

**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. 07-1371  
Issued: November 9, 2007**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 25, 2007 appellant filed a timely appeal of a February 9, 2007 merit decision of the Office of Workers' Compensation Programs which denied modification of a February 5, 2005 decision denying her recurrence of disability claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a recurrence of disability during the period May 30 through October 21, 2003 causally related to her accepted employment-related injuries.

**FACTUAL HISTORY**

This case has previously been before the Board. In an October 4, 2006 decision, the Board affirmed the Office's February 5, 2005 decision which denied appellant's claim for a recurrence of disability.<sup>1</sup> It found that she failed to submit rationalized medical evidence

---

<sup>1</sup> Docket No. 06-681 (issued October 4, 2006).

establishing that her total disability during the period May 30 through October 21, 2003 was causally related to her accepted employment-related thoracic outlet syndrome and bilateral carpal tunnel syndrome. The Board also affirmed the Office's May 19, 2005 decision which denied appellant's request for further review of the merits of her claim under 5 U.S.C. § 8128(a). It found that the medical reports of Dr. Osama A. Al-Masri, a Board-certified orthopedic surgeon, covering the period April 4, 2003 through December 14, 2004 appellant submitted in connection with her reconsideration request had previously been considered by the Office. The Board also found that Dr. Al-Masri's July 7, 2003 and May 17, 2004 notes were not relevant to the main issue in the present case because he did not address whether appellant was totally disabled during the period in question due to her accepted employment-related injuries. The facts and the circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference.<sup>2</sup> The facts and the history relevant to the present issue are hereafter set forth.

By letter dated November 13, 2006, appellant requested reconsideration before the Office. She submitted Dr. Al-Masri's October 23, 2006 report which stated that she was being seen again for the same symptoms of residual carpal tunnel and thoracic outlet syndromes. Dr. Al-Masri related that appellant had recurring numbness and pain when she used a computer or her hands repetitively. He stated that she was placed off work between May 30 and October 21, 2003 because appellant was doing physical therapy and repetitive use increased her symptoms. Dr. Al-Masri decided "to do this to avoid a recurrence." He opined that appellant was totally disabled due to a recurrence of her symptoms when she returned to work. Dr. Al-Masri indicated that she had to type and repetitively use her hands. He determined that appellant's carpal tunnel and thoracic outlet syndromes developed by clinical diagnosis and stated that it could also occur following repetitive use. Dr. Al-Masri summarized that placing appellant off work completely and deeming her disabled during the period May 30 through October 21, 2003 would be helpful in relieving her symptoms and treating her thoracic outlet and carpal tunnel syndromes with physical therapy. He opined that appellant was totally disabled at that time. Appellant was directed to return to work gradually, 20 hours per week and then gradually increase her hours as she felt better. Dr. Al-Masri concluded that her condition continued to be the same and that she was unable to perform work that required repetitive use of her upper extremity at that time.

By decision dated February 9, 2007, the Office denied modification of its prior decision. It found that Dr. Al-Masri's October 23, 2006 report was insufficient to establish that appellant sustained a recurrence of disability during the period May 30 through October 21, 2003 due to her accepted employment injuries.

### **LEGAL PRECEDENT**

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

---

<sup>2</sup> On June 12, 1995 appellant, then a 42-year-old data transcriber, filed a claim for an occupational disease. She alleged that on March 8, 1994 she first became aware of her carpal tunnel syndrome and tendinitis of both hands. Appellant further alleged that on March 25, 1994 she first realized that these conditions were caused by her federal employment. She stopped work on April 6, 1994. The Office accepted appellant's claim for thoracic outlet syndrome and bilateral carpal tunnel syndrome and authorized right carpal tunnel release.

previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>3</sup>

A person who claims a recurrence of disability has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability, for which she claims compensation is causally related to the accepted employment injury.<sup>4</sup> Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence a causal relationship between her recurrence of disability and her employment injury.<sup>5</sup> This burden includes the necessity of furnishing evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury.<sup>6</sup> Moreover, the physician's conclusion must be supported by sound medical reasoning.<sup>7</sup>

### ANALYSIS

In a report dated October 23, 2006, Dr. Al-Masri stated that appellant experienced continuing symptoms of her employment-related carpal tunnel and thoracic outlet syndromes as she had recurring numbness and pain when she used a computer or her hands repetitively. He placed her off work from May 30 to October 21, 2003 because appellant was receiving physical therapy for her employment-related injuries and repetitive use increased her symptoms. Dr. Al-Masri stated that he did so "to avoid a recurrence." He opined that appellant was totally disabled due to a recurrence of her symptoms when she returned to work, noting that she was required to type and repetitively use her hands. Dr. Al-Masri concluded that her condition continued to be the same and that she was unable to perform work that required repetitive use of her upper extremity at that time. Regarding his decision to place appellant off work from May 30 through October 21, 2003 to avoid a recurrence of disability, the Board has held that fear of future injury or fear of a recurrence of disability if the employee returns to work, is not compensable; there must be medical evidence showing that a claimant is currently disabled for work due to an employment-related condition.<sup>8</sup> Dr. Al-Masri did not provide any medical rationale explaining how or why appellant sustained a recurrence of disability from May 30 through October 21, 2003 due to her employment-related carpal tunnel and thoracic outlet syndromes and why the medical services rendered were for the effects of an employment-related condition. Thus, the Board finds that his October 23, 2006 report is insufficient to establish appellant's burden of proof.

---

<sup>3</sup> 20 C.F.R. § 10.5(x).

<sup>4</sup> *Kenneth R. Love*, 50 ECAB 193, 199 (1998).

<sup>5</sup> *Carmen Gould*, 50 ECAB 504 (1999); *Lourdes Davila*, 45 ECAB 139 (1993).

<sup>6</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *see also* 20 C.F.R. § 10.104(a)-(b).

<sup>7</sup> *Alfredo Rodriquez*, 47 ECAB 437 (1996); *Louise G. Malloy*, 45 ECAB 613 (1994).

<sup>8</sup> *See Virginia Dorsett*, 50 ECAB 478 (1999); *William A. Kandel*, 43 ECAB 1011 (1992); *Mary A. Geary*, 43 ECAB 300 (1991).

**CONCLUSION**

The Board finds that appellant has failed to establish that she sustained a recurrence of disability from May 30 through October 21, 2003 causally related to her accepted employment-related injuries.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 9, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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