United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
and	)	**Docket No. 07-914**
	)	**Issued: September 6, 2007**
SOCIAL SECURITY ADMINISTRATION,	)	
CENTER FOR HUMAN RESOURCES,	)	
New York, NY, Employer	)	

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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 20, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 20, 2006 with respect to a 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 this case.

ISSUE

The issue is whether appellant has established a recurrence of disability commencing April 29, 2005.

FACTUAL HISTORY

On August 26, 1999 appellant, then a 53-year-old claims representative, filed an occupational disease claim alleging that she sustained bilateral arm tendinitis as a result of repetitive activity during her federal employment. The claim was accepted for bilateral wrist tendinitis, bilateral carpal tunnel syndrome and bilateral de Quervain's syndrome. Appellant

underwent right carpal tunnel surgery on June 21, 2002 and left carpal tunnel surgery on September 17, 2002. She returned to a light-duty position at four hours per day on November 12, 2002.

In a report dated April 19, 2005, Dr. Sana Bloch, a neurologist, diagnosed chronic pain syndrome and right reflex sympathetic dystrophy (RSD). She opined that appellant was totally disabled. On April 29, 2005 appellant filed a notice of recurrence of disability (Form CA-2a) commencing on that date.

By decision dated August 2, 2005, the Office denied the claim for a recurrence of disability commencing April 29, 2005. Appellant requested reconsideration and submitted an August 12, 2005 report from Dr. Bloch, who opined that the source of appellant's pain syndrome was the carpal tunnel syndrome. Dr. Bloch stated that the carpal tunnel had progressed to a RSD involving the arms and opined that appellant was totally disabled. In a report dated August 15, 2005, Dr. Roy Kulick, an orthopedic surgeon, opined that appellant was totally disabled due to carpal tunnel syndrome.

The Office referred the case to an Office medical adviser. In a report dated September 7, 2005, the medical adviser opined that there was no evidence to establish an RSD due to carpal tunnel syndrome. He opined that appellant's complaints were due to degenerative arthritis and her disability as of April 2005 was not employment related.

The Office initially referred appellant for a second opinion examination by Dr. Richard DuShuttle, an orthopedic surgeon, who submitted reports dated March 8 and April 26, 2006. In the latter report, Dr. DuShuttle opined that the RSD was not related to the carpal tunnel surgery and that he did not believe that appellant was totally disabled as of April 20, 2005. An Office medical adviser reviewed the evidence and opined in a May 10, 2006 report that Dr. DuShuttle's examination was inadequate as he did not provide appropriate results on examination in his reports.

The Office referred appellant to Dr. Robert Smith, an orthopedic surgeon, for a second opinion examination. In a report dated June 20, 2006, Dr. Smith provided a history and results on examination. He reported no clinical evidence of RSD or ongoing carpal tunnel syndrome and stated that it appeared that residuals of the accepted conditions had resolved. Dr. Smith noted that an electromyogram (EMG) in June 2003 showed no evidence of any ongoing nerve abnormalities in the arms. He opined that any claim for total disability since April 29, 2005 would not be related to carpal tunnel syndrome. Dr. Smith completed a work restriction evaluation and indicated that appellant could work without restriction.

The Office found that a conflict in the medical opinion evidence existed. The questions posed for the referee examiner included an opinion as to whether any other diagnoses, specifically RSD and chronic pain syndrome, were employment related and an opinion as to whether appellant was totally disabled as of April 29, 2005 due to the effects of the work injuries.

The neurologist selected as the referee examiner, Dr. Lee Dresser, provided a report dated August 23, 2006. Dr. Dresser provided a history and results on examination. He diagnosed

bilateral carpal tunnel syndrome with subsequent normalization of nerve conduction studies, osteoarthritis with a history of tendinitis and chronic right greater than left arm pain without significant evidence of RSD changes. Dr. Dresser stated:

> "It is quite likely that [appellant's] carpal tunnel syndrome was the result of her frequent repetitive typing. The tenosynovitis and osteoarthritis likely also were contributed to by her repetitive workplace activity. I find [appellant] to be unable to return full time to work. She is partially disabled because of the above-described symptoms. [Appellant] should be able to return part time to work, performing activities that do not require repetitive, continuous motions."

By decision dated November 20, 2006, the Office denied modification of the August 2, 2005 decision. The Office found that the weight of the evidence was represented by Dr. Dresser.

LEGAL PRECEDENT

The Office's regulation defines the term recurrence of disability as follows:

> "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 previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."[1]

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or 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 he or she cannot perform such light duty. As part of this burden, 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 requirements.[2]

When the Office refers appellant to a referee examiner for the purpose of resolving a conflict in the medical evidence pursuant to 5 U.S.C. § 8123(a), the Office has a responsibility to secure a medical report that properly resolves the conflict.[3] When the opinion from the referee

[1] 20 C.F.R. § 10.5(x).

[2] *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

[3] *See Thomas Graves*, 38 ECAB 409 (1987).

examiner requires clarification or elaboration, the Office must further develop the medical evidence until the conflict is properly resolved.[4]

ANALYSIS

The Office found that a conflict existed under 5 U.S.C. § 8123(a) with respect to disability as of April 29, 2005.[5] Attending physicians Drs. Bloch and Kulick supported an employment-related total disability, while second opinion examiner Dr. Smith and an Office medical adviser opined that appellant was not totally disabled as of April 29, 2005.

In referring the case to a referee examiner, the Office properly requested the physician provide an opinion as to whether there was total disability as of April 29, 2005 causally related to an employment injury. Since Dr. Bloch had provided a diagnosis that included nonaccepted conditions, such as RSD, the referee examiner was also asked to discuss whether there were any other employment-related conditions other than the accepted conditions.

The referee examiner, Dr. Dresser, failed to address the relevant issues or provide a reasoned medical opinion. With respect to the diagnoses, Dr. Dresser briefly stated that there was no "significant evidence" of RSD changes without providing further explanation. He also appeared to find the diagnosis of osteoarthritis was employment related, although again he did not provide additional explanation. With respect to the primary issue of whether appellant was totally disabled as of April 29, 2005 due to an employment-related condition, Dr. Dresser provided no opinion at all. He does not discuss appellant's light-duty job or provide a reasoned medical opinion as to whether appellant was totally disabled on or after April 29, 2005 as a result of an employment-related injury.

The case therefore will be remanded to the Office for further development to properly resolve the conflict in the medical evidence.[6] After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The referee examiner did not resolve the conflict in the medical evidence and the case will be remanded for proper resolution of the conflict.

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[4] *Id.*

[5] Under 5 U.S.C. § 8123(a), if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. 20 C.F.R. § 10.321 (1999).

[6] As noted in *Thomas Graves, supra* note 3, the referee examiner should be asked to provide a supplemental report. If a supplemental report is not forthcoming, or if the physician is unable to provide a rationalized medical opinion, the Office should refer appellant to a second referee examiner.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 20, 2006 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: September 6, 2007
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