

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

C.F., Appellant)

and)

DEPARTMENT OF THE TREASURY,)
INTERNAL REVENUE SERVICE,)
Fitchburg, MA, Employer)

**Docket No. 06-681
Issued: October 4, 2006**

Appearances:
C.F., *pro se*
Jim C. Gordon, Jr., Esq., for the Director

Oral Argument September 7, 2006

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 31, 2006 appellant filed a timely appeal of the February 3, 2005 merit decision of the Office of Workers' Compensation Programs, denying her claim for wage-loss compensation for total disability for the period August 16, 2002 through October 21, 2003 and a May 19, 2005 nonmerit decision, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that she was totally disabled from May 30 to October 21, 2003 due to her accepted employment injuries; and (2) whether the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 12, 1995 appellant, then a 42-year-old data transcriber, filed a claim for an occupational disease alleging that on March 8, 1994 she first became aware of her carpal tunnel

syndrome and tendinitis of both hands. She further alleged that on March 25, 1994 she first realized that these conditions were caused by factors of her federal employment. Appellant stopped work on April 6, 1994.¹ The Office accepted her claim for thoracic outlet syndrome and bilateral carpal tunnel syndrome, and authorized right carpal tunnel release.

On May 19, 2004 appellant filed a claim for wage-loss compensation (Form CA-7) for the period beginning August 16, 2002. She submitted a May 27, 2004 attending physician's form report of Dr. Osama A. Al-Masri, a Board-certified orthopedic surgeon, which diagnosed thoracic outlet syndrome, carpal tunnel syndrome and cervical radiculitis. Dr. Al-Masri indicated with an affirmative mark that the diagnosed conditions were caused by the accepted employment injuries. Dr. Al-Masri further indicated that appellant was totally disabled from May 30 through October 26, 2003.

In a July 30, 2004 report, Dr. Al-Masri diagnosed ulnar neuritis, cervical radiculitis, spondylosis, thoracic outlet syndrome and lumbar disc herniation. He noted that appellant experienced the most pain in her neck. Dr. Al-Masri opined that she remained in the same condition as before and that he did not expect changes in the future.

Dr. Al-Masri's July 30, 2004 work capacity evaluation (Form OWCP-5c) revealed that appellant was unable to perform her usual job duties but found that she could work two to four hours a day with certain physical restrictions.

On September 14, 2004 the Office received Dr. Al-Masri's October 1, 2003 addendum to a September 9, 2003 report. Dr. Al-Masri stated that the first report contained an error in that appellant worked from December 2001 until August 2002 but did not perform computer work. Appellant carried a bag weighing up to 25 pounds on her left shoulder in and out of a courthouse. Dr. Al-Masri noted that appellant was laid off in August 2002 and thereafter she experienced difficulty while using a computer to prepare her résumé and research job opportunities.

In a March 5, 2004 report, Dr. Al-Masri reiterated his diagnoses of carpal tunnel syndrome, cervical radiculitis, thoracic outlet syndrome and lumbar disc herniation. He attributed these conditions to appellant's repetitive work duties which caused pain and numbness in the upper extremity. Dr. Al-Masri reiterated his October 2003 opinion that appellant could perform light-duty work, 20 hours a week with certain physical restrictions.

In an October 1, 2003 letter, received by the Office on September 14, 2004, Dr. Al-Masri opined that appellant should remain off work until he evaluated her again on October 21, 2003.

¹ Appellant's employment was terminated effective September 21, 2001 due to the employing establishment's inability to provide a position within her physical restrictions. She returned to work as a temporary legal advocate at a courthouse on December 2, 2001 following vocational rehabilitation. By letter dated March 26, 2002, the Office advised appellant that her compensation was being reduced effective March 24, 2002 based on her actual earnings as a safeplan advocate. Appellant's temporary employment ended on August 16, 2002. In an October 10, 2002 decision, the Office found that appellant's actual wages as a safeplan advocate fairly and reasonably represented her wage-earning capacity. This decision was affirmed by an Office hearing representative on September 12, 2003.

By letter dated October 29, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised her to submit medical evidence establishing her disability for work during the claimed period.

Appellant submitted Dr. Al-Masri's December 17, 2004 report which revealed that she underwent a cervical disc excision at C6-7 but still complained of pain on the left side of the cervical spine and left shoulder. Dr. Al-Masri reported numbness on elevation of the left arm due to thoracic outlet syndrome and tenderness in the left shoulder which could represent tendinitis. He completed a Form OWCP-5c on December 17, 2004 indicating that appellant could work two to four hours a day with certain physical restrictions.

By decision dated February 3, 2005, the Office denied appellant's claim for wage-loss compensation. It found that she failed to submit any rationalized medical evidence establishing that she was totally disabled during the period August 16, 2002 through October 21, 2003 due to her accepted employment injuries.

In a letter dated February 14, 2005, appellant requested reconsideration. She submitted duplicate copies of Dr. Al-Masri's reports dated April 4, May 30, July 7, September 9 and October 1 and 21, 2003 and March 5, May 27, July 30 and December 17, 2004. Appellant also submitted Dr. Al-Masri's partly illegible handwritten note dated July 7, 2003 which revealed that she worked at a courthouse from December 2001 to August 2002, carrying bags weighing 25 to 30 pounds. In another partly illegible handwritten note dated May 17, 2004, Dr. Al-Masri indicated that appellant had a problem in the left supraclavicular region.

By decision dated May 19, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and irrelevant and, thus, insufficient to warrant a merit review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

Under the Act, the term disability is defined as an inability, due to an employment injury, to earn the wages the employee was receiving at the time of the injury, *i.e.*, an impairment resulting in loss of wage-earning capacity.² For each period of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.³ Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁴ The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁵ The Board will not require the Office to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability

² See *Prince E. Wallace*, 52 ECAB 357 (2001).

³ *Dennis J. Balogh*, 52 ECAB 232 (2001).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ *Manuel Garcia*, 37 ECAB 767 (1986).

for which compensation is claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.⁶

ANALYSIS -- ISSUE 1

In this case, the Office accepted appellant's claim for thoracic outlet syndrome and bilateral carpal tunnel syndrome. On appeal appellant contends that the accepted employment-related conditions rendered her totally disabled for work from May 30 to October 21, 2003. She has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed disability from May 30 through October 21, 2003 and the accepted conditions.⁷

Appellant submitted narrative and Form OWCP-5C reports from Dr. Al-Masri, her attending physician, which covered intermittent dates from October 1, 2003 through December 17, 2004. Dr. Al-Masri found that appellant continued to suffer from residuals of her accepted employment injuries and she experienced symptoms related to her cervical and lumbar spine and left shoulder. However, he found that she could perform light-duty work, 20 hours a week with certain physical restrictions. The Board finds that Dr. Al-Masri's narrative and Form OWCP-5c reports are insufficient to establish appellant's claim because they did not specifically state that appellant was totally disabled during the period May 30 through October 21, 2003 due to the accepted employment injuries. Moreover, he did not provide any rationale explaining why the accepted conditions precluded appellant from engaging in full-time employment.

Dr. Al-Masri's October 1, 2003 letter found that appellant should remain off work until he evaluated her again on October 21, 2003. He did not provide medical rationale explaining how or why appellant was totally disabled from performing her work duties during the claimed period due to residuals of the accepted employment injuries. Therefore, the Board finds that Dr. Al-Masri's letter is insufficient to establish appellant's claim.

Dr. Al-Masri's May 27, 2004 form report diagnosed thoracic outlet syndrome, carpal tunnel syndrome and cervical radiculitis. He indicated with an affirmative mark that the diagnosed conditions were caused by the accepted employment injuries. Dr. Al-Masri found that appellant was totally disabled from May 30 through October 26, 2003. The Board, however, has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁸ As Dr. Al-Masri failed to provide medical rationale explaining how or why the diagnosed conditions and resultant disability were caused by the accepted employment injuries, the Board finds that his report is insufficient to establish appellant's claim.

⁶ *Amelia S. Jefferson*, 57 ECAB ____ (Docket No. 04-568, issued October 26, 2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *Alfredo Rodriguez*, 47 ECAB 437 (1996).

⁸ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

Appellant failed to submit rationalized medical evidence establishing that her total disability during the period May 30 through October 21, 2003 resulted from the effects of her employment-related thoracic outlet syndrome and bilateral carpal tunnel syndrome. The Board finds that she has not met her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128 of the Act,⁹ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.¹⁰ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹¹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

ANALYSIS -- ISSUE 2

In a February 3, 2005 decision, the Office found that appellant was not totally disabled from August 16, 2002 through October 21, 2003 due to her employment-related thoracic outlet syndrome and bilateral carpal tunnel syndrome. By letter dated February 14, 2005, appellant disagreed with this decision and requested reconsideration. As previously noted, appellant contends that she was totally disabled from May 30 through October 21, 2003. Thus, the relevant underlying issue in this case is whether appellant was totally disabled during the period May 30 through October 21, 2003 due to the accepted work-related thoracic outlet syndrome and bilateral carpal tunnel syndrome.

Appellant submitted duplicate copies of Dr. Al-Masri's reports dated April 4, May 30, July 7, September 9 and October 1 and 21, 2003, and March 5, May 27, July 30 and December 17, 2004. The Board has held that evidence that repeats or duplicates evidence already in the case record and considered by the Office has no evidentiary value and does not constitute a basis for further merit review.¹² As the Office previously reviewed the submitted medical reports, they are repetitive in nature and, thus, insufficient to warrant further merit review.¹³ Dr. Al-Masri's partly illegible handwritten note dated July 7, 2003 revealed that appellant worked at a courthouse from December 2001 to August 2002, carrying bags weighing 25 to 30 pounds. His partly illegible May 17, 2004 handwritten note indicated that appellant had

⁹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

¹⁰ 20 C.F.R. § 10.606(b)(1)-(2).

¹¹ *Id.* at § 10.607(a).

¹² *Edward W. Malaniak*, 51 ECAB 279 (2000).

¹³ *James A. England*, 47 ECAB 115, 119 (1995).

a problem in the left supraclavicular region. Neither of Dr. Al-Masri's notes addressed the issue of whether appellant was totally disabled during the period May 30 through October 21, 2003 due to her employment-related thoracic outlet syndrome and bilateral carpal tunnel syndrome. Therefore, they are not relevant to the issue at hand. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁴

Appellant did not submit any relevant and pertinent new evidence not previously considered by the Office in support of her request for reconsideration. Further, she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. As appellant did not meet any of the necessary regulatory requirements, the Board finds that the Office properly denied merit review.¹⁵

CONCLUSION

The Board finds that appellant has failed to establish that she was totally disabled from May 30 to October 21, 2003 due to her accepted employment injuries. The Board further finds that the Office properly denied appellant's request for further review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 19 and February 3, 2005 decisions of Office of Workers' Compensation Programs are affirmed.

Issued: October 4, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹⁴ See *Arlesa Gibbs*, 53 ECAB 204 (2001); *Kevin M. Fatzer*, 51 ECAB 407 (2000).

¹⁵ See *James E. Norris*, 52 ECAB 93 (2000).