United States Department of Labor
Employees' Compensation Appeals Board

K.L., Appellant	)	
and	)	**Docket No. 07-2313**
	)	**Issued: June 24, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Wrightstown, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
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 September 11, 2007 appellant filed a timely appeal of the April 13 and July 9, 2007 decisions of the Office of Workers' Compensation Programs which affirmed the denial of her claim for a recurrence of disability. She also appealed an April 13, 2007 decision of an Office hearing representative. 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 on appeal is whether appellant met her burden of proof to establish a recurrence of disability on April 22, 2006 causally related to her employment injury.

FACTUAL HISTORY

On November 25, 2002 appellant, then a 43-year-old letter clerk, filed an occupational disease claim alleging that she developed carpal tunnel syndrome at work. She first became aware of the disease and realized it was caused by her employment on August 6, 2002. Appellant did not initially stop work. On March 5, 2003 the Office accepted the claim for

bilateral carpal tunnel syndrome.[1] The Office expanded the claim to include left ulnar nerve entrapment and authorized a left endoscopic carpal tunnel syndrome release.[2] Appellant was placed on the periodic rolls on May 30, 2003.

On July 7, 2003 Dr. Daren J. Aita, a Board-certified orthopedic surgeon and treating physician, advised that appellant could return to full duty on July 12, 2003. In reports dated January 12, 2004, he noted that appellant experienced a recurrence of both wrist discomfort and numbness in the fingertips. Dr. Aita advised that appellant stay off work for two weeks, and return with restrictions on repetitive wrist and hand motion. In a January 16, 2004 attending physician's report, he diagnosed bilateral carpal tunnel syndrome and checked the box "yes" that he believed appellant's condition was employment related. Dr. Aita noted restrictions on repetitive hand movements and continued to submit reports. Appellant returned to work on January 26, 2004 with restrictions on lifting, pushing, pulling and repetitive duties. On September 3, 2004 she underwent recurrent right carpal tunnel syndrome release. When the employing establishment was unable to accommodate appellant's restrictions, she was placed on the periodic rolls on July 13, 2004.

On January 20, 2006 Dr. Aita noted that a functional capacity evaluation indicated that appellant could perform sedentary work with up to 10 pounds of lifting or carrying. He indicated that he had reviewed appellant's job description and opined that it was reasonable for her to perform. Dr. Aita also indicted that appellant related that she had a recurrence of her symptoms in August 2005; however, he noted that she had not returned to work during this time. He indicated that appellant had stenosing tenosynovitis but he could not relate it directly to her occupation and did not believe that it was work related.

On January 30, 2006 appellant accepted a modified job as a distribution window clerk for four hours per day with duties that included working at the window, boxing mail and distributing parcels. The position required lifting no more than 10 pounds intermittently for up to three hours, interim standing and no pushing or pulling more than 10 pounds for up to three hours, fine manipulation on an interim basis for up to four hours and interim sitting up to one hour. Appellant returned to work for four hours per day on February 11, 2006.[3]

In a March 20, 2006 report, Dr. Aita noted that appellant returned with complaints of occasional tingling in her bilateral hands. Appellant related that she could not continue her current work as she stated that she was sometimes required to box mail for up to three hours per day. She had to use her right hand and open it widely to grip large bundles of mail while placing them in boxes. Dr. Aita advised that this activity worsened appellant's symptoms with numbness and tingling in the long and index fingers. He noted that examination was relatively benign with no evidence of swelling or limitation in digital or wrist motion. Dr. Aita opined that appellant's prior functional capacity evaluation had failed and recommended that she return to her modified

[1] The record reflects that appellant had a separate claim, which was also accepted for carpal tunnel syndrome on May 3, 2004. On May 17, 2004 the Office combined appellant's claims.

[2] Appellant underwent the surgery for the right wrist on April 8, 2003 and the left wrist on May 30, 2003. She filed a notice of recurrence for a January 12, 2004 date of injury, which the Office accepted as compensable.

[3] The Office continued to pay appellant compensation for the four hours daily that she did not work.

duty as outlined with the exception that she forego box mail, which he noted "appears to be her aggravating activity at work."

On April 26, 2006 appellant filed a recurrence of disability claim asserting that, on April 22, 2006, she had a recurrence for which she stopped work on April 25, 2006. The employing establishment stated that limited duty was provided for appellant's restrictions, four hours per day. The employing establishment denied that appellant worked outside her restrictions. Appellant asserted that her postmaster screamed at her after she tried to limit herself to one hour of box mail as this caused numbness and tingling.

In an April 24, 2006 report, Dr. Scott M. Fried, an osteopath and treating physician, noted appellant's history of injury and treatment. Appellant related that her modified job was changed and required her to work outside her restrictions, and included that she box mail for one and one half to three hours. She explained that this meant that she sorted and cased mail. Dr. Fried recommended a pain management program and opined that it was dangerous for appellant to work. He diagnosed trigger finger on the right, sympathetically mediated bilateral upper extremity pain syndrome, neuropathy on the left; radial and ulnar neuropathy, median nerve carpal tunnel decompression, carpal tunnel and median neuropathy and radial neuropathy on the right.

In a May 17, 2006 statement, Mark R. Davidson, postmaster, indicated that he had never instructed appellant to work outside her restrictions. He asserted that, if it took her longer than one hour to case box mail, it was because she was making telephone calls and talking to other employees. Regarding casing box mail, the postmaster indicated that, once appellant's restrictions changed, he would let her sit and do nothing rather than work beyond her restrictions. Mr. Davidson denied that he had ever screamed at appellant and confirmed that he had informed her that he might have to find her a new position if she were unable to case the box mail, as it was her primary job function. Appellant did not inform him that her hands tingled or became numb. Mr. Davidson was unable to allow her to be trained for the window due to her four-hour work limitation.

By letter dated May 24, 2006, the Office requested additional information from appellant. In a June 5, 2006 statement, appellant alleged that on April 22, 2006 she worked her usual four hours. However, she indicated that she started her day by unloading parcels from the all purpose container (APC) which was not a part of her limited-duty assignment. Appellant alleged that she unloaded parcels occasionally when the postmaster was busy or not in to unload. She also worked on the accountable mail and answered the telephone. Appellant alleged that it was the daily repetitive movement of her hands and arms while sorting parcels and stamping the accountable mail that caused pain, tingling, numbness and swelling in her hands, wrists and elbows.

In a June 12, 2006 statement, Mr. Davidson stated that appellant's assignment did not preclude her from working out of an APC. She was instructed to ask for assistance for lifting any parcel over 10 pounds. Mr. Davidson advised that he did not order appellant to work the accountable mail, but rather, asked her if she could, since she was unable to work the box mail. He indicated that appellant responded that she could perform the task. Mr. Davidson noted that after working the parcels in the morning for about one hour, appellant would sit at a desk for two

hours, either reading or talking on the telephone. He noted that, about 30 minutes before leaving, she put the "CFS and PARS mail together for deployment to the plant." Mr. Davidson noted that this was typically a 15-minute endeavor and did not contradict her restrictions.

By decision dated July 25, 2006, the Office denied appellant's claim for a recurrence of disability beginning April 22, 2006.

On July 28, 2006 appellant requested a hearing, which was held on December 13, 2006.[4]

In a June 30, 2006 report, Dr. Fried recommended continued work modifications. He noted reviewing a June 26, 2006 functional capacity evaluation and stated that appellant was unable to lift more than three pounds. Dr. Fried advised that appellant was unable to perform lifting required in her regular job to move parcels and letters. In a September 7, 2006 report, he noted that appellant's symptoms remained the same. Dr. Fried indicated that appellant related an increase in some of her symptoms and while she was "relieved to not be constantly reaggravating her symptoms at work since coming out of work in April, the symptoms again do remain severe and are set off by activities as simple as those involved in daily living, such as bathing and dressing." He advised that appellant remained symptomatic and should stay off work. The Office also received physical therapy reports. In an October 31, 2006 electrodiagnostic report, Dr. Ernest Baran, a Board-certified physiatrist, noted that appellant had a bilateral lower plexus lesion and moderate left medial humeral epicondylitis.

On November 28, 2006 the Office referred appellant for a second opinion to Dr. Zohar Stark, a Board-certified orthopedic surgeon. In a January 2, 2007 report, Dr Stark noted appellant's history and opined that her accepted bilateral carpal tunnel syndrome had not completely resolved. He advised that appellant had a positive Tinel's and Phalen's testing in both wrists. Dr. Stark opined that appellant had reached maximum medical improvement and was unable to perform the full duties of her employment as a clerk with the employing establishment. Appellant was able to perform work with modifications. Dr. Stark completed a work capacity evaluation, noting that appellant was able to work for eight hours per day with limitations on more than two hours of repetitive movements with the wrists, and more than four hours of pushing, pulling, lifting, and squatting, with a five-pound weight restriction. Additionally, Dr. Stark advised that appellant could do no climbing, and could not operate a motor vehicle for more than two hours per day.

In a January 16, 2007 statement, Mr. Davidson noted that appellant's stool was adjustable and could accommodate a five or six foot employee. Appellant did not receive certain training due to the confidential employee information in her office and that she was not given window training because 40 hours of training was required at an alternate location and she could only work 4-hour days and could not drive to the other location. Mr. Davidson denied asking

[4] At the hearing, appellant noted that, upon her return to limited work on February 11, 2006, her duties were supposed to include working at the window; however, the computer system changed while she was out, and she was not given window training. She stated that she initially only boxed mail for an hour; however, she indicated that she was under pressure and began boxing mail for an average of 2 hours and 15 minutes, which was beyond her restrictions. Appellant noted that she did not do parcels until she stopped doing box mail. She stated that she occasionally did accountable mail when another clerk was out.

appellant to do more than her position indicated. He agreed to allow her to do parcels, after she was unable to do the box section, and only if she agreed to ask for help if a parcel was too heavy. Mr. Davidson indicated that they averaged about 5 to 10 pieces of accountable mail a day. He contended that appellant was exaggerating her duties and the physical ability needed to complete her tasks.

In a January 28, 2007 response, appellant alleged that, despite being adjustable, the clerk's stools had a big reach. She alleged that she was never offered window training, that it took more than an hour to put up box mail, and that she only had a conversation with other clerks who were in the vicinity of the box section and were also working.

In a January 29, 2007 report, Dr. Fried repeated his previous diagnoses, noting his concern regarding the "repetitive nature of this job." He stated that the job "consisted of aggressive and repetitive and wrist and arm motion with repeated stress and strain on the flexor tendons resulting in chronic inflammatory change and ultimately compression of the median nerve of the carpal tunnel." Dr. Fried recommended treatment, to include therapy and a spa program and indicated that appellant would not return to repetitive activity. He opined that he did "not foresee this individual returning to regular work activities."

By decision dated April 13, 2007, the Office hearing representative affirmed the July 25, 2006 decision.

Appellant requested reconsideration. In an April 20, 2007 report, Dr. Fried noted that he initially saw appellant on April 24, 2006. He described her duties and history, noting that she returned to modified work on February 1, 2006 and a dispute arose between her description of her work duties and the description of the postmaster. Dr. Fried opined that, in either case, appellant noted significant progression of her pain and discomfort when performing duties and that involved regular grasping and use of the hands, wrists and arms. Appellant had difficulty with prolonged driving, gripping and grasping. Dr. Fried noted that appellant's description of her activities was not as important or pertinent as the fact that she had increased symptoms when performing her work activities, even though they were more limited than her previous regular duty and modified duty jobs. He stated that she was "disabled from her regular work and occupation and certainly the activities she has been performing, which do exacerbate her work-related median neuropathies." Dr. Fried continued to treat appellant and opine that her condition remained unchanged. In May 16, and June 19, 2007 reports, he noted that appellant presented for pain management and medical self-hypnosis. The Office also received therapy reports.

By decision dated July 9, 2007, the Office denied modification of the April 13, 2007 decision.

LEGAL PRECEDENT

Section 10.5(x) of the Office's regulations provides that 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 previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[5]

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 establishes that the employee 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 to show that he or 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 job requirements.[6]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.[7] This consists of 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.[8] The physician's opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[10]

ANALYSIS

Appellant's claim was accepted for bilateral carpal tunnel syndrome, left ulnar nerve entrapment and bilateral carpal tunnel syndrome release. She returned to work on February 11, 2006, within restrictions set forth by Dr. Aita. Appellant claimed a recurrence on April 22, 2006 for which she stopped work on April 25, 2006. The Board finds she has not submitted sufficient evidence providing a medical rationalized opinion from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she had a recurrence of disability causally related to the employment injury and supported that conclusion with sound medical reasoning.[11]

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[5] 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

[6] *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

[7] *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

[8] *Duane B. Harris*, 49 ECAB 170, 173 (1997).

[9] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

[10] *Walter D. Morehead*, 31 ECAB 188 (1986).

[11] *See Helen K. Holt*, 50 ECAB 279 (1999).

The relevant medical reports to the period commencing on April 22, 2006 are from Dr. Fried, who indicated that appellant related that her modified job duties were changed and that she was required her to work outside her medical restrictions, including boxing mail for one and a half to three hours. The Board notes that Dr. Fried was provided an inaccurate description of the activities appellant was engaged in. For example, the record reflects that appellant's physician, Dr. Aita, indicated on March 20, 2006 that appellant could continue with her modified duty, but that she should not continue performing box mail duties which aggravated her condition. Appellant also stated that she stopped her box mail duties at that time. The postmaster also indicated that he did not require appellant to work beyond her restrictions. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.[12] The Board also notes that Dr. Fried diagnosed certain conditions not accepted by the Office such as trigger finger on the right, sympathetically mediated bilateral upper extremity pain syndrome, neuropathy on the left; and radial and ulnar neuropathy. However, the claimant bears the burden of proof to establish that such condition is causally related to the employment injury.[13] Additionally, on March 20, 2006, Dr. Aita noted an essentially normal examination.

On June 30, 2006 Dr. Fried concluded that appellant could not perform regular job activities, including no lifting over three pounds. In a September 7, 2006 report, he advised that appellant's symptoms remained the same despite being off work. However, these reports do not adequately address how the accepted condition worsened such that appellant was no longer able to perform her limited-duty work on or after April 22, 2006. While Dr. Fried indicated that appellant was unable to lift more than three pounds, the restrictions in place on April 22, 2006 were that she could lift up to 10 pounds. The Board notes that appellant did not work after April 22, 2006, and Dr. Fried did not explain how he determined that this lower weight restriction was due to a change in her accepted condition. Moreover, Dr. Fried indicated that appellant's symptoms were set off by activities involved in daily living, such as bathing and dressing. On January 29, 2007 he repeated his previous diagnoses and advised that he was concerned regarding the "repetitive nature of this job." Dr. Fried indicated that the job "consisted of aggressive and repetitive and wrist and arm motion with repeated stress and strain on the flexor tendons resulting in chronic inflammatory change and ultimately compression of the median nerve of the carpal tunnel." He opined that he did not foresee appellant "returning to regular work activities." However, the issue before the Board is not whether appellant could perform her regular duties but whether there was a change in the nature and extent of her injury-related condition beginning April 22, 2006. This report does not identify the aggressive repetitive activities appellant was engaged in and fails to explain how appellant's accepted condition had worsened such that she was no longer able to perform her limited-duty work on or after April 22, 2006.[14]

[12] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[13] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[14] Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *Michael E. Smith*, 50 ECAB 313 (1999).

In an April 20, 2007 report, Dr. Fried noted that there was some dispute between appellant's description of her limited-duty work with the description of the postmaster. He opined that the description of her activities was not pertinent, noting the fact that she did have increased symptomatology when performing work activities which were more limited than her previous regular duty. However, the Board finds that an accurate knowledge of appellant's work activities is an important factor in determining whether she sustained a recurrence of disability on April 22, 2006.[15] This report is of limited probative value as he did not provide a reasoned opinion explaining how appellant's accepted condition had worsened beginning April 22, 2006 such that she was no longer able to perform her limited-duty work.

The Board also notes that Dr. Stark, the second opinion physician, provided a January 2, 2007 report, in which he opined that appellant was capable of working limited duties for eight hours per day.

The other medical records provided by appellant are insufficient to establish her claim. Physical therapy reports are of no probative value as a physical therapist is not a "physician" within the meaning of section 8101(2), and cannot render a medical opinion.[16] The record also contains several diagnostic reports and other reports that do not specifically address whether appellant's claimed recurrence of disability commencing on April 22, 2006 is causally related to her accepted condition.

The Board further finds that appellant has not shown a change in the nature and extent of the light-duty job requirements.

Appellant alleged that she worked outside her restrictions until she stopped work on April 22, 2006. She stated that on April 22, 2006 she started her day by unloading parcels from an APC which was not a part of her limited-duty assignment. Appellant noted that she worked box mail outside her restrictions and that she occasionally unloaded parcels. She also alleged that the clerk's stools, despite being adjustable, had a big reach but it is not clear how this violated a particular work restriction.

Mr. Davidson, the postmaster, responded to appellant's allegations about her job duties and emphasized that she was not required to work outside of her restrictions. He noted that her restrictions did not preclude her from working out of an APC. Appellant was instructed to ask for assistance regarding lifting any parcels over 10 pounds. Furthermore, Mr. Davidson denied ordering her to work the accountable mail but confirmed that he asked her if she felt that she could since she was unable to work the box mail. He noted that appellant informed him that she could perform the task. Mr. Davidson noted that accountable mail was comprised of approximately 5 to 10 pieces a day, and not more the volume asserted by appellant.

The Board finds that the evidence reflects that appellant was in a position where she was given substantial leeway, which included only doing what she felt comfortable doing, asking for assistance when needed and generally working within her restrictions. The postmaster explained

[15] *See supra* note 12.

[16] *Vickey C. Randall*, 51 ECAB 357 (2000).

that he only asked her to do accountable mail if she felt up to it and she was instructed to ask for assistance with anything she felt that she could not do. The evidence indicates that the modified-duty position was such that appellant was able to sit and talk at her leisure and was not required to do anything outside her restrictions. Although appellant disputed some of Mr. Davidson's characterizations about work requirements and conditions, she did not submit any corroborating evidence. The Board finds that evidence does not substantiate that appellant had a change in the nature and extent of her light-duty requirements or was required to perform duties that exceeded her medical restrictions.[17]

The Board finds that appellant has not submitted sufficient rationalized medical evidence to establish a spontaneous change in her accepted conditions preventing her from being able to perform her light-duty position. Furthermore, appellant has not shown a change in the nature and extent of the light-duty job requirements.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability beginning April 22, 2006 causally related to her employment injury.

ORDER

IT IS HEREBY ORDERED THAT the July 9 and April 13, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 24, 2008
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

[17] *See Richard A. Neidert*, 57 ECAB 474 (2006).