



surgical procedures on January 11 and August 6, 2002 and received appropriate compensation. Appellant returned to a limited-duty position following the August 6, 2002 procedure. The Office also accepted that appellant sustained a recurrence of disability on September 16, 2002 and she again returned to limited duty on September 28, 2002.

In a report dated June 27, 2003, Dr. Joseph F. Schwartz, appellant's attending Board-certified orthopedic surgeon, advised that she could work her limited-duty position and discharged her from his care. Appellant also submitted reports from Dr. Richard L. Cristea, a Board-certified neurologist. In a September 30, 2003 duty status report, he advised that appellant could work eight hours per day with a lifting restriction of 20 pounds and that she should not do simple grasping or fine manipulation for more than four to six hours daily. By letter dated October 1, 2003, he advised the Office that appellant had bilateral thumb pain, mechanical in nature and right lateral epicondylitis with tendinitis. In an October 20, 2003 report, Dr. Schwartz advised that appellant could have returned to limited duty on August 16, 2002 and to full duty on December 13, 2002. He noted that he had last seen appellant on June 27, 2003.

Appellant elected to retire on December 1, 2003.<sup>1</sup> By decision dated December 9, 2003, the Office found that she was not entitled to compensation benefits after that day. In a letter dated November 9, 2004, appellant requested reconsideration and stated that she was sending in supportive evidence. By decision dated November 16, 2004, the Office denied appellant's reconsideration request on the grounds that she did not submit any new evidence or argument to warrant 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 had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>2</sup> This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>3</sup>

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 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

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<sup>1</sup> The record also indicates that appellant filed a schedule award claim on September 22, 2003. The record does not indicate that the Office has issued a final decision regarding this. See 20 C.F.R. § 501.2(c).

<sup>2</sup> 20 C.F.R. § 10.5(x) (1999).

<sup>3</sup> *Id.*

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 Board finds that appellant did not submit medical evidence sufficient to establish that she sustained a recurrence of disability. In reports dated June 27 and October 20, 2003, Dr. Schwartz advised that appellant could work her limited-duty position effective August 16, 2002 and return to full duty on December 13, 2002. He discharged her from his care effective June 27, 2003. Likewise in reports dated September 30 and October 1, 2003, Dr. Cristea advised that appellant could work eight hours per day with a lifting restriction of 20 pounds and that she should not do simple grasping or fine manipulation for more than four to six hours daily. While he noted that appellant had bilateral thumb pain, mechanical in nature, and right lateral epicondylitis with tendinitis, these conditions have not been accepted as employment related. Furthermore, Dr. Cristea did not indicate in either report that appellant was totally disabled. His reports, too, fail to establish that appellant sustained a recurrence of disability on December 1, 2003. The Board therefore finds the medical evidence of record insufficient to meet appellant's burden of proof to establish that she sustained a recurrence of disability on December 1, 2003 causally related to her accepted bilateral carpal tunnel syndrome.

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

Section 8128(a) of the Federal Employees' Compensation Act<sup>5</sup> states 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. The Secretary, in accordance with the facts found on review may -- (1) end, decrease or increase the compensation awarded; or (2) award compensation previously refused or discontinued."<sup>6</sup> Section 10.608(a) of Office regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>7</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain 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 new evidence not previously considered by the Office.<sup>8</sup> Section 10.608(b) provides that when a request for

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<sup>4</sup> *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> 5 U.S.C. § 8128(a); see *Claudio Vazquez*, 52 ECAB 496 (2001).

<sup>7</sup> 20 C.F.R. § 10.608(a).

<sup>8</sup> 20 C.F.R. § 10.608(b)(1) and (2).

reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

In her letter requesting reconsideration, appellant merely stated that she wished to request reconsideration and would be submitting additional evidence to the Office. She thus did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).<sup>10</sup>

With respect to the third above-noted requirement under section 10.606(b)(2), while appellant stated that she was submitting additional evidence, the record does not indicate that any additional evidence was forthcoming.<sup>11</sup> Appellant therefore did not submit relevant and pertinent new evidence not previously considered by the Office.<sup>12</sup> The Office therefore properly denied her request for merit review.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability causally related to her accepted employment injury. The Board further finds that the Office properly refused to reopen appellant's claim for merit review on November 16, 2004.

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<sup>9</sup> 20 C.F.R. § 10.608(b).

<sup>10</sup> 20 C.F.R. § 10.606(b)(2).

<sup>11</sup> The Board notes that, in her letter of appeal to the Board, appellant acknowledged that she had not yet obtained a medical report.

<sup>12</sup> 20 C.F.R. § 10.608(b)(1) and (2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 16, 2004 and December 9, 2003 be affirmed.

Issued: May 9, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member