

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

BRENDA J. WELLS, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Beaumont, TX, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 05-215
Issued: July 7, 2005**

Appearances:
Brenda J. Wells, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On October 26, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 5, June 8 and September 22, 2004 merit decisions denying her recurrence of total disability claim. 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 a recurrence of total disability on or after January 3, 2004 due to her accepted employment injuries.

FACTUAL HISTORY

On June 17, 1996 appellant, then a 24-year-old data conversion operator, filed an occupational disease claim alleging that she sustained tendinitis of her left wrist due to the repetitive duties of her job. She indicated that during the prior year she had engaged in keying

for 55 minutes of each hour for 40 hours per week.¹ Appellant had stopped work on May 16, 1996. The Office accepted that she sustained de Quervain's disease of the left wrist due to excessive use of her left thumb and paid her compensation for periods of disability.² The Office later accepted that appellant also sustained a left cervicothoracic ganglion located in the area of C7.

Appellant returned to work in July 1996 and on October 17, 1996 she stopped work to undergo a surgical release of the dorsal compartment of her left wrist (*i.e.*, de Quervain's compartment) which was approved by the Office. On December 27, 1996 appellant returned to light-duty work at the employing establishment for eight hours per day.³

Appellant periodically stopped work and returned to light-duty positions for the employing establishment.⁴ She continued to receive treatment for her left wrist and hand problems; the results of nerve conduction studies from March 1997 were normal. Appellant was released to her regular full-time duties in mid March 1997.

Appellant later reported increased upper extremity problems and began working in light-duty positions for the employing establishment.⁵ In December 1998 and March 1999, Dr. Jerry M. Keepers, an attending physician specializing in anesthesiology, performed left stellate ganglion block procedures which were authorized by the Office.⁶ On October 10, 2000 and June 5, 2003 Dr. Keepers performed radio frequency thermocoagulopathies of appellant's left cervicothoracic ganglion which were authorized by the Office.⁷

Appellant stopped work in mid 2003 and then returned to light-duty work on September 24, 2003 for four hours per day per the recommendation of Dr. Keepers.⁸ The Office continued to pay appellant compensation for periods of partial disability. In a report dated December 22, 2003, Dr. Keepers indicated that appellant's work hours could be increased from four to six hours.

¹ Appellant started working for the employing establishment in July 1994 and between then and June 1995 she engaged in keying for five to six hours per day for four to five days per week.

² Nerve conduction studies from mid 1996 did not show any signs of carpal tunnel syndrome. In November 1998 appellant received a schedule award for an eight percent permanent impairment of her left arm.

³ The job did not require appellant to use her left hand.

⁴ Appellant also attempted to perform her regular duties for short periods.

⁵ Appellant did not begin to complain of left shoulder pain on a regular basis until 1998; attending physicians indicated that she had left reflex sympathetic dystrophy.

⁶ Dr. Keepers later indicated that appellant's left ganglion was directly related to the de Quervain's disease of her left wrist.

⁷ By decision dated August 24, 2001, the Office denied appellant's claim that she sustained a recurrence of total disability for a period beginning December 10, 1999. Appellant's claim of total disability during this period is not currently before the Board.

⁸ The position involved repetitive motion of the hands and wrists and required lifting, pushing and pulling up to five pounds.

Appellant stopped work on January 3, 2004 and argued that she had sustained a recurrence of total disability due to her accepted employment injuries, de Quervain's disease of the left wrist and left cervicothoracic ganglion.

Appellant submitted a January 7, 2004 report in which Dr. Marcos V. Masson, an attending Board-certified orthopedic surgeon, stated that her chief complaint was moderate mechanical pain in her left shoulder and arm. Dr. Masson indicated that appellant had engaged in repetitive keying for eight hours per day for three years and then "went to four hours per day." He stated that appellant's musculoskeletal examination was normal and that her left grip strength was 20 pounds. Dr. Masson indicated that percussion tests on the left were normal but compression tests were positive on the left for "thoracic outlet, cubital, pronator, radial, carpal [and] ulnar." He diagnosed left thoracic outlet compression and indicated that surgery was a possibility if there was no improvement. In a February 18, 2004 report, Dr. Masson provided similar findings on examination and stated, "Consider job change, due to moderate symptoms may not be able to return to the type of work she was doing."

Appellant also submitted a January 12, 2004 report in which Dr. Keepers indicated that her musculoskeletal condition was unchanged.

By decision dated March 5, 2004, the Office denied appellant's claim that she sustained an employment-related recurrence of total disability on January 3, 2004 because she did not submit sufficient medical evidence in support of her claim.⁹

Appellant requested reconsideration of her claim and submitted a March 24, 2004 report in which Dr. Masson provided findings on examination which were similar to those contained in his prior reports.

In a March 22, 2004 report, Dr. Keepers stated that he had been treating appellant for several years without any evidence of progress regarding her wrist pain and noted that he did not feel that he could help her with this problem. He indicated that he was terminating appellant from his practice. The findings of an April 12, 2004 magnetic resonance angiography (MRA) testing showed a suggestion of stenosis of the distal portions of the left subclavian artery.

In a letter dated April 26, 2004, the Office had requested that Dr. Masson answer several questions regarding appellant's medical condition and level of disability. On May 26, 2004 the Office received a copy of its April 26, 2004 letter on which Dr. Masson made notations on an unspecified date. Dr. Masson indicated that appellant had thoracic outlet compression due to the accepted employment injury because she had a "history of repetitive keying eight hours per day for three years." He stated that, due to the severity of her symptoms, appellant could not lift even less than five pounds and was totally disabled from "the work she was doing." Dr. Mason stated that appellant "may be unable to do different work" and indicated that a functional capacity evaluation "should clarify the question."

By decision dated June 8, 2004, the Office affirmed its March 5, 2004 decision.

⁹ In its decision, the Office included language regarding the termination of compensation, but the content and context of the decision shows that it is a denial of appellant's recurrence of disability claim.

Appellant requested reconsideration of her claim and submitted a July 30, 2004 report in which Dr. Masson provided findings on examination which were similar to those contained in his prior reports and stated:

“[Appellant] has a history, exam[ination] and MRA consistent with left thoracic outlet compression. This is a diagnosis of exclusion where multiple nerve involvement in the upper extremity is found, it is associated to chronic repetitive trauma and long-standing provocative positioning like in this patient that has worked for 8 hours per day, 5 days per week for 10 years.... The limitations imposed by the condition are to the point that the patient cannot perform repetitive activities even with less than five pounds without severe pain, numbness, tingling and a burning sensation. Based on the severity of her symptoms and triggering factors the patient has a temporary total disability to perform her job. A [functional capacity evaluation] should allow to make recommendations about possible vocational activities should the patient not [be] authorized to obtain appropriate medical treatment in the form of a first rib resection.”

By decision dated September 22, 2004, the Office affirmed its prior decisions.

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.¹⁰

ANALYSIS

In 1996 the Office accepted that appellant sustained de Quervain’s disease of the left wrist and a left cervicothoracic ganglion. Appellant returned to limited duty for the employing establishment.¹¹ The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a recurrence of total disability on or after January 3, 2004 due to her accepted employment injuries.

Appellant submitted reports dated between January and July 2004 of Dr. Masson, an attending Board-certified orthopedic surgeon, who indicated that appellant’s chief complaint was moderate mechanical pain in her left shoulder and arm and diagnosed left thoracic outlet compression. In notations made in May 2004, Dr. Masson indicated that appellant’s thoracic outlet compression was due to the accepted employment injury because she had a “history of

¹⁰ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

¹¹ At the time she stopped work on January 3, 2004, appellant’s job involved repetitive motion of the hands and wrists and required lifting, pushing and pulling up to five pounds.

repetitive keying eight hours per day for three years.” He stated that, due to the severity of her symptoms, appellant could not lift even less than five pounds and was totally disabled from “the work she was doing.” Dr. Mason stated that appellant “may be unable to do different work” and indicated that a functional capacity evaluation “should clarify the question.”

This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Masson did not provide adequate medical rationale in support of his conclusion regarding appellant’s ability to work.¹² Dr. Masson did not explain how appellant’s employment-related condition had worsened to the extent that she was unable to perform the duties of the light-duty job she held when she stopped work on January 3, 2004. His opinion appears to be based on appellant’s reporting of increased left shoulder and arm symptoms rather than any increase in objective factors. Appellant’s claim has not been accepted for thoracic outlet compression and Dr. Masson did not explain the medical process through which this condition would be related to the accepted employment injuries, de Quervain’s disease of the left wrist and a left cervicothoracic ganglion. Dr. Masson’s opinion is of limited probative value for the further reason that it is not based on a complete and accurate factual history.¹³ He indicated that appellant engaged in repetitive keying eight hours per day for three years. However, the record reflects that after she started working for the employing establishment in 1994 appellant spent one year keying for five to six hours per day for four to five days per week, that the following year she engaged in keying for eight hours per day for five days per week, and that in the remaining years she engaged in keying to a much lesser extent.

Such medical rationale is particularly necessary because the other medical evidence from around the time of appellant’s claimed recurrence of total disability in January 2004 does not show a material worsening of appellant’s condition. Dr. Keepers, a Board-certified anesthesiologist who treated appellant for more than seven years, indicated in January 2004 that appellant’s condition had not changed since his prior examination in December 2003. In fact, on December 22, 2003, Dr. Keepers indicated that appellant’s work hours could be increased from four to six hours.

In his July 30, 2004 report, Dr. Masson stated that appellant’s left thoracic outlet compression was “associated to chronic repetitive trauma and long-standing provocative positioning like in this patient that has worked for 8 hours per day, 5 days per week for 10 years.” He indicated that appellant “cannot perform repetitive activities even with less than five pounds without severe pain, numbness, tingling and a burning sensation” and noted that due to the “severity of her symptoms and triggering factors” appellant had temporary total disability to perform her job. This report contains deficiencies similar to those contained in Dr. Masson’s May 2004 notations. Dr. Masson did not explain how appellant’s employment-related condition

¹² See *Leon Harris Ford*, 31 ECAB 514, 518 (1980).

¹³ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

had worsened such that she was totally disabled from all work. Moreover, this report also is not based on a complete and accurate factual history.¹⁴

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 January 3, 2004 due to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 22, June 8 and March 5, 2004 decisions are affirmed.

Issued: July 7, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

¹⁴ Appellant submitted additional evidence after the Office's September 22, 2004 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).