

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

AILEEN M. KREWSON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hemet, CA, Employer**

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**Docket No. 06-189
Issued: June 13, 2006**

Appearances:
K.D. Hughes, 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 October 31, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' September 6, 2005 merit decision denying her claim for an employment-related recurrence of 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 employment-related total disability on or after March 16, 2004.

FACTUAL HISTORY

On March 2003 appellant, then a 45-year-old clerk, filed an occupational disease claim alleging that she sustained upper extremity injuries due to the repetitive duties of her job. Appellant stopped work on January 21, 2002.¹ The Office accepted that appellant sustained

¹ The Office had previously accepted that appellant sustained a right elbow strain due to lifting a heavy tub of mail overhead on August 6, 1999, but she returned to full duty after that injury.

bilateral carpal tunnel syndrome, right shoulder strain, cervical strain and right lateral epicondylitis. Appellant participated in a vocational rehabilitation program.

On October 15, 2002 appellant returned to limited-duty work for the employing establishment as a lobby director. The position involved greeting customers, directing them to vending machines, answering questions regarding their transactions, and answering telephone calls. It could be performed sitting or standing and required occasional lifting of up to 10 pounds.

On February 26, 2003 appellant underwent right lateral epicondyle release, right shoulder decompression and repair, and right de Quervain's syndrome release surgery. The procedures were performed by Dr. Vito Caruso, an attending Board-certified orthopedic surgeon, and were authorized by the Office.²

On September 13, 2003 appellant returned to limited-duty work for the employing establishment as a lobby director. The position originally did not require any lifting, repetitive bending/stooping, forceful pulling/squeezing or overhead work. In December 2002, it was modified to require lifting up to one pound and simple grasping of up to one half pound for two hours per day.

Appellant stopped work on March 16, 2004 and claimed that she sustained total disability beginning March 16, 2004 due to her accepted employment injuries. Although appellant did not file a formal claim for a new occupational injury, she argued that her work duties over time as a lobby director caused her to sustain disability beginning March 16, 2004.³

Appellant submitted a March 16, 2004 form report in which Dr. Caruso diagnosed an employment-related right shoulder sprain and right wrist ganglion and indicated that appellant was totally disabled from March 16 to April 7, 2004.⁴ He noted that appellant had decreased range of motion and strength of the upper extremities.⁵ In a report dated April 9, 2004, Dr. Caruso noted that on examination appellant exhibited tenderness throughout the right wrist and shoulder and diagnosed right shoulder impingement, right tennis elbow, right de Quervain's syndrome and right wrist ganglion cyst. He indicated that, after appellant returned to limited-duty work, her condition deteriorated in that her pain level increased and her range of motion and grip strength decreased. Dr. Caruso stated, "[Appellant's] condition became worse upon being at work under limited working conditions. Even with the slightest repetitive use she developed an

² Appellant stopped work just prior to the surgery.

³ Appellant retired effective April 6, 2005.

⁴ Dr. Caruso listed the "date of injury" as August 6, 1999.

⁵ Appellant submitted an April 9, 2004 form report in which Dr. Caruso indicated that appellant's total disability continued until April 30, 2004. He continued to produce similar form reports indicating that appellant's employment-related disability continued beyond April 2004.

exacerbation of these problems. It is for this reason I have taken her off work and kept her on temporary total disability.”

By decision dated May 10, 2004, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained employment-related total disability on or after March 16, 2004.

Appellant submitted form reports, dated between May and June 2004, in which Dr. Caruso variously diagnosed right lateral epicondylitis, right de Quervain’s syndrome, right shoulder syndrome, right rotator cuff condition, right shoulder pain and right wrist pain, and indicated that her employment-related total disability continued. She began to be treated for emotional problems beginning in April 2004 based on a referral by Dr. Caruso.

By decision dated August 17, 2004, the Office affirmed its May 10, 2004 decision.

In a report dated August 27, 2004, Dr. Caruso stated that appellant reported pain, swelling, and popping in her right shoulder and wrist, bilateral thumb tenderness, a small painful lump in her right wrist, and limited arm motion and strength. Appellant exhibited point tenderness of the cervical spine, trapezial spasm, right shoulder swelling, and positive Phalen’s and Tinel’s signs and diagnosed right wrist ganglion cyst, bilateral carpal tunnel syndrome, chronic cervical sprain, right shoulder rotator cuff tear, right lateral epicondylitis, possible left de Quervain’s, and severe depression and anxiety. Dr. Caruso indicated that appellant’s condition deteriorated after returning to limited-duty work in September 2003, noted that she continued to be totally disabled and stated:

“Recent [electromyogram]/nerve conduction studies show right carpal tunnel syndrome, definitely related to continuous use of her hands while working as a postal employee. All of the above diagnoses in fact, correlate with the overuse of the upper extremities during her employ[ment] with the postal service. With the continued lifting of heavy items and repetitive use of the extremities after the original injury of August 6, 1999, the damage was accentuated. Her severe state of depression continues to be exasperated by her pain, her lack of ability to perform and the continued adverse working conditions.”⁶

In report dated November 1, 2004, Dr. Caruso indicated that appellant exhibited tenderness of the right shoulder and a positive right shoulder impingement sign. He performed range of motion testing, diagnosed cervical sprain, right shoulder rotator cuff tear, right lateral epicondylitis, left thumb de Quervain’s syndrome and indicated that appellant was totally disabled until November 23, 2004.⁷

⁶ Appellant also submitted an April 30, 2004 report in which Dr. Caruso indicated that appellant reported right shoulder, right elbow and left thumb pain. He diagnosed right shoulder rotator cuff tear and right lateral epicondylitis and stated that appellant was totally disabled until May 14, 2004. In a June 25, 2004, Dr. Caruso stated that appellant exhibited a positive right shoulder impingement sign and indicated that she was totally disabled until July 9, 2004.

⁷ The record contains similar reports of Dr. Caruso dated September 10, 2004 and January 11, 2005.

In a report dated May 17, 2005, Dr. Caruso noted appellant's complaint of pain in both hands and elbow and noted that she exhibited tenderness of the right shoulder and a positive right shoulder impingement sign. He performed range of motion testing, diagnosed cervical sprain, right shoulder rotator cuff tear, and right carpal tunnel syndrome and indicated that appellant was totally disabled until June 3, 2005. In form reports dated between August 2004 and March 2005, Dr. Caruso variously diagnosed right lateral epicondylitis, right rotator cuff repair, right de Quervain's syndrome, and right cervical strain. He indicated that appellant's employment-related total disability continued.

In a report dated March 2, 2005, Dr. John B. Dorsey, an attending Board-certified orthopedic surgeon, noted that appellant injured her right upper extremity lifting a heavy tub of mail overhead on August 6, 1999.⁸ Dr. Dorsey noted that appellant reported experiencing pain in her right hand, wrists, elbow and shoulder and in her left hand. He indicated that upon range of motion testing of the right shoulder appellant complained of pain and showed some limited motion and noted that she showed some weakness in the right shoulder.⁹ Dr. Dorsey stated that appellant had no cervical spasms, displayed a negative right shoulder impingement sign and a negative Tinel's sign, and that she had no swelling or obvious deformity of the upper extremities. Dr. Dorsey diagnosed "repetitive use syndrome of the upper extremities" and depression and stated:

"The work activities as a lobby director did not result in a new injury but were an exacerbation of the prior condition and it may be that her depression has played a large role in her being unable to resume gainful employment. She did have [electromyogram/nerve conduction velocity] studies revealing carpal tunnel syndrome which was a result of continuous use of the hands and is often associated with repetitive work activities such as [appellant] was engaged in up through January 19, 2002."

* * *

"[Appellant's] duties as a lobby director have temporarily aggravated her prior condition with a resultant worsening in the symptomatology and as a result she would be unable to resume gainful employment in that position at this time.

"In summary, [appellant] was injured on August 6, 1999.... She has continued to have pain and disability and although she did return to work in September 2003 and continued to work as a lobby director up through March 16, 2004. During this time because of the work activities she experienced an increase in her symptomatology with a temporary aggravation of the underlying condition which occurred originally on August 6, 1999.

⁸ Dr. Dorsey noted that appellant initially worked as a clerk but was later placed in a limited-duty position as a lobby director.

⁹ Dr. Dorsey stated that appellant showed a positive Phalen's sign in both wrists.

“As a result of the work activities, she has been disabled from her employment since March 16, 2004. Based on her current status, both medical and physical, she would be unable to resume gainful employment.”

By decision dated September 6, 2005, the Office affirmed its August 17, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹⁰ has the burden of establishing the essential elements of her claim including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.¹¹ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS

In early 2003, the Office accepted that appellant sustained bilateral carpal tunnel syndrome, right shoulder strain, cervical strain, and right lateral epicondylitis due to the repetitive duties of her job as a clerk. The Office had previously accepted that appellant sustained a right elbow strain due to lifting a heavy tub of mail overhead on August 6, 1999, but she returned to full duty after that injury.¹³ In September 2003, appellant returned to limited-duty work for the employing establishment as a lobby director. The position required lifting up to one pound and simple grasping of up to one half pound for two hours per day, but did not require any repetitive bending/stooping, forceful pulling/squeezing, or overhead work.¹⁴ Appellant stopped work on March 16, 2004 and claimed that her work duties over time as a lobby director caused her to sustain total disability beginning March 16, 2004.

¹⁰ 5 U.S.C. §§ 8101-8193.

¹¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹² *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹³ On February 26, 2003 appellant underwent right lateral epicondyle release, right shoulder decompression and repair, and right de Quervain's syndrome release surgery.

¹⁴ The position originally did not require any lifting but the minor lifting and grasping requirements were added in December 2003.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained employment-related total disability on or after March 16, 2004.

In support of her claim, appellant submitted an April 9, 2004 report in which Dr. Caruso, an attending Board-certified orthopedic surgeon, noted that on examination she exhibited tenderness throughout the right wrist and shoulder and diagnosed right shoulder impingement, right tennis elbow, right de Quervain's syndrome, and right wrist ganglion cyst. He indicated that after appellant returned to limited-duty work, her condition deteriorated in that her pain level increased and her range of motion and grip strength decreased. He stated, "[Appellant's] condition became worse upon being at work under limited working conditions. Even with the slightest repetitive use she developed an exacerbation of these problems. It is for this reason I have taken her off work and kept her on temporary total disability."

This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Caruso did not provide adequate medical rationale in support of his conclusion on causal relationship.¹⁵ Dr. Caruso did not explain the medical process through which appellant's job as a lobby director could have caused her to sustain total disability. Given that the duties of the position were extremely limited and only required lifting up to one pound and grasping up to one half pound for two hours per day, such medical rationale would be especially necessary in the present case. Dr. Caruso reported extremely limited findings in this report and his other reports dated after March 2004¹⁶ and he did not adequately explain how appellant had sufficient objective signs to be totally disabled from all work beginning April 16, 1999. Although Dr. Caruso appears to have correlated appellant's reported symptoms with her return to work as a lobby director, the Board has held that the fact that a condition manifests itself or worsens during a period of employment¹⁷ or that work activities produce symptoms revelatory of an underlying condition¹⁸ does not raise an inference of causal relationship between a claimed condition and employment factors.

Appellant submitted numerous reports in which Dr. Caruso indicated that she had employment-related disability since March 16, 2004. However, these reports did not contain any explanation of why appellant had employment-related disability. The reports contained a wide variety of diagnoses, including right lateral epicondylitis, right de Quervain's syndrome, right shoulder syndrome, right rotator cuff tear, right shoulder impingement, right tennis elbow, right wrist ganglion cyst, right shoulder pain, right wrist pain, cervical strain, and bilateral carpal tunnel syndrome. Dr. Caruso did not explain why appellant's diagnoses changed over a relatively short time period.

¹⁵ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹⁶ In other reports, Dr. Caruso indicated that appellant displayed a positive right shoulder impingement sign on examination.

¹⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹⁸ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

In a report dated August 27, 2004, Dr. Caruso stated that appellant exhibited point tenderness of the cervical spine, trapezial spasm, right shoulder swelling, and positive Phalen's and Tinel's signs and diagnosed right wrist ganglion cyst, bilateral carpal tunnel syndrome, chronic cervical sprain, right shoulder rotator cuff tear, right lateral epicondylitis, possible left de Quervain's, and severe depression and anxiety. Dr. Caruso indicated that diagnostic testing showed a repetitive stress injury in the form of carpal tunnel syndrome, indicated that appellant was totally disabled, and stated, "With the continued lifting of heavy items and repetitive use of the extremities after the original injury of August 6, 1999, the damage was accentuated. Her severe state of depression continues to be exasperated by her pain, her lack of ability to perform and the continued adverse working conditions." However, this report is of limited probative value because it lacks adequate medical rationale and is not based on a complete and accurate factual and medical history.¹⁹ Dr. Caruso appears to have been of the impression that appellant performed more cumbersome work duties than she actually performed around the time she claimed total disability.

Appellant also submitted a March 2, 2005 report in which Dr. Dorsey, an attending Board-certified orthopedic surgeon, diagnosed "repetitive use syndrome of the upper extremities" and depression and concluded that she had employment-related disability since March 16, 2004. Dr. Dorsey noted limited findings on examination, including some limited motion and weakness of the right shoulder. His report is of limited probative value because he did not adequately explain the medical process through which appellant's work duties could have caused her to sustain total disability. Dr. Dorsey did not describe appellant's work duties in any detail or explain how she could have been totally disabled given her limited examination findings. His opinion is of limited probative value for the reason that it contains an opinion on causal relationship which is equivocal in nature.²⁰ On the one hand, Dr. Dorsey stated, "The work activities as a lobby director did not result in a new injury but were an exacerbation of the prior condition and it may be that her depression has played a large role in her being unable to resume gainful employment." But he also stated that appellant's duties as a lobby director "have temporarily aggravated her prior condition with a resultant worsening in the symptomatology and as a result she would be unable to resume gainful employment in that position at this time." As noted above, the mere correlation of symptoms with employment duties would not be enough to establish causal relationship. Dr. Dorsey also seemed to attribute appellant's disability to her

¹⁹ 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).

²⁰ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship).

emotional condition, but the Office has not accepted that appellant sustained an employment-related emotional condition.²¹

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained employment-related total disability on or after March 16, 2004.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 6, 2005 decision is affirmed.

Issued: June 13, 2006
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

²¹ The Board notes that appellant did not show that she sustained a recurrence of total disability on or after March 16, 2004 due to her accepted employment injuries. None of medical evidence contains a rationalized opinion that she sustained such a recurrence of disability and she has not shown a change in the extent of her light-duty job requirements. 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. *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).