physicians did not explain this conclusion or provide adequate medical reasoning in support of their opinion.¹² Neither Dr. Michael Brown nor Dr. Schierman explain what aspect of appellant's light-duty job, which required that she sit at a modified case, drawing a line through the barcode with the use of a black magic marker, pick up one breaker card at a time putting in rack according to color and zone, and work with letter mail into letter case one letter at a time, they felt she could not perform.¹³

The December 11, 2002 functional capacity evaluation revealed that appellant could not return to work as a postal clerk because she was only able to work at a sedentary light-physical demand level for activities above the waist, and a light-physical demand level below the waist, while the postal clerk position was classified at the light-physical demand level. It also revealed that she was unable to meet the nonmaterial handling demands of constant reaching out, and frequent walking and standing. The Board notes, however, that, as the evaluation was performed almost three months after appellant stopped work on September 30, 2002 it is directly relevant to appellant's physical condition on the date she stopped work.¹⁴ While the evaluation sets forth that appellant cannot return to work, a comparison between the physical restrictions upon which the light-duty position is based, and the level at which appellant was able to perform as determined by the functional capacity evaluation, reveals that the light-duty position was entirely consistent with her abilities. There is no indication in the job description that the position required constant reaching out or frequent walking and standing, rather, these tasks were to be performed intermittently only one to two hours per day.

The remainder of Dr. Michael Brown's and Dr. Schierman's reports consist of treatment notes and form reports which indicate that appellant was totally disabled due to her employment-related conditions but offer no rationalized opinion relating her disability to the accepted carpal

¹¹ *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹² Medical conclusions unsupported by rationale are of diminished probative value. *Albert C. Brown*, *supra* note 5.

¹³ *See Charles E. Evans*, 48 ECAB 692 (1997).

¹⁴ *Robin L. Brainard*, 43 ECAB 329 (1991) (holding that reports most contemporaneous with the date of injury are the most reliable indicators of the period of disability).

tunnel syndrome.¹⁵ Dr. Michael Brown and Dr. Schierman did not state that appellant's accepted condition worsened after her return to work such that she could no longer perform her light-duty job. Their reports are insufficient to establish appellant's claim for a recurrence of disability.

The record also contains several reports from Dr. Larry D. Brown, appellant's family practitioner. On a July 29, 2002 work restriction evaluation form completed approximately two months prior to her claimed recurrence of disability, Dr. Larry Brown noted that appellant could continue to work eight hours a day with restrictions similar to those provided by her light-duty job, but indicated that appellant's medication might cause drowsiness.

On April 7, 2003 Dr. Larry Brown addressed appellant's September 30, 2002 work stoppage, stating:

"[Appellant] has asked that I write a letter in her behalf regarding recent decisions related to her employment injury and current condition. [She] has a history of bilateral wrist pain with previous carpal tunnel surgery performed but continues to be symptomatic. She has been referred to the hand specialist, Dr. Michael Brown in Houston, Texas, with apparent recommendation for physical therapy.

A review of the notice of decision indicates that you are in possession of notes from Dr. Brown. Therefore, I will not reiterate his findings. Per Dr. Brown's note, he indicated a release from work in September through November 4. Therapy was recommended at that time to see if the patient's symptoms would improve. [Appellant's] pain is felt to be secondary to repetitive use of her hands and wrists, even though being on a light-duty profile and these restrictions being followed. The repetitive nature of her work is felt to be a triggering factor with flare-ups or periods of exacerbations to be expected. It is recommended that the patient be granted coverage during this time period that she was off of work, as she was undergoing therapy and continued to be symptomatic. The patient now needs to be compensated for lost wages or offered a suitable job within her continued limitations. In addition, the patient continues to be disabled as a result of her injury dated June 25, 1996 that is more or less permanent with no significant resolution of her pain or decrease in her disability despite rest, treatment, therapy and medication."

In a final narrative report of record dated May 8, 2003, Dr. Larry Brown stated:

"This patient continues to require medications that may cause drowsiness. Therefore, it is recommended a work schedule, *i.e.*, shift, that would minimize the likelihood of excessive sedation associated with driving to and from work. She

¹⁵ These reports are not sufficient to meet appellant's burden of proof, however, as they either do not discuss the cause of appellant's recurrence of disability, or indicate by check mark that appellant's disabling conditions were caused by her employment. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish a claim. *Gary J. Watling*, 52 ECAB 278 (2001); *Beverly J. Duffey*, 48 ECAB 569 (1997); *Lee R. Haywood*, 48 ECAB 145 (1996).

also needs to continue her restrictions in terms of lifting, climbing, walking, and sitting as previously outlined on Form OWCP-5.”

In an accompanying work restriction evaluation form, Dr. Larry Brown indicated that appellant could work eight hours a day, within certain restrictions, and noted that her medications might cause drowsiness.

While Dr. Larry Brown recommended that appellant be granted compensation for the period beginning September 30, 2002, as she was undergoing therapy and continued to be symptomatic, he did not offer any explanation as to why appellant needed to be off work while she attended therapy three days a week. The physician also stated that the repetitive nature of appellant’s work was felt to be a triggering factor with flare-ups or periods of exacerbations to be expected. However, the description of appellant’s light-duty job, which she performed until September 30, 2002, does not reflect such repetitive duties. With respect to Dr. Larry Brown’s recommendation that appellant work a shift which did not exacerbate her drowsiness, he again did not state that appellant’s work stoppage on September 30, 2002 was causally related to her inability to work late hours.

Appellant has submitted insufficient medical evidence, supported by medical rationale and objective findings to establish that her condition has worsened to cause total disability as of September 30, 2002. Furthermore, the record contains no medical evidence that appellant was no longer able to perform her light-duty job. As appellant has failed to establish that she had a change in the nature or extent of her modified duties and did not submit a rationalized medical report based on a complete factual and medical background establishing a change in the nature or extent of her employment-related conditions such that she could no longer perform her full-time limited-duty job, the Board finds that she has failed to discharge her burden of proof.¹⁶

CONCLUSION

Appellant has failed to submit rationalized medical evidence establishing that she sustained a recurrence of disability beginning September 30, 2002, causally related to her accepted employment injuries.

¹⁶ *Alberta S. Williamson*, 47 ECAB 569 (1996).

ORDER

IT IS HEREBY ORDERED THAT the August 22, June 26 and March 3, 2003, and December 5 and November 21, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 4, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member