

employment factors. The Office accepted the claim for right wrist tendinitis, right carpal syndrome and right cubital tunnel syndrome.

In a report dated June 21, 2006 report, Dr. John C. Norton, a general practitioner, advised that appellant was unable to lift heavy objects at her job. Based on his examination, he stated that appellant's current repetitive cumulative trauma at work was the cause of right wrist tendinitis in addition to suspected right hand carpal tunnel syndrome. Dr. Norton released appellant to return to modified duty with restrictions of no repetitive grasping with the right hand for more than 30 minutes per hour, per 8-hour day, and no repetitive right hand motion for more than 30 minutes per hour, per 8-hour day. In a July 25, 2006 report, he reiterated his findings and work restrictions.

In a September 18, 2006 work status form, Dr. Jay Vogel, a specialist in orthopedic surgery, noted "a moderate degree of carpal tunnel syndrome." He indicated with a checkmark that appellant's temporary total disability was extended to October 16, 2006.

In an October 10, 2006 CA-7 time analysis form, the employing establishment indicated that appellant returned to work on July 27, 28 and 31, 2006. By letter dated August 17, 2006, it informed appellant that it was placing her in absent-without-leave (AWOL) status because she failed to report to work on August 2, 2006. The employing establishment had advised appellant that it would be able to accommodate the work restrictions imposed by Dr. Norton and had attempted to contact her by telephone several times. However, appellant did not answer the calls or return voice mail messages. Moreover, she did not submit medical documentation to substantiate her continued absence from work. The employing establishment advised appellant that it was considering formal disciplinary action against her.

Appellant submitted CA-7 forms requesting compensation for wage loss for the period August 1 to October 14, 2006.

In an October 24, 2006 memorandum, the employing establishment stated that appellant had returned to work on July 27, 2006 but stopped work again on July 31, 2006 because the job required her to write. The employing establishment advised appellant that she needed to submit additional medical evidence to support her claim of total disability.

By letter dated October 19, 2006, the Office asked appellant to submit rationalized medical evidence establishing her disability for the period claimed. It informed her that she needed to provide evidence showing 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.

On October 23, 2006 the employing establishment requested additional medical and factual evidence from appellant. It had received medical documentation from appellant supporting total disability after she filed her claim in April 2006, in addition to work restrictions from her treating physician. The employing establishment stated that it was not able to locate a job accommodating her work restrictions until July 26, 2006. It stated:

"On July 26, 2006 we contacted you to offer you a limited[-]duty position taking into consideration your medical restrictions imposed by your physician. Your limited[-]duty position consisted of holding a clipboard and counting the luggage

opened by screeners in the baggage area, to include light clerical duties in the admin[istrative] office as needed. You accepted the assignment and reported for duty on July 27[, 2006] and worked the entire shift as well as July 28, 2006, for a total of 16 hours. On July 31[, 2006] you worked for 1.5 hours and went home ill and called out sick on August 1, 2006. You came into work on August 2, 2006 and worked 2.0 hours before going home ill again. You did not indicate that your illness was work related.

“On August 2[, 2006] you provided us with another doctor’s note dated August 1, 2006. Your medical restrictions included no lifting of over 10 pounds and no grasping or right hand motion for longer than 15 minutes at a time. [Your supervisor] met with you and assured you that your limited[-]duty position would still fall within your medical restrictions. You failed to report for duty on August 3, 2006.”

The employing establishment asked appellant to provide additional medical documentation to substantiate her absence from work. It also asked her to indicate what specific event, incident or exposure occurred to cause a worsening of her work-related injury.

By letter dated November 17, 2006, the employing establishment formally charged appellant with being AWOL for the period August 3 to September 19, 2006.

By decision dated December 4, 2006, the Office denied appellant’s claim for a recurrence of disability due to her accepted right wrist conditions. It found that she failed to establish either a change in the nature and extent of her injury-related condition or a change in the nature and extent of her light-duty requirements.

By letter dated March 9, 2007, appellant requested reconsideration. She submitted an October 20, 2006 chiropractor report; x-ray and electrodiagnostic tests dated September 23, 2006; and a September 21, 2006 report from Dr. T. Eric Yokoo, Board-certified in psychiatry and neurology. Appellant also submitted reports from Dr. Vogel dated September 18, 2006 to January 22, 2007. Dr. Yokoo advised that appellant had been off work since July 31, 2006 due to injuries to her right wrist and hand. He stated that she complained of constant pain in her right wrist and hand, radiating up the shoulder with numbness and tingling. Dr. Yokoo opined that the injuries that led to appellant’s current disability were causally related to the cumulative effects of her work exposure while employed at the employing establishment.

Dr. Vogel reviewed the history of appellant and noted that she returned to work with restrictions in July 2006. He noted that, when she returned to work, her wrist pain was aggravated and she experienced increased pain. Dr. Vogel stated:

“[Appellant] complains of occasional pain and discomfort in the right wrist that travels to the arm and to the hand and fingers. She complains of numbness and tingling in the shoulder, arm, hand and fingers. The pain increases with lifting and squeezing. [Appellant] is able to lift five pounds, with difficulty.

“The patient complains of occasional pain and discomfort in the right hand that varies with activity. The pain travels to the fingers with numbness and tingling. The pain increases with lifting, squeezing and gripping.”

On November 13, 2006 Dr. Vogel noted that appellant continued to be symptomatic with pain and discomfort in the right wrist extending up the arm to shoulder and neck. He stated that she had numbness and tingling in the palm of the hand, with squeezing, bending, lifting or twisting aggravating the pain. Dr. Vogel advised that the pain in appellant’s hand radiated from her wrist. On December 11, 2006 he noted that she had not returned to work since her last visit and remained on temporary total disability. Dr. Vogel reiterated the diagnosis of carpal tunnel syndrome and advised that appellant was three months pregnant. In January 22 and March 19, 2007 reports, he reiterated his findings and conclusions.

By decision dated September 11, 2007, the Office denied appellant’s application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.¹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.² When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Federal Employees’ Compensation Act.³

ANALYSIS

The Board has duly reviewed the case record and finds that the refusal of the Office to reopen appellant’s case for further consideration of the merits pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion. In the present case, appellant requested reconsideration of the Office’s December 4, 2006 decision denying compensation for a recurrence of disability beginning August 3, 2006. In support of her request, she submitted reports from Drs. Vogel and Yokoo. In his September 18, 2006 report, Dr. Vogel stated that when appellant returned to work with restrictions in July 2006 her wrist pain was aggravated and she experienced increased pain. He related complaints of occasional pain and discomfort in the right wrist radiating to the right arm, hand and fingers. Dr. Vogel stated that appellant complained of numbness and tingling in the shoulder, arm, hand and fingers which increased with lifting and squeezing. Dr. Yokoo noted that appellant had been off work since July 31, 2006 due to injuries to her right wrist and

¹ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

² *Howard A. Williams*, 45 ECAB 853 (1994).

³ *Joseph W. Baxter*, 36 ECAB 228, 231 (1994).

hand and complained of constant pain in her right wrist and hand, radiating up through the shoulder with numbness and tingling. He opined that the injuries that led to her current disability were causally related to the cumulative effects of her work exposure while employed at the employing establishment. The Board finds that these reports, which indicated that appellant experienced a worsening of her accepted right wrist condition when she returned to work in July 2006, constitute relevant and pertinent evidence not previously considered by the Office in regard to the issue of whether appellant sustained a recurrence of disability on August 3, 2006. Therefore, the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim constituted an abuse of discretion.⁴ The Board therefore reverses the September 11, 2007 decision and the case is remanded for a review of the merits of appellant's claim and any other proceedings deemed necessary by the Office, to be followed by an appropriate decision.

CONCLUSION

The Board finds that the Office abused its discretion by refusing to reopen appellant's case for further consideration of the merits.

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2007 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings by the Office consistent with this decision.

Issued: September 22, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁴ *Carol Cherry (Donald Cherry)*, 47 ECAB 658 (1996).