United States Department of Labor
Employees' Compensation Appeals Board

TERRI L. WASHINGTON, Appellant	)	
and	)	**Docket No. 05-722**
	)	**Issued: August 10, 2005**
SOCIAL SECURITY ADMINISTRATION, REGION IX, Richmond, CA, Employer	)	

Appearances:
Terri L. Washington, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On February 3, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 7 and 8, and November 12, 2004 merit decisions denying her claim for recurrence of total disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained recurrences of total disability for the periods January 9 to February 2, 2004 and March 31 to June 12, 2004.

FACTUAL HISTORY

On April 7, 1989 appellant, then a 28-year-old secretary, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome due to the repetitive duties of her job. The Office accepted that appellant sustained bilateral carpal tunnel syndrome and paid compensation for periods of disability. Appellant underwent a right carpal tunnel release on

May 31, 1989 and a left carpal tunnel release on April 10, 2003. Both procedures were authorized by the Office and were performed by Dr. William C. Lyon, an attending Board-certified orthopedic surgeon.

After her April 10, 2003 surgery, appellant returned to light-duty work on May 28, 2003 for four hours per day and then increased her hours to six hours per day on July 19, 2003. Appellant was initially restricted from lifting, pushing or pulling more than 25 pounds; when she began working 6 hours per day she was restricted from lifting, pushing or pulling more than 15 pounds. Appellant received compensation from the Office for partial disability.

Appellant stopped work for the period January 9 to February 2, 2004, worked in her limited-duty position for six hours per day between February 3 and March 30, 2004, and then stopped work again on March 31, 2004. She claimed that she sustained total disability due to her accepted bilateral carpal tunnel syndrome during these periods.[1]

Appellant submitted a January 9, 2004 note in which Dr. Lyon stated that appellant was off work through January 31, 2004 "pending EMG [electromyogram] report from Dr. Brian Richardson, an attending Board-certified neurosurgeon, and return visit to my office." In a report dated January 9, 2004, Dr. Lyon stated that appellant reported that Dr. Richardson told her there was electrical evidence that her right carpal tunnel syndrome might be recurring and that she might need another surgery on the right. Dr. Lyon stated:

> "Given the patient's statements in regards to what Dr. Richardson has concluded, I am going to take her off work until I get a copy of his report. I'll get her back once I have a copy of the report and will keep you informed of her course. She is off work at this point until I can find out what the neurologist actually said."

In a report dated January 30, 2004, Dr. Lyon noted that Dr. Richardson reported that appellant had mild right carpal tunnel syndrome. Dr. Lyon indicated that there was no need to "push" appellant into surgery and stated, "It seems quite safe for her to live with the hand the way it is." He noted that appellant's left wrist had clinically improved and indicated that he was releasing appellant to return to work on February 2, 2004.

In a report dated February 4, 2004, Dr. Lyon stated that appellant reported it was her left hand, rather than her right hand, that "limits her at work." He noted that after his examination he did not "see things that worry me" and indicated that appellant had "good range of motion and decent sensation." Dr. Lyon recommended that appellant receive an opinion from another surgeon.[2]

In a report dated March 31, 2004, Dr. Lyon stated that appellant reported that her left arm might be improving but that she experienced increased pain and numbness in her right arm. He

[1] Appellant returned to work on June 13, 2004 for eight hours per day with restrictions, so she later claimed that her last period of total disability extended from March 31 to June 12, 2004.

[2] The record contains another February 4, 2004 report of Dr. Lyon which contains similar findings.

noted that on examination appellant exhibited good or excellent upper extremity motion except for some limitation of wrist flexion and extension. Dr. Lyon stated:

> "Given the amount of trouble she is having getting by at work, I think the smartest thing to do is to take her off work at this point, let her see Dr. Schmitz, and let's act on Dr. Schmitz' recommendations and send her back to work when she is more comfortable.
>
> "Therefore, I'm taking her off work now and returning her to work after Dr. Schmitz has had a chance to express his opinion and make his recommendations."[3]

The Office ultimately referred appellant to Dr. Glenn B. Pfeffer, a Board-certified orthopedic surgeon. In a report dated April 19, 2004, he stated that appellant reported that the numbness and tingling was essentially gone from both hands but that she had some residual tingling in her right dominant index finger and pain in both wrists. Dr. Pfeffer indicated that appellant had a negative Tinel's sign and "few if any symptoms of her carpal tunnel syndrome." He indicated that appellant could work 8 hours per day with restrictions from lifting more than 10 pounds, engaging in repetitive wrist motion for more than 4 hours per day, and typing for more than 30 minutes without a 30-minute rest period. Dr. Lyon stated:

> "[Appellant] was off January 9 through January 23. At that time, she had total temporary disability. She was taken off because of a flare-up of her pain in her left wrist. I think that period of total temporary disability is reasonable."[4]

By decision dated June 7, 2004, the Office determined that appellant did not meet her burden of proof to show that she sustained a recurrence of total disability beginning March 31, 2004.[5] By decision dated June 8, 2004, the Office determined that appellant did not meet her burden of proof to show that she sustained a recurrence of total disability for the period January 9 to February 2, 2004.

Appellant submitted a June 9, 2004 report addressed to the Office in which Dr. Lyon stated that he agreed with Dr. Pfeffer that she needed to go back to work. Dr. Lyon noted, "She has been off work this year under specific dates because of specific flares of pain. She has been off work since March 31, 2004 until now in an effort for you to arrange for me to obtain appropriate consultative opinion." He indicated that he was releasing appellant to return to work on June 13, 2004 for eight hours per day under the restrictions recommended by Dr. Pfeffer. Dr. Lyon stated that he took appellant off work because he "needed an explanation from a second opinion physician which wasn't available to me until today" and noted that he was

[3] Appellant had been scheduled for a second opinion examination by Dr. Thomas Schmitz, a Board-certified orthopedic surgeon.

[4] The record also contains an April 26, 2004 report in which Dr. Lyon indicated that he expected to release appellant for work as soon as he received the report from Dr. Pfeffer.

[5] The Office inadvertently indicated that appellant was claiming total disability beginning April 5, 2004, but the record clearly indicates that she stopped work on March 31, 2004 and claimed total disability beginning that date.

releasing appellant to work because he now had that explanation after receiving Dr. Pfeffer's report. He stated that the way appellant "was doing work was too strong for her because the trouble was increasing when she did that amount of work" and indicated that he thought that "her work-caused trouble was indeed flared by her work activities." He concluded that therefore it was appropriate to state that appellant "left work because of the worsening employment[-]related condition."[6]

Appellant requested a review of the written record by an Office hearing representative.

By decision dated and finalized November 12, 2004, the Office hearing representative affirmed the Office's June 7 and 8, 2004 decisions. The hearing representative determined that the medical evidence did not show that appellant sustained recurrences of total disability for the periods January 9 to February 2, 2004 and March 31 to June 12, 2004.

LEGAL PRECEDENT

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.[7]

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome due to her work duties and she underwent a right carpal tunnel release on May 31, 1989 and a left carpal tunnel release on April 10, 2003. Appellant began working for six hours per day with restrictions from lifting, pushing or pulling more than 15 pounds and received compensation from the Office for partial disability. She claimed that her employment-related condition worsened such that she sustained recurrences of total disability for the periods January 9 to February 2 and March 31 to June 12, 2004. Appellant did not submit sufficient medical evidence to establish that she sustained recurrences of total disability for these periods.

Appellant submitted several reports in which Dr. Lyon, an attending Board-certified orthopedic surgeon, took her off work for various periods. However, these reports are of limited probative value on the relevant issue of the present case because they do not contain a clear, well-rationalized opinion that appellant could not perform her limited-duty position due to an

[6] In a report dated July 28, 2004, Dr. Lyon stated that appellant reported that she felt she was unable to work eight hours per day without needing to ice her hands but that she was able to work six hours per day. He recommended that appellant work six hours per day for the next three months and indicated that it might become a permanent restriction.

[7] *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

objective worsening of her employment-related carpal tunnel syndrome condition.[8] In fact, the primary reason that Dr. Lyon appears to have advanced for having taken appellant off work was to await the reports by other physicians, particularly a report of an Office referral physician. His recommended work stoppages also appear to have been influenced by appellant's reporting of increased difficulty in performing her job rather than any objective worsening of her employment-related condition.

For example, in a January 9, 2004 note, Dr. Lyon stated that appellant was off work through January 31, 2004 "pending EMG report from Dr. Richardson and return visit to my office."[9] In a report dated January 9, 2004, Dr. Lyon stated that he was going to take appellant off work until he received Dr. Richardson's report and indicated that he would place her back on work once he received the report.[10] He did not provide any indication that this work stoppage was necessitated by an objective worsening in appellant's employment-related arm condition which prevented her from performing her light-duty work.[11]

In a report dated March 31, 2004, Dr. Lyon noted that given "the amount of trouble she is having getting by at work" it was prudent to take appellant off work until he had a chance to get an opinion from Dr. Schmitz, a Board-certified orthopedic surgeon to whom she was referred by the Office.[12] Dr. Lyon again appears to have based his recommended work stoppage on a desire to await the findings of another medical report and on appellant's own complaints, rather than on any objective worsening of appellant's employment-related condition.

In a June 9, 2004 report, Dr. Lyon again indicated that appellant was placed off work because he was awaiting the findings of an additional medical report by an Office referral physician.[13] He stated that appellant had been "off work since March 31, 2004 until now in an effort for you to arrange for me to obtain appropriate consultative opinion" and indicated that he took appellant off work because he "needed an explanation from a second opinion physician which wasn't available to me until today." He concluded that appellant could return to work on June 13, 2004 for eight hours per day with restrictions because he now had a report from Dr. Pfeffer, the Office referral physician. Dr. Lyon also referenced appellant's reported

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

[9] Dr. Richardson was an attending Board-certified neurosurgeon.

[10] He stated, "She is off work at this point until I can find out what the neurologist actually said."

[11] In a report dated January 30, 2004, Dr. Lyon noted that it seemed "quite safe" for appellant "to live with the hand the way it is" and he returned her to work on February 2, 2004. In a report dated February 4, 2004, Dr. Lyon noted that after his examination he did not "see things that worry me" and indicated that appellant had "good range of motion and decent sensation." The Board notes that there is no substantial difference between the reporting of appellant's condition in these reports and the reporting of her condition in Dr. Lyon's earlier reports.

[12] He also stated that appellant reported increased pain and numbness in her right arm and noted that on examination she exhibited good or excellent upper extremity motion except for some limitation of wrist flexion and extension.

[13] The Office ultimately referred appellant to Dr. Pfeffer, a Board-certified orthopedic surgeon, after the referral to Dr. Schmitz did not result in an examination.

difficulties at work, stated that "her work-caused trouble was indeed flared by her work activities," and concluded that therefore it was appropriate to state that she "left work because of the worsening employment[-]related condition." However, this apparent opinion on causal relationship is of limited probative value because it appears to be based more on appellant's reporting of symptoms rather than any objective worsening of her employment-related condition during the periods January 9 to February 2, 2004 or March 31 to June 12, 2004. Dr. Lyon did not explain how findings on examination or diagnostic testing showed that appellant's employment-related condition prevented her from performing her light-duty work.

In a report dated April 19, 2004, Dr. Pfeffer stated that appellant reported limited wrist and hand symptoms and concluded that she had "few if any symptoms of her carpal tunnel syndrome." He indicated that appellant could work 8 hours per day with restrictions from lifting more than 10 pounds, engaging in repetitive wrist motion for more than 4 hours per day, and typing for more than 30 minutes without a 30-minute rest period. Dr. Lyon also stated that it was appropriate for appellant to stop work between January 9 and 23, 2004 due to an increase in left wrist symptoms.[14] His report is of limited probative value on the relevant issue of this case because Dr. Pfeffer did not provide a clear opinion, supported by medical rationale, that appellant was not able to perform her limited-duty position for this period due to an employment-related worsening of her arm condition. Dr. Lyon did not provide any findings of appellant's condition between January 9 and 23, 2004 or otherwise explain how her medical condition prevented her from performing her limited-duty work during this period. His opinion appears to have been based primarily on appellant's expressed inability to work rather than objective medical findings.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained recurrences of total disability for the periods January 9 to February 2, 2004 and March 31 to June 12, 2004.

[14] Dr. Lyon stated, "[Appellant] was off January 9 through January 23. At that time, she had total temporary disability. She was taken off because of a flare-up of her pain in her left wrist. I think that period of total temporary disability is reasonable."

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 12, June 8 and June 7, 2004 decisions are affirmed.

Issued: August 10, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board