



left arm. The Office accepted aggravation of left carpal tunnel syndrome. She underwent a left carpal tunnel release surgery on May 21, 1998. The record indicates that appellant returned to light duty at six hours per day in April 1997 and full-time light duty in July 1998.

The Office referred appellant for a second opinion examination by Dr. Joel Grad, an orthopedic surgeon. In a report dated November 17, 1998, Dr. Grad indicated that appellant could return to regular duty in four to six weeks. In a report dated April 13, 1999, Dr. Grad opined that appellant could work her regular job.

By decision dated November 23, 1999, the Office determined that appellant no longer had any employment-related disability. Appellant did not return to regular duty; she stopped working on December 8, 1999 and filed a notice of recurrence of disability (Form CA-2a). She requested a hearing with respect to the November 23, 1999 decision and submitted additional medical evidence. In a report dated January 25, 2000, Dr. Igor Stiler, a neurologist, stated that appellant remained totally disabled. In a March 7, 2000 report, Dr. Stiler again found that appellant was totally disabled.

In a decision dated July 18, 2000, the Office hearing representative found that appellant had not established an employment-related disability as of December 8, 1999. On appeal, the Board issued a decision dated June 14, 2002 adopting the findings and conclusions of the hearing representative.<sup>1</sup> On June 16, 2002 the Office issued a schedule award for a seven percent left arm impairment.

On July 30, 2002 the Office received reports date from March 9, 2001 to July 11, 2002, from Dr. Stiler. In the July 11, 2002 report, Dr. Stiler stated that appellant has been working but remained symptomatic with the residual effects of carpal tunnel syndrome.

On January 28, 2003 the Office received a request for reconsideration.<sup>2</sup> By decision dated April 18, 2003, the Office reviewed the case on its merits and denied modification of the July 18, 2000 decision.

Appellant again requested reconsideration on February 18, 2004 and submitted a February 13, 2004 report from Dr. Stiler, who stated that the carpal tunnel release did not completely resolve appellant's condition. He referred appellant to a May 19, 2000 magnetic resonance imaging scan, that still revealed flattening of the median nerve and April 19, 2001 diagnostic studies showing polyphasic potentials involving the abductor pollicis brevis muscle of the left hand. Dr. Stiler concluded that there was objective evidence of ongoing residuals of the work-related injury.

By decision dated May 21, 2004, the Office reviewed the case on its merits and denied modification. The Office found that the evidence did not establish that appellant was unable to perform her job duties.

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<sup>1</sup> Docket No. 01-1255 (issued June 14, 2002).

<sup>2</sup> Appellant stated that she was requesting reconsideration of the Board's decision; there is no indication that appellant filed a timely petition for reconsideration with the Board.

In a letter dated June 8, 2004, appellant again requested reconsideration. Appellant stated that she sought to reopen her claim for medical benefits. She submitted reports from Dr. N. Jayaram dated August 11 and 18, 2004, indicating that she was being treated for bilateral carpal tunnel syndrome.

In a decision dated January 19, 2005, the Office found that appellant's request for reconsideration was not sufficient to warrant further merit review.

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

A recurrence of disability means “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”<sup>3</sup>

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 light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>4</sup>

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

The issue before the Board is whether appellant has established a recurrence of disability on or after December 8, 1999. On this issue appellant has not submitted sufficient medical evidence to establish his claim. Dr. Stiler had indicated that appellant was totally disabled in January 25 and May 7, 2000 reports, but he did not provide a complete factual and medical background or a reasoned opinion on causal relationship between disability and the employment injury. In a February 18, 2004 report, Dr. Siler opined that appellant continued to have residuals of the left carpal tunnel syndrome, without discussing disability for work on or after December 8, 1999. The Board finds that the medical evidence does not contain a reasoned medical opinion, based on a complete background, that is sufficient to establish a recurrence of disability in this case.

The Board notes that appellant raised the issue of entitlement to medical benefits. However, the Office did not issue a decision denying medical benefits or otherwise addressing this issue. Therefore, this issue is not before the Board in the present appeal.

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<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

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

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>5</sup> the Office's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that [the Office] erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by [the Office]; or (iii) constitutes relevant and pertinent evidence not previously considered by [the Office]."<sup>6</sup> Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.<sup>7</sup>

## **ANALYSIS -- ISSUE 2**

As noted above, the merit issue in this case was disability for work on or after December 8, 1999. The medical evidence submitted on reconsideration does not address the issue. The form reports from Dr. Jayaram indicated, that appellant was treated for bilateral carpal tunnel syndrome without addressing the relevant issue. The evidence submitted is therefore not considered relevant and pertinent evidence.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law; advance a relevant legal argument not previously considered; or submit new and relevant evidence. The Board therefore finds that appellant did not meet the requirements of section 10.606(b)(2) and she was not entitled to a merit review of the claim.

## **CONCLUSION**

The Board finds that appellant did not submit sufficient evidence to establish a recurrence of disability on or after December 8, 1999. The Board further finds that the Office properly denied the June 8, 2004 request for reconsideration without merit review of the claim.

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<sup>5</sup> 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

<sup>6</sup> 20 C.F.R. § 10.606(b)(2).

<sup>7</sup> 20 C.F.R. § 10.608(b); *see also Norman W. Hanson*, 45 ECAB 430 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated January 19, 2005 and May 21, 2004 are affirmed.

Issued: July 13, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member