

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

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MARYLOU CONLIN, Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS ADMINISTRATION MEDICAL )  
CENTER, Boston, MA, Employer )

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**Docket No. 05-1092  
Issued: August 12, 2005**

*Appearances:*

*John L. Whitehouse, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On April 18, 2005 appellant, through counsel, filed an appeal from a decision of the Office of Workers' Compensation Programs dated March 1, 2005, which denied her claim for a recurrence of total disability beginning April 5, 2000. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board had jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant has sustained a recurrence of total disability on and after April 5, 2000 due to her accepted December 7, 1995 employment injury.

**FACTUAL HISTORY**

On December 11, 1995 appellant, a 47-year-old housekeeper, filed a traumatic injury claim alleging that she injured her right hand on December 7, 1995 while lifting a laundry bag down a chute. The Office accepted the claim for right wrist sprain and authorized right ulnar osteotomy and right ulnar wrist removal of the fixation plate, which was performed on

March 21, 1999. Appellant was placed in a light-duty job subsequent to her December 7, 1995 injury. Appellant was totally disabled for the period March 21 to June 21, 1997 due to surgery and returned to light-duty work on June 22, 1997. Subsequently, appellant was totally disabled due to surgery for the period March 19 to April 5, 1999 and returned to limited-duty work on April 6, 1999.

In a memorandum dated April 8, 1999, the employing establishment noted that appellant had been cleared to return to light-duty work. It noted that she had a partial disability with restrictions on lifting and carrying and no use of the right hand. The memorandum noted "light-duty restrictions to begin" on April 8, 1999.

In an April 15, 1999 letter, the employing establishment offered appellant a light-duty position as an elevator operator. The physical limitations of the position were detailed as no lifting more than five pounds, no carrying over five pounds, restricted use of the right hand and limited twisting and grasping of the right hand. The employing establishment indicated that the position would be available until she had recovered from her injury.

In a report dated August 24, 1999, Dr. John F. McConville, a second opinion Board-certified orthopedic surgeon, diagnosed mild degenerative arthritis in both wrists, right wrist chronic pain syndrome and status post ulna shortening procedure of the right distal forearm. He concluded that appellant was capable of performing her date-of-injury position. In a work capacity evaluation form, he limited appellant's wrist repetitive movements to 4 hours a day and no pushing, pulling or lifting more than 10 pounds for no more than 4 hours per day.

On March 23, 2001 appellant filed a claim alleging that she sustained a recurrence of total disability beginning April 5, 2000.<sup>1</sup> She noted the light-duty job provided by the employing establishment was no longer available. On the back of the form, the employing establishment stated that appellant had been on light duty "until it was determined her complaints were not work related and was no longer an [Office] case."

In a letter dated June 7, 2002, the Office informed appellant that the evidence was currently insufficient to support her claim for a recurrence of total disability and advised her to submit additional medical and factual evidence. No evidence was submitted.

By decision dated August 20, 2002, the Office denied appellant's recurrence claim.

Appellant's counsel requested an oral hearing, which was held on June 24, 2003.

On August 18, 2003 the Office received a letter dated July 30, 2003 from the employing establishment. The employing establishment stated that appellant had been given light duty due to a back injury and not because of her wrist injury. It noted her back injury claim had been active at the time of her December 7, 1995 employment injury, but that it had been subsequently denied. Thus, appellant was ineligible for light-duty work due to an employment injury.

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<sup>1</sup> The record contains evidence that appellant sustained a nonemployment-related injury on January 14, 2001 when she hurt her back when an elevator she was in came to a sudden stop.

In a decision dated September 15, 2003, an Office hearing representative affirmed the August 20, 2002 decision denying appellant's recurrence total disability claim.

Appellant's counsel requested reconsideration in letters dated September 8, 2004 and January 4, 2005 and submitted a November 8, 2004 report by Dr. Peter B. Martens, a Board-certified internist, who noted that appellant has complained of pain since the injury occurred. He concluded that appellant was totally disabled due to her "persistent hand pain." A physical examination revealed "[t]enderness and flexor tendon nodularity of both hands with decreased grip strength and inability to make a complete grip bilaterally." Dr. Martens diagnosed flexor tendinitis in both hands, which he indicated had been present since the December 7, 1995 injury. In support of this conclusion, he noted "[t]he biomechanical stressors related to this injury and the treatment of the injury have contributed to the current chronic flexor tendinitis."

By decision dated March 1, 2005, the Office denied modification of the September 15, 2003 decision.

### **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 establishes that the employee 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 to 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>2</sup>

The Office's procedure manual provides that a recurrence of disability includes a work stoppage caused by an objective, spontaneous, material change in the accepted condition, a recurrence or worsening of disability due to an accepted consequential injury or withdrawal of a light-duty assignment made to accommodate the work-related condition, for reasons other than misconduct or nonperformance.<sup>3</sup>

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.<sup>4</sup>

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<sup>2</sup> *Carl C. Graci*, 50 ECAB 557 (1999); *Mary G. Allen*, 50 ECAB 103 (1998); *see also Terry R. Hedman*, 38 ECAB 222 (1986). The term "recurrence of disability" is defined at 20 C.F.R. § 10.5(x).

<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b) (May 1997). *See also Steven A. Andersen*, 53 ECAB 367 (2002).

<sup>4</sup> *James H. Botts*, 50 ECAB 265 (1999).

### ANALYSIS

Appellant was placed in a light-duty job as a result of her December 7, 1995 right wrist injury. Thereafter, she requested compensation during the period March 21 to June 21, 1997 and March 19 to April 6, 1999. Appellant returned to a limited-duty position on April 6, 1999. On April 15, 1999 the employing establishment offered appellant a light-duty position as an elevator operator. The physical limitations of the position were detailed as no lifting more than five pounds, no carrying over five pounds, restricted use of the right hand and limited twisting and grasping of the right hand. The employing establishment indicated that the position would be available until she had “fully recovered from your injury.”

Appellant filed a claim for a recurrence of total disability on April 5, 2000 following the withdrawal of her limited-duty position. The employing establishment indicated that the light-duty job had been withdrawn because “it was determined her complaints were not work related and was no longer an OWCP case.” The employing establishment indicated in a letter dated July 30, 2003 that appellant had been given light duty due to a prior back injury and not because of her right wrist injury; however, the record does not support this conclusion. As noted, on April 15, 1999 the employing establishment offered appellant a light-duty position as an elevator operator. The physical limitations of the position included no lifting more than five pounds, no carrying over five pounds, restricted use of the right hand and limited twisting and grasping of the right hand. The restrictions of the limited-duty position were designed for appellant’s hand injury and not her back, as alleged by the employing establishment. As the employing establishment withdrew her limited-duty position, appellant has established a recurrence of total disability.

### CONCLUSION

The Board finds that appellant sustained a recurrence of total disability effective April 5, 2000, as light duty provided to accommodate her injury-related restrictions was no longer made available to her by the employing establishment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 1, 2005 is reversed and the case remanded to the Office for payment of appropriate compensation.

Issued: August 12, 2005  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board