United States Department of Labor
Employees' Compensation Appeals Board

J.J., Appellant	)	
and	)	**Docket No. 06-1407**
	)	**Issued: November 8, 2006**
DEPARTMENT OF AGRICULTURE, FARM SERVICES AGENCY, Huron, SD, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 13, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 20, 2006 which denied 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 met her burden of proof to establish that she sustained a recurrence of disability, due to her accepted employment injury, beginning May 10, 2004.

FACTUAL HISTORY

On November 29, 1999 appellant, then a 45-year-old farm loan program technician, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome as a result of her federal employment. The Office accepted that appellant developed bilateral carpal tunnel syndrome and authorized a right carpal tunnel release, which was performed on October 28, 1999. A left carpal tunnel release was performed on April 6, 2000. Appellant

stopped work on October 28, 1999 and thereafter returned to a limited-duty position. She subsequently claimed schedule awards and submitted medical evidence regarding impairment to her arms. By decision dated June 28, 2002, the Office granted appellant schedule awards for 12 percent permanent impairment of both the left and right arms.

On July 30, 2004 appellant filed a Form CA-2a, notice of recurrence of disability. She noted that on May 10, 2004 she experienced weakness and discomfort in both wrists causally related to her accepted carpal tunnel syndrome. Appellant had performed limited-duty work since her return following the April 6, 2000 carpal tunnel release. She submitted reports from Dr. Larry Nickelson, a chiropractor, dated January 3, 2000 to March 8, 2004. Dr. Nickelson treated appellant for circumduction strain and post immobilization strain/fixation from carpal tunnel surgery. In reports dated April 2 and June 1, 2004, he treated appellant for lumbar, cervical and thoracic strains. Dr. David J. Witzke, a Board-certified plastic surgeon, submitted reports dated January 10, 2000 to October 31, 2003. He noted appellant's continued treatment for carpal tunnel syndrome. Appellant came under the treatment of Dr. David L. Hoversten, a Board-certified orthopedic surgeon, who treated her from January 10, 2002 to September 18, 2003 for a left knee injury. Dr. Hoversten diagnosed displacing tear of the medial meniscus and noted performing arthroscopic surgery to repair the tear. He treated appellant from June 18, 2003 to April 19, 2004, for trochanteric bursitis of the right hip and low back pain.

By letter dated August 13, 2004, the Office advised appellant of the factual and medical evidence needed to establish her claim for a recurrence of disability and requested that she submit a physician's reasoned opinion addressing the causal relationship of her claimed condition to the accepted condition. She did not respond.

In a decision dated September 14, 2004, the Office denied appellant's claim, finding that the medical evidence of record did not establish a change in the nature and extent of her injury-related disability or a change in the nature of her light-duty job.

On October 4, 2004 appellant requested an oral hearing, which was held on October 19, 2005. Appellant submitted a report from Dr. Witzke dated September 10, 2004, who noted treating her for bilateral wrist weakness. Dr. Witzke referred her to another physician for an impairment rating. In a report dated September 21, 2004, Dr. Nickelson noted that appellant's hands had improved since her 2000 surgery but that she experienced a loss in strength and flare-ups over the years. Appellant submitted a report from Dr. Mathew C. Reynen, a Board-certified orthopedic surgeon, dated November 9, 2005. Dr. Reynen noted a history of injury and subsequent treatment. He diagnosed six years status post bilateral carpal tunnel release with progressive weakness in the hands. Dr. Reynen noted that appellant's symptoms were not classic for carpal tunnel syndrome and recommended a repeat electromyogram (EMG). An EMG dated December 12, 2005 revealed evidence of bilateral median nerve entrapment at the wrists with chronic and inactive denervation/reinnervation bilaterally. The radiologist noted that, when compared to a study in 1999, appellant experienced excellent improvement of the nerve conduction findings of adequate decompression of the median nerves at the wrists bilaterally and opined that the present findings were most likely from the previous advanced carpal tunnel syndrome. In a December 28, 2005 statement, appellant asserted that the reports from

Dr. Reynen and the EMG supported that she had disability from her accepted condition of bilateral carpal tunnel syndrome. She requested that her case be reopened for an additional impairment rating.

In a decision dated January 5, 2006, the hearing representative set aside the September 14, 2004 decision and remanded the case for further medical development. The hearing representative noted that appellant submitted sufficient evidence to develop the issue of whether worsening of her condition was causally related to her accepted condition.

On remand, the Office referred appellant to Dr. Walker A. Wynkoop, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a report dated February 6, 2006, Dr. Wynkoop reviewed the records and performed a physical examination of appellant. He noted scars on the wrists, light touch sensation intact in all digits, no obvious interosseous atrophy, tenderness over the first carpometacarpal joints bilaterally, positive Tinel's bilaterally and a mildly positive Phalen's sign bilaterally. Dr. Wynkoop diagnosed mild bilateral carpal tunnel syndrome with nonclassic symptoms of pain at the base of her thumb and weakness of grip. Although appellant claimed a worsening of her condition, the objective data did not support this determination. He indicated that appellant's current symptoms were caused by carpometacarpal osteoarthritis and unrelated to her use of a keyboard. Dr. Wynkoop advised that carpometacarpal osteoarthritis caused grip strength weakening, which was appellant's main symptom. Appellant did not require any additional surgery for her accepted carpal tunnel syndrome but might require surgery for the carpometacarpal osteoarthritis. Dr. Wynkoop noted that appellant could return to work full duty without restrictions.

In a decision dated March 20, 2006, the Office denied appellant's claim for a recurrence of disability.

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 requirements.[1]

Causal relationship is a medical issue[2] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated 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

[1] *Terry R. Hedman*, 38 ECAB 222 (1986).

[2] *Mary J. Briggs*, 37 ECAB 578 (1986).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[3]

ANALYSIS

Appellant's claim was accepted bilateral carpal tunnel syndrome. She returned to a limited-duty position as a farm loan program technician and filed a claim for a recurrence of disability beginning May 10, 2004. The Board finds that appellant has not submitted sufficient evidence to 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 requirements.

Appellant submitted reports from Dr. Nickelson, a chiropractor, dated January 3, 2000 to September 21, 2004. He treated appellant for circumduction strain, post immobilization strain/fixation from carpal tunnel surgery, lumbar strain and a neck strain. Section 8101(2) of the Federal Employees' Compensation Act provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."[4] In this case, Dr. Nickelson is not considered a "physician," and his or her reports cannot be considered as competent medical evidence under the Act.[5] Dr. Nickelson is not a physician as appellant's accepted condition of bilateral carpal tunnel syndrome does not pertain to any treatment of the spine. The Board has held that a chiropractor may qualify as a physician in the diagnosis and treatment of a spinal subluxation; his or her opinion is not considered competent medical evidence in the evaluation of other disorders, including those of the extremities, although these disorders may originate in the spine.[6] Dr. Nickelson's opinion is not considered competent medical evidence under the Act.

The record contains several reports from Dr. Witzke dated January 10, 2000 to October 31, 2003 and Dr. Hoversten dated January 10, 2002 to April 19, 2004. However, as reports predate the time of the claimed recurrence of disability of May 10, 2004 they are not relevant to that issue.

[3] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] 5 U.S.C. § 8101(2); *see also* section 10.311 of the implementing federal regulations provides: "(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. The Office will not necessarily require submittal of the x-ray or a report of the x-ray, but the report must be available for submittal on request."

[5] *See Susan M. Herman,* 35 ECAB 669 (1984).

[6] *Pamela K. Guesford*, 53 ECAB 726 (2002).

In a report dated September 10, 2004, Dr. Witzke noted treating appellant for bilateral wrist weakness and a possible increased impairment. However, none of Dr. Witzke's reports contemporaneous with the recurrence claim noted a specific date of a recurrence of disability nor did he address any change in the nature of appellant's physical condition, arising from the employment injury, which prevented her from performing her light-duty position.[7]

In a report dated November 9, 2005, Dr. Reynen diagnosed six years status post bilateral carpal tunnel release and recent progressive weakness in the hands. He noted that appellant's symptoms were not classic for carpal tunnel syndrome. Dr. Reynen also did not address how appellant's condition on May 10, 2004 resulted in disability due to a change in the nature of her physical condition arising from the employment injury.

In January 2006, the Office referred appellant to Dr. Wynkoop for a second opinion evaluation. In a report dated February 6, 2006, he diagnosed mild bilateral carpal tunnel syndrome with nonclassic symptoms of pain at the base of her thumb and weakness of grip indicative of carpometacarpal osteoarthritis. He noted that, although appellant claimed a subjective worsening of her condition, the objective data did not support this finding. Dr. Wynkoop opined that appellant's current symptom were due to carpometacarpal osteoarthritis, which was not causally related to any work activity.

The Board finds that appellant has submitted insufficient evidence to show a change in the nature and extent of her physical condition, arising from the employment injury, which prevented appellant from performing her light-duty position. There is no evidence showing that appellant experienced a change in the nature and extent of the light-duty requirements or was required to perform duties which exceeded her medical restrictions. The light-duty position performed by appellant was in conformance with the medical restrictions set forth by her treating physician and the record is void of evidence which would indicate that there was a change in the nature and extent of the light-duty requirements or that she was required to perform duties which exceeded her medical restrictions.

Appellant has not met her burden of proof in establishing that there was a change in the nature or extent of the injury-related condition or a change in the nature and extent of the light-duty requirements which would prohibit her from performing the light-duty position she assumed after she returned to work.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability on May 10, 2004 causally related to her accepted bilateral carpal tunnel syndrome.

[7] *See Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971) (where the Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence).

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board