

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

JOANN E. KEITH, Appellant

and

**U.S. POSTAL SERVICE, NEW JERSEY
INTERNATIONAL & BULK MAIL CENTER,
Jersey City, NJ, Employer**

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**Docket No. 06-78
Issued: March 7, 2006**

Appearances:

*Thomas R. Uliase, 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 12, 2005 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated November 8, 2004, denying her claim for a recurrence of disability. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant sustained a recurrence of disability on September 2, 2003 causally related to her April 1, 1998 employment injury.

FACTUAL HISTORY

On April 1, 1998 appellant, then a 45-year-old clerk, filed a traumatic injury claim alleging that she strained her right arm while processing mail. The Office accepted her claim for a right arm strain and a lesion of the right ulnar nerve. On January 23, 2002 appellant underwent surgery for her ulnar nerve neuropathy, consisting of right ulnar nerve submuscular transposition

at the elbow performed by Dr. Mark S. Feierstein, a Board-certified orthopedic surgeon. Appellant subsequently filed a recurrence of disability claim. The Office accepted a recurrence of disability on January 23, 2002, as causally related to her April 1, 1998 employment injury. She was placed on the periodic rolls to receive compensation for temporary disability.

On June 3, 2002 Dr. Feierstein released appellant to light-duty work effective June 4, 2002 for 8 hours a day with no lifting over 10 pounds. He indicated that a neurodiagnostic study was essentially unremarkable and she was neurologically intact.

Appellant accepted a light-duty assignment as a modified mail processing clerk and returned to work on September 12, 2002, at which time the Office ceased paying wage-loss compensation. Her duties included sitting at a desk looking up the addresses of parcels of mail in a zip code or foreign country reference book, writing the current address on the parcel and placing it in an all purpose container. The physical requirements for the job included pushing, pulling and lifting up to 10 pounds for 8 hours a day and repetitive movement of the wrists and elbows for up to 6 hours a day.

In a September 24, 2002 report, Dr. David J. Rubinfeld, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition and findings on physical examination. He noted that range of motion of appellant's right shoulder, elbow and wrist was normal in all planes, Phalen's and Tinel's signs were negative, grip strength was good and there was no atrophy. He opined that appellant did not have a work-related disability or medical condition and could perform her position as a clerk for eight hours a day with no physical restrictions.

On October 31, 2002 Dr. Feierstein reported that appellant's right upper extremity symptoms had improved but she still had aching discomfort in the forearm and numbness at the surgical site of her ulnar nerve transposition. He stated that she should continue to perform light-duty work on an indefinite basis.

On September 15, 2003 appellant filed a claim for a recurrence of disability on September 2, 2003.

In a September 15, 2003 report, Dr. Feierstein indicated that appellant had an onset of right elbow and forearm discomfort one week earlier with no specific injury. He provided findings on physical examination and indicated that she had a full range of motion of the elbow and normal function of the ulnar nerve, with tenderness over the medial scars, medial humeral epicondyle and ulnar nerve. Dr. Feierstein recommended no work for two weeks while appellant underwent physical therapy. In form reports dated September 24 and October 1, 2003, Dr. Feierstein stated that appellant was disabled from September 15 through October 21, 2002. In answer to the question as to whether her condition was caused or aggravated by an employment activity, he wrote, "Female who injured her right forearm on [April 1, 1998] while doing repetitive work at the [employing establishment]."

By letter dated October 16, 2003, the Office advised appellant to submit medical evidence establishing a change in the nature and extent of her accepted right arm conditions or a

change in the nature and extent of her light-duty requirements such that she could not perform her light-duty position.

In a narrative report dated November 10, 2003, Dr. Feierstein stated that appellant had aching discomfort and tenderness on the medial side of her right arm but could perform her light-duty work. In a November 10, 2003 form report, he indicated that appellant was disabled from October 20 to November 14, 2003 but could resume light-duty work on November 14, 2003.

In a November 12, 2003 report, Dr. Irving D. Strouse, a Board-certified orthopedic surgeon and an Office referral physician, provided a history of appellant's condition and findings on physical examination. He stated:

“There is full range of motion of the right shoulder. There is no tenderness over the rotator cuff or acromioclavicular area. There is full motion of the right elbow in flexion, extension and rotation. There is full motion of the right wrist and hand.... There is no atrophy in the upper extremities.... [Appellant] has full muscle strength in the right upper extremity. There is no hypesthesia in the fingers of the right hand including the fourth and fifth fingers. There is no atrophy of the small muscles of the hand. There is full range of motion of all small joints of the right hand.

“[Appellant] does complain of tenderness over the anteriorly transported ulnar nerve along the medial aspect of the right elbow. She has some slight hypesthesia just posterior to the scar. Reflexes are intact. Circulation is intact.”

* * *

“[Appellant] is capable of performing her job duties as a clerk ... however, at the present time she is avoiding heavy lifting and excessive use of the right upper extremity. It is my opinion that because of the previous transposition of the ulnar nerve anteriorly, [appellant] will need the same job restrictions on a permanent basis. [Appellant] has a permanent disability in her right elbow secondary to her nerve injury and secondary transposition of the nerve. This disability will be permanent and is aggravated by heavy lifting. [She] should continue her weight restrictions to the right upper extremity on a permanent basis.”

Dr. Strouse stated that appellant was capable of working eight hours a day, needed no further medical care and there were no other medical conditions preventing her from returning to work.

By decision dated December 22, 2003, the Office denied appellant's claim for a recurrence of disability on September 2, 2003.

Appellant requested an oral hearing that was held August 30, 2004. She testified that on September 2, 2003 she worked intermittently due to right arm pain but was unable to work the following day and did not return to her light-duty job until November 7, 2003. Appellant did not allege that her recurrence of disability was caused by a change in her light-duty job requirements.

She contended that a worsening of her accepted right arm conditions prevented her from performing light-duty work.

By decision dated November 8, 2004, an Office hearing representative affirmed the December 22, 2003 decision.¹

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 disability and that she cannot perform the light-duty position. 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 job requirements.²

A recurrence of disability is defined under the Office's implementing federal regulations as the 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.³

ANALYSIS

Appellant has not alleged a change in the nature and extent of her light-duty job requirements. She alleges that her recurrence of disability on September 2, 2003 was due to a change in the nature and extent of her employment-related conditions, a right arm strain and ulnar nerve lesion. The record shows that, following the April 1, 1998 injury, appellant returned to work in a modified mail processing clerk position on September 12, 2002.

To be entitled to compensation for disability beginning on September 2, 2003, appellant must provide medical evidence establishing that she was disabled due to a worsening of her accepted work-related conditions, a right arm strain and a lesion of the right ulnar nerve, such that she was unable to perform her light-duty work.

Dr. Strouse provided a history of appellant's condition and findings on physical examination. He noted that appellant had full range of motion of the right shoulder, elbow, wrist and hand. There was no atrophy and she had full muscle strength. Dr. Strouse found no tenderness over the rotator cuff or acromioclavicular area and no hypesthesia in the fingers of the right hand. Her reflexes and circulation were intact. Appellant exhibited some tenderness over

¹ Appellant submitted additional evidence with her appeal to the Board. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board has no jurisdiction to consider this evidence for the first time on appeal.

² *Bryant F. Blackmon*, 57 ECAB ____ (Docket No. 04-564, issued September 23, 2005); *Terry R. Hedman*, 38 ECAB 222 (1986).

³ 20 C.F.R. § 10.5(x).

the anteriorly transported ulnar nerve along the medial aspect of the right elbow and some slight hypesthesia just posterior to the scar. Dr. Strouse opined that appellant was capable of performing her light-duty position with permanent restrictions of no heavy lifting or excessive use of the right upper extremity due to her employment-related nerve injury. He stated that appellant was capable of working eight hours a day, needed no further medical care and there were no other medical conditions preventing her from returning to work. Dr. Strouse opined that appellant was capable of performing her light-duty work and his report does not support her claim for an employment-related recurrence of disability on September 2, 2003.

On September 15, 2003 Dr. Feierstein indicated that appellant had an onset of right elbow and forearm discomfort one week earlier with no specific injury. He provided findings on physical examination and indicated that she had full range of motion of the elbow and normal function of the normal nerve but some tenderness over the medial scars, medial humeral epicondyle and ulnar nerve. Dr. Feierstein recommended no work for two weeks while appellant underwent physical therapy and other treatments. In reports dated September 24 and October 1, 2003, Dr. Feierstein stated that appellant was disabled from September 15 through October 21, 2002. However, he did not provide a rationalized medical opinion explaining a change in the nature and extent of her employment-related conditions, a right arm strain and a lesion of the right ulnar nerve. In a November 10, 2003 form report, Dr. Feierstein indicated that appellant was disabled from October 20 to November 14, 2003 but could resume light-duty work on November 14, 2003. He did not address how appellant's accepted right arm conditions had changed such that she became disabled nor did he address any change in her light-duty requirements. Because Dr. Feierstein's reports do not adequately address any change in the nature and extent of appellant's accepted right arm conditions or a change in the nature and extent of her light-duty requirements, the reports are not sufficient to establish that she sustained a recurrence of disability on September 2, 2003 causally related to her April 1, 1998 employment injury.

Appellant failed to establish that she was disabled on September 2, 2003 due to a worsening of her accepted work-related conditions or a change in her job duties such that she was unable to perform her light-duty work. Therefore, she failed to meet her burden of proof and the Office properly denied her claim for a recurrence of disability.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a recurrence of disability on September 2, 2003 causally related to her April 1, 1998 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' dated November 8, 2004 is affirmed.

Issued: March 7, 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