

had failed to provide an opinion on the issue of whether appellant was totally disabled as of April 29, 2005 due to an employment-related condition. The case was remanded to properly resolve the conflict in the medical evidence. The history of the case is provided in the prior decision and is incorporated herein by reference.

By letter dated September 26, 2007, the Office requested that Dr. Dresser provide a supplemental report (outgoing). It asked Dr. Dresser for an opinion as to whether appellant had reflex sympathetic dystrophy (RSD) or chronic pain syndrome casually related to her employment and to discuss her current disability. In addition, the Office also asked whether total disability from April 29, 2005 to the present was causally related to the accepted conditions of bilateral carpal tunnel syndrome, tenosynovitis of the hand/wrist or closed dislocated cervical vertebrae.²

In a report dated October 29, 2007, Dr. Dresser stated that appellant's upper extremity pain did not meet the criteria for RSD. He reported the bilateral carpal tunnel syndrome was appropriately treated with surgery in 2002 and there was no clear evidence appellant had sarcoid-related peripheral nerve dysfunction. Dr. Dresser stated appellant's current disability "exceeds that related to her past diagnoses of carpal tunnel syndrome and tenosynovitis of the hand and wrist." He indicated appellant's current disability was largely due to chronic pain, which was likely due to tenosynovitis and arthritis, magnified by her depression. Dr. Dresser also stated appellant may have an element of somataform or conversion disorder, and less likely malingering. With respect to disability on April 29, 2005, he stated, "I do not believe her total disability, which she incurred on April 29, 2005, is related to her bilateral carpal tunnel syndrome or any dislocated cervical vertebrae. Appellant is limited by tenosynovitis and likely some element of arthritis of her hands and cervical spine strain." Dr. Dresser completed a work capacity evaluation (Form OWCP-5c) and indicated appellant could work four hours per day with restrictions.

By decision dated November 14, 2007, the Office denied the claim for a recurrence of disability. It stated the referee's findings indicated the accepted conditions had not developed into a complex regional pain syndrome and also appellant was able to work four hours per day.

LEGAL PRECEDENT

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), it has a responsibility to secure a medical report that properly resolves the conflict.³ When the opinion from the referee examiner requires clarification or elaboration, the Office must further develop the medical evidence until the conflict is properly resolved.⁴

² The closed dislocated cervical vertebrae condition was accepted pursuant to another claim, OWCP File No. xxxxxx084. An April 1, 2003 statement of accepted facts for the current claim indicated that bilateral de Quervain's syndrome was also an accepted condition.

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

⁴ *Id.*

ANALYSIS

The Office sought clarification from Dr. Dresser on the issue of whether the disability commencing April 29, 2005 was employment related. The October 29, 2007 report from Dr. Dresser stated that he did not believe the total disability commencing April 29, 2005 was related to bilateral carpal tunnel syndrome or a dislocated cervical vertebrae. However, this response does not recognize that tenosynovitis of the hand/wrist is also an accepted condition in this case. The September 26, 2007 letter to Dr. Dresser specifically included tenosynovitis as an accepted employment-related condition. With regard to tenosynovitis, he does indicate whether appellant's current disability was at least in part related to the condition. Dr. Dresser does not clearly state whether he believed appellant was totally disabled as of April 29, 2005 due to the tenosynovitis or whether there was any period of subsequent total or partial disability causally related to the accepted tenosynovitis. It is also noted that he again referred to arthritis of the hand. As the Board pointed out in its prior decision, Dr. Dresser appeared to find that osteoarthritis was employment related in his August 23, 2006 report. He did not clarify this issue in his October 29, 2007 report.

The case must be remanded to resolve the conflict. The referee physician should provide a rationalized opinion as to an employment-related disability for the light-duty job on or after April 29, 2005. The accepted conditions should be clearly stated in the statement of accepted facts, all of the accepted employment-related conditions must be discussed by the physician and an opinion as to whether a diagnosis of arthritis is employment related should also be provided. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The additional report from the referee examiner did not resolve the conflict and the case is remanded for additional development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 14, 2007 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 19, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board