United States Department of Labor
Employees' Compensation Appeals Board

T.D., Appellant	)	
and	)	**Docket No. 08-2147**
	)	**Issued: September 16, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 30, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' November 1, 2007 and May 6, 2008 merit decisions, denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty.

FACTUAL HISTORY

On December 12, 2005 appellant filed an occupational disease claim alleging an aggravation of ulnar nerve damage, carpal tunnel syndrome (CTS) and complex regional pain

syndrome of her upper extremities due to employment. She stated that she first became aware that her condition was caused or aggravated by her employment on September 26, 2003.[1]

In a statement accompanying her CA-2 form, appellant indicated that her employment duties included "checking the chokes on tractor trailers." Her position allegedly required her to walk between two different areas in the terminal annex, moving through heavy doors that were not "handicapped accessible." Appellant stated that her repeated exposure to drafty and cold conditions aggravated her conditions of nerve damage, CTS and complex regional pain syndrome.[2] She indicated that she was subsequently assigned to a position, which required her to check employee badges at several different locations, including exit points which subjected her to temperature changes and drafts. Appellant was also reportedly required to pick up and transport mail to various offices within the employing establishment. She alleged that the described duties, all of which were outside of her job restrictions, aggravated the claimed conditions.[3]

Previous claims filed by appellant include a March 26, 1985 traumatic injury claim, which was accepted for cervical and left shoulder strain and cubital palsey of the left elbow. Appellant filed a notice of recurrence of disability as of January 17, 2005. The recurrence claim was denied by the Office in a March 7, 2005 decision, which was affirmed by the Office's Branch of Hearings and Review on November 7, 2005. In a May 1, 2007 decision, the Board affirmed the denial of the recurrence claim.[4] Appellant stopped working on January 17, 2005, but subsequently returned to work part time on October 14, 2006 and is in receipt of compensation for four hours per day under this claim.

On September 12, 2003 appellant filed a separate occupational disease claim alleging that she developed right hand, elbow and arm conditions due to repetitive work activities. Her claim was accepted for lateral epicondylitis of the right elbow.

Appellant was treated by Dr. Sandra M. DeAntonio, an attending neurologist. In a report dated October 14, 2003, Dr. DeAntonio stated that she had been appellant's treating neurologist for at least 10 years. She noted appellant's history of ulnar compression neuropathy, which developed subsequent to her 1985 work-related injury and median nerve dysfunction at the level

[1] This case was previously before the Board. On May 1, 2007 appellant filed an application for review of a November 8, 2006 decision of the Office's Branch of Hearings and Review denying her occupational disease claim. In an order dated October 3, 2007, the Board remanded the case to the Office for consolidation of File Nos. xxxxxx530, xxxxxx154 and xxxxxx860 and a *de novo* decision on the merits of the claim. Docket No. 07-1422 (issued October 3, 2007).

[2] The record contains a limited-duty assignment, effective September 18, 2003, which was accepted by appellant. Duties included checking vehicles parked at the truck terminal annex or processing and distribution center platforms to ensure that their wheels are properly "choked." Restrictions included "no extremes of temperature;" no use of arms; no repetitive activity of upper extremities.

[3] The record contains a limited-duty job offer for a mail handler, which was accepted by appellant on July 20, 2004. Duties included checking employee badges. The employee was restricted from exposure to extremes of temperature, cold air or drafts and from repetitive activities of the upper extremities.

[4] Docket No. 06-1087 (issued May 1, 2007).

of the wrist on the right. Dr. DeAntonio indicated that, during the previous 18 months, appellant's symptoms had progressively worsened and now included her right arm. She was experiencing intermittent swelling of her arms and hands, as well as temperature and color change. Dr. DeAntonio opined that the worsening of appellant's condition was a consequence of constant repetitive activities of the right upper extremity at work due to her inability to use her left upper extremity. She provided restrictions, which precluded exposure to cold air or drafts; lifting more than 5 pounds frequently or 5 to 10 pounds occasionally; repetitive motions of the wrists and elbows; reaching above the shoulder; and pushing or pulling with the arms and hands.

Dr. DeAntonio stated that in repeated examinations appellant demonstrated weakness of opponens pollicis, abductor pollicis brevis, finger flexors and extensors in both hands to a greater degree on the left than on the right specifically, graded 3/5 on the left and 4/5 on the right; sensory deficit to pin in her left hand and, most recently, also in her right hand; and sensory deficits to pin in the C6 dermatome. She also noted that appellant had prominent thenar eminence atrophy. Tinel's sign was positive bilaterally at the elbow. Electromyograms (EMG) of the upper extremities showed evidence of ulnar compression neuropathy bilaterally, worse on the left than the right. There was evidence of left C6 radiculopathy and right median nerve dysfunction at the level of the wrist. Dexascan was abnormal with evidence of osteopenia. Dr. DeAntonio opined within a reasonable degree of medical certainty that appellant had developed complex regional pain syndrome in her right extremity as a result of the March 1985 work injury and ulnar epicondylitis as a consequence of the ongoing work that she was required to do with her right upper extremity.

On February 16, 2006 the Office informed appellant that the evidence submitted was insufficient to establish her claim. It advised her to submit additional details regarding the activities which allegedly contributed to her claimed condition, as well as a physician's report which contained a diagnosis and an opinion explaining how the alleged work factors caused or contributed to her diagnosed condition. On December 21, 2005 the employing establishment controverted appellant's claim, contending that it was duplicative of previous claims.

In a February 24, 2006 statement, appellant repeated earlier claims that her duties in 2003, which included checking trucks for proper choking of wheels, were outside her medical restrictions. She alleged that moving through large, heavy industrial doors, which were not handicapped accessible, required her to use either her arms or the full weight of her body, exacerbating her upper extremity condition.

By decision dated March 29, 2006, the Office denied appellant's claim on the grounds that the medical evidence did not demonstrate that the claimed medical conditions were causally related to the established work-related events. On April 21, 2006 appellant requested an oral hearing.

In a January 22, 2005 report, Dr. DeAntonio opined that appellant's symptoms had worsened because her work restrictions had not been observed. She reported that a December 30, 2004 magnetic resonance imaging (MRI) scan showed increased T2 signal at C6-7 on the left side of the spinal cord. On February 23, 2005 Dr. DeAntonio noted objective findings which supported a worsening of appellant's condition. She cited a worsening of nerve conduction testing with decrement, amplitude and conduction velocity across the level of the

elbow with reference to the ulnar nerve motor action potential. Dr. DeAntonio found increased weakness and atrophy in the hands.

In a July 25, 2005 report, Dr. DeAntonio reviewed the history of appellant's injury and treatment, noting that she originally sustained a work-related injury in 1985. She stated that she began treating appellant in 1992 for symptoms related to ulnar compression neuropathy, which progressed to complex regional pain syndrome involving bilateral upper extremities. Dr. DeAntonio noted that appellant had been restricted to sedentary duties, which required no repetitive use of either arm or hand, no lifting over five pounds, no bending, no stooping, no reaching above her shoulder with either arm, no extremes of temperature environment, specifically no working around fans, cold air or drafty areas and a work week not to exceed 20 hours. She opined that appellant's condition had worsened over the previous 18-month period as a result of being required to work outside her restrictions.

Dr. DeAntonio stated that, by March 19, 2002, appellant's physical findings were consistent with complex regional pain syndrome. Her symptoms included pain in her upper extremities, intermittent swelling of her upper extremities, intermittent temperature change of her upper extremities and intermittent color change of her upper extremities. Appellant's examination was routinely abnormal with evidence of weakness, worse on the left than on the right, involving opponens pollicis, abductor pollicis brevis, finger flexors and finger extensors. She also consistently demonstrated sensory deficits, which frequently involved the first through third digits of her hands bilaterally and the left C6-7 and right C5-6 dermatomes. Tinel's sign was frequently positive. Thenar eminence atrophy was noted, particularly on the left.

Dr. DeAntonio stated that, after accepting a September 15, 2003 limited-duty assignment, which was designed to conform to her medical restrictions, appellant continued to experience persistent symptoms of pain, color change, temperature change and intermittent swelling involving her upper extremities. She indicated that in October 2003, appellant began working in the safety department checking badges. By December 22, 2004, appellant's condition had worsened. She reported that her job required her to walk from one area of the employing establishment to another, pushing and pulling heavy doors in order to open them and that there were no handicapped accessible doors in the building. Appellant specifically recalled an instance on October 14, 2004 when she pulled a door open with her left hand and felt a sudden onset of pain in her left arm and in her left low back. On another occasion, her son took her to the emergency room because he found her on the floor crying due to her low back pain. Appellant indicated that her work environment was like a factory and was very cold, requiring her to wear gloves.

On January 17, 2005 Dr. DeAntonio opined that appellant's condition had worsened due to the fact that her work restrictions were not being observed and recommended that she remain "off work." An MRl scan of the cervical spine revealed a bulging disc at C5-6 and C6-7. There was also an area of increased T2 signal at C6-7 on the left side of the spinal cord measuring five millimeter (mm) in length, represented myclomalacia. Following a repeat study Dr. DeAntonio opined that this area represented myclomalacia or syrinx as a post-traumatic change from appellant's previous spinal cord injury.

The record contains a March 1, 2005 report from Dr. Steven Mandel, a Board-certified neurologist, who performed a second opinion examination of appellant in File No. xxxxxx154. The Office asked Dr. Mandel to provide diagnoses, which were causally related to the 1985 accepted work injury and to opine as to whether appellant was disabled as a result of those diagnosed conditions. Physical examination revealed no evidence of muscle atrophy; positive Tinel's over both cubital tunnels and over the left median nerve; diffuse weakness in the left hand that did not follow any specific nerve root or peripheral nerve pattern with tremulousness; no clinical weakness to the right upper extremity; no specific sensory loss to the right hand; reduced sensation in both the median and ulnar distribution in the left hand; intact reflexes and pulses; no color, temperature, or skin changes; and no tenderness over the supraclavicular regions. Appellant reported pain around both regions of the elbows radiating down to the fourth and fifth fingers of the left hand.

Based upon his review of the records, Dr. Mandel found no evidence of complex regional pain syndrome. He noted clinical complaints indicating bilateral ulnar neuropathy and left median neuropathy. Dr. Mandel concluded, on the basis of medical records reviewed and statement of accepted facts, that, as result of a left ulnar nerve injury, appellant developed problems in the left hand consistent with carpal tunnel and subsequently in the right upper extremity consistent with ulnar neuropathy. He opined that "bilateral ulnar neuropathy and left [CTS] would be considered to be work related" and that "objective findings support[ed] subjective complaints in regard to the bilateral ulnar neuropathy at the cubital tunnels and left [CTS]." Dr. Mandel opined that appellant was not totally disabled, but rather that she was able to perform the duties of a limited-duty assignment officer. In an addendum to his March 1, 2005 report, he reiterated that he saw no evidence of cervical radiculopathy as being attributable to a work-related injury; no evidence of complex regional pain syndrome; and no evidence to indicate right median neuropathy, despite the positive EMG as being attributable to the work-related injury.

The record contains a March 11, 2003 report of an EMG and nerve conduction study reflecting: evidence of C6 radiculopathy; bilateral ulnar compression neuropathy, worse on the right; and right median nerve dysfunction at the wrist level.

At the August 16, 2006 hearing, appellant testified that, from February 6 to September 3, 2003, she worked in a position which required her to apply adhesive return labels. From September 3, 2003 to July 20, 2004, she was assigned to a position checking wheel chokes. Contrary to her restrictions, appellant testified that she was required to walk through heavy plastic doors, 30 to 40 times per day, into very cold areas on a platform and a dock in order to check the trucks. Beginning July 20, 2004, she was taken off the dock and started working in a position which required her to check employee badges. Appellant stated that she was required to walk in and out of large doors on each floor numerous times each day and that, even though the doors had "regular" handles, the doors were heavy and often were "stuck."

On February 24, 2006 the employing establishment controverted appellant's allegation that she was required to work outside of her restrictions. It stated that appellant's limited-duty position required her to walk throughout the building; monitor compliance of employees wearing badges; and transport mail to offices. The employing establishment indicated that appellant was only required to go through swinging, unsealed, rubber doors to the dock two to three times per

week and that the doors were so easy to open that a "slight draft would open them up." Interior doors were alleged to be lightweight.

By decision dated November 8, 2006, the Office hearing representative affirmed the March 29, 2006 decision. He found that the evidence failed to establish that appellant's work activities caused, aggravated or otherwise contributed to a diagnosed medical condition. The hearing representative also found that Dr. DeAntonio's opinion was of no probative value because it was based on a description of physical requirements and work environment which was not supported by the factual evidence of record. He stated that appellant's exposure to cold temperatures would have been brief and there was no evidence that force was required to open doors on infrequent occasions when she went onto the dock.

Appellant appealed the hearing representative's decision to the Board. In an order dated October 3, 2007, the Board remanded the case to the Office for consolidation of File Nos. xxxxxx530, xxxxxx154 and xxxxxx860 and a *de novo* decision on the merits of the claim.[5]

On remand, the Office consolidated appellant's claims as directed by the Board under File No. xxxxxx530, which became the master file. By decision dated November 1, 2007, an Office hearing representative affirmed the March 29, 2006 decision on the grounds that the medical evidence did not demonstrate that the claimed medical conditions were causally related to established employment events. On November 5, 2007 appellant requested an oral hearing.

At a February 19, 2008 hearing, appellant's representative contended that Dr. DeAntonio's opinion that appellant's work duties exacerbated her upper extremity conditions was sufficient to establish a *prima facie* case. He noted that the employing establishment did not address appellant's duties in her position on the dock from September 13, 2003 through July 20, 2004, where she was constantly exposed to cold temperatures and walked through heavy doors 30 to 40 times in a four-hour period. The representative also argued that Dr. Mandel's report did not address the issue in this case, namely whether appellant's work activities between October 2003 and January 2005 aggravated her ulnar nerve condition and caused her CTS condition. Rather Dr. Mandel's report was obtained by the Office in connection with appellant's claim for a recurrence of total disability as of January 17, 2005. The representative contended that, therefore, Dr. Mandel's report did not constitute the weight of the medical evidence in this case.

In a May 6, 2008 decision, the Office hearing representative affirmed the November 1, 2007 decision, denying appellant's occupational disease claim. The hearing representative found that the medical evidence did not establish a causal relationship between appellant's claimed conditions and her limited-duty assignments between October 2003 and January 2005. He stated that Dr. DeAntonio's opinion was based on an inaccurate factual background, noting that the Board had relied on Dr. Mandel's March 1, 2005 report in affirming the Office's denial of appellant's recurrence claim in File No. xxxxxx154.

On appeal, appellant's representative contends that the evidence shows that appellant was required to perform repetitive tasks, open heavy doors and work in a cold environment and that

[5] Docket No. 07-1422 (issued October 3, 2007).

the medical evidence establishes that her actual employment activities aggravated her preexisting upper extremity conditions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[6] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[7] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[8]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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]

ANALYSIS

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his or her claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the

[6] 5 U.S.C. §§ 8101-8193.

[7] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[8] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] *Id*.

employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.[10] However, it is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[11]

Dr. DeAntonio treated appellant for more than 10 years. Under previous claims, the Office had accepted the conditions of cervical and left shoulder strain, cubital palsey of the left elbow and lateral epicondylitis of the right elbow. In numerous reports, Dr. DeAntonio provided detailed examination findings. She opined that appellant's accepted conditions had worsened and that she had developed additional conditions, including complex regional pain syndrome, as a result of her limited-duty employment activities, which exceeded her restrictions.

On October 14, 2003 Dr. DeAntonio stated that appellant's symptoms had progressively worsened during the previous 18 months to include intermittent swelling of both arms and hands, as well as temperature and color change. She opined that the worsening was a consequence of constant repetitive activities of the right upper extremity at work due to appellant's inability to use her left upper extremity. Dr. DeAntonio noted appellant's history of ulnar compression neuropathy, which developed subsequent to her 1985 work-related injury. Recent EMGs of the upper extremities revealed evidence of median nerve dysfunction at the level of the wrist on the right and left C6 radiculopathy. Dexascan was abnormal with evidence of osteopenia. Dr. DeAntonio opined within a reasonable degree of medical certainty that appellant had developed complex regional pain syndrome in her right extremity as a result of the March 1985 work injury and ulnar epicondylitis as a consequence of the ongoing work that she has been required to do with right upper extremity.

On January 22 and February 23, 2005 Dr. DeAntonio opined that appellant's symptoms had worsened because her work restrictions had not been observed. Objective included results of nerve conduction testing and a December 30, 2004 MRI scan report, which showed increased T2 signal at C6-7 on the left side of the spinal cord. Dr. DeAntonio also found increased weakness and atrophy in the hands.

On July 25, 2005 Dr. DeAntonio reviewed the history of appellant's injury and treatment, noting that she had been restricted to sedentary duties, which required no repetitive use of either arm or hand, no lifting over five pounds, no bending, no stooping, no reaching above her shoulder with either arm, no extremes of temperature environment, specifically no working around fans, cold air or drafty areas and a workweek not to exceed 20 hours. She opined that appellant's condition had worsened over the previous 18-month period as a result of being required to work outside her restrictions. Dr. DeAntonio stated that appellant's condition had progressed and her symptoms were now consistent with, complex regional pain syndrome.

[10] *See Virginia Richard, claiming as executrix of the estate of (Lionel F. Richard)*, 53 ECAB 430 (2002); *see also Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

[11] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, *supra* note 10; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

Symptoms included pain in appellant's upper extremities, intermittent swelling of her upper extremities, intermittent temperature change of her upper extremities and intermittent color change of her upper extremities. Dr. DeAntonio's examination was routinely abnormal with evidence of weakness, worse on the left than on the right, involving opponens pollicis, abductor pollicis brevis, finger flexors and finger extensors. Appellant's examination also consistently showed sensory deficits, which frequently involved the first through third digits of her hands bilaterally and the left C6-7 and right C5-6 dermatomes. Tinel's sign was frequently positive. Thenar eminence atrophy was noted, particularly on the left.

Dr. DeAntonio stated that, after accepting a September 15, 2003 limited-duty assignment, which was designed to conform to her medical restrictions, appellant continued to experience persistent symptoms of pain, color change, temperature change and intermittent swelling involving her upper extremities. She indicated that, from October 2003 to December 22, 2004, during her tenure as a badge checker in the safety department beginning, her condition had continued to worsen. Appellant reported that her job required her to walk from one area of the employing establishment to another, pushing and pulling heavy doors in order to open them and that there were no handicapped accessible doors in the building. She recalled specific instances when she experienced severe pain as she opened doors in the employing establishment. Appellant stated that her work environment was so cold that she needed to wear gloves. On January 17, 2005 Dr. DeAntonio noted a significant worsening of appellant's condition and recommended that she remain "off work." An MRl scan of the cervical spine revealed a bulging disc at C5-6 and C6-7 and an area of increased T2 signal at C6-7 on the left side of the spinal cord measuring five mm in length, which represented myclomalacia. Following a repeat study Dr. DeAntonio opined that this area represented myclomalacia or syrinx as a post-traumatic change from her previous spinal cord injury.

The Office hearing representative found that Dr. DeAntonio's reports were of "little probative value," because they were based on an inaccurate factual description of appellant's limited-duty assignments. The Board notes that Dr. DeAntonio did not identify with specificity all of appellant's job activities in each of the positions held from October 2003 through January 2005. Dr. DeAntonio relied on information provided by appellant in concluding that she had been required to work outside of her restrictions. However, she accurately noted that appellant had been consistently restricted to sedentary duties, which required no repetitive use of either arm or hand, no lifting over five pounds, no bending, no stooping, no reaching above her shoulder with either arm, no extremes of temperature environment, specifically no working around fans, cold air or drafty areas and a workweek not to exceed 20 hours. Dr. DeAntonio stated that appellant's actual activities, rather than the duties outlined in the position descriptions for the relevant jobs, exceeded her medical restrictions and caused or exacerbated her medical conditions.

The employing establishment contended that appellant's light-duty job did not exceed her restrictions, stating that the position required her to walk throughout the building; monitor compliance of employees wearing badges; and transport mail to offices. Appellant was allegedly only required to go through swinging, unsealed, rubber doors to the dock two to three times per week and the doors were so easy to open that a "slight draft would open them up." Interior doors were alleged to be lightweight. The establishment, however, did not deny that appellant was required to open doors or that the facility was cold. The Board notes that, while she worked in

several limited-duty positions, with different job duties, from October 2003 to January 2005, the employing establishment's controversion does not identify the modified-duty position referenced, nor did the establishment deny or even address, appellant's claim that she was exposed to extreme temperatures in her position checking trucks in the annex. Therefore, it is unclear whether her actual job activities exceeded her sedentary restrictions.

In her May 6, 2008 decision, the Office hearing representative relied on the Board's May 1, 2007 decision, which denied appellant's claim for a recurrence of total disability in File No. xxxxxx154 based on the report of the Office's second opinion examiner, Dr. Mandel. The hearing representative's reliance was misplaced. The issue before the Board in its May 1, 2007 decision was whether appellant had sustained a recurrence of total disability on January 18, 2005 causally related to her March 26, 1985 traumatic injury. The issue in the instant case is whether she sustained an occupational disease in the performance of duty due to her limited-duty employment activities beginning October 2003. Dr. Mandel was asked to provide diagnoses which were causally related to the 1985 accepted work injury and to opine as to whether appellant was disabled as a result of those diagnosed conditions. He was not provided with information regarding her employment duties from October 2003 to January 2005, nor was he asked to opine as to whether she had developed or experienced an aggravation of, any condition due to her employment duties during that period of time. Dr. Mandel found no evidence of complex regional pain syndrome. However, he found evidence of left CTS and right ulnar neuropathy, which he opined were work related. Dr. Mandel's opinion that appellant was not totally disabled as of January 18, 2005 due to her 1985 employment injury is not dispositive of the issue in this case. Additionally, the Board's determination that Dr. Mandel's report constituted the weight of the medical evidence in the recurrence case does not render Dr. DeAntonio's reports nonprobative in the instant case.

The Board notes that, while none of Dr. DeAntonio's reports is completely rationalized, they are consistent in indicating that appellant sustained an exacerbation of her upper extremity conditions due to her limited-duty activities and are not contradicted by any substantial medical or factual evidence of record. The Office found that appellant's physician did not seem to have a clear understanding of her work duties. However, the Board notes that the Office failed to provide her physician with a statement of accepted facts which delineated her job functions and restrictions over the course of her employment. While the reports are not sufficient to meet her burden of proof to establish appellant's claim, they raise an uncontroverted inference between her claimed conditions and the identified employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.[12]

On remand, the Office should prepare a statement of accepted facts which includes a detailed employment history, job descriptions for each position held, specific functions performed by appellant in each position and the restrictions imposed by her treating physicians. It should submit the statement of accepted facts to appellant's treating physician or to a second opinion examiner, in order to obtain a rationalized opinion as to whether her current conditions are causally related to factors of her employment, either directly or through aggravation, precipitation or acceleration.

[12] *See Virginia Richard, supra* note 10; *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

CONCLUSION

The Board finds that this case is not in posture for decision as to whether appellant sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2008 and November 1, 2007 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further development consistent with this decision.

Issued: September 16, 2009
Washington, DC

David S. Gerson, Judge
Employees, Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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