

FACTUAL HISTORY

This is the second appeal before the Board. The facts as set forth in the Board's June 2, 2006 decision are incorporated hereby by reference.¹ The Board remanded the case for further development of the medical evidence to have Dr. C.M. Sharma, a Board-certified neurologist, clarify his opinion on causal relationship.

On July 11, 2008 appellant filed a claim for wage loss from February 26, 2001 through September 28, 2006. She submitted progress notes from Dr. William L. King, a Board-certified orthopedic surgeon. On August 6, 2001 Dr. King diagnosed clinical evidence of cervical radiculopathy and median neuropathy at the wrist despite negative electromyogram/nerve conduction (EMG/NC) studies. In a January 7, 2002 note, he advised that appellant's nonemployment motor vehicle accident precipitated cervical radiculopathy while her repetitive duties at the employing establishment counting money and lifting packages caused an exacerbation of her preexisting problem that impaired her function. Dr. King advised that she should not continue in her duties until the resolution of her condition. On February 7, 2002 he reiterated that appellant could not work at her usual occupation at the employing establishment. Appellant had difficulty with her neck and right upper extremity, cervical radiculopathy and a positive Tinel's sign at the carpal tunnel. Dr. King noted tenderness but no Tinel's sign over the cubital tunnel. On July 1, 2002 he noted that appellant fell and reinjured her right upper extremity and cervical spine. The right upper extremity continued to show evidence of carpal tunnel syndrome. In a January 15, 2003 note, Dr. King advised that appellant returned complaining of difficulty in her right upper extremity. Appellant's carpal tunnels were again problematic with a positive Tinel's sign and her Basal joint was also markedly symptomatic. Dr. King stated that she was unable to work due to these problems.

In a December 27, 2004 report, Dr. King summarized his treatment of appellant. He diagnosed cervical radiculopathy and median neuropathy at the wrist despite negative EMG/NC studies. Dr. King noted that appellant had not had surgery but might require surgery in the future. He related that her diagnosis to her job as the competent cause in producing the symptoms of which she complained. Dr. King stated that any type of activity would exacerbate appellant's present symptom complex. On August 31, 2005 he noted continued complaints, of cervical radiculopathy with a positive costoclavicular maneuver, a positive Tinel's sign at both elbows and reduced flexor tenosynovitis. On October 17, 2005 Dr. King found that appellant had pain over the carpal tunnel with percussion despite the fact that the Tinel's sign was negative that date. He attributed these problems to her occupation with the employing establishment. In a December 7, 2005 note, Dr. King indicated that appellant had cervical radicular findings as well as carpal tunnel findings despite negative EMG/NC studies. He stated that her basal joint, particularly the left one, was quite tender and that she could not work. On August 24, 2006 he stated that she was somewhat improved regarding her biceps tendinitis and flexor extensor tenosynovitis of the right forearm. Dr. King noted that appellant's basal joint was also stable. An attempt would be made to return her to work on September 18, 2006.

¹ Docket No. 06-441 (issued June 2, 2006); on March 11, 2001 appellant filed a claim for right carpal tunnel syndrome and a right shoulder condition. She had previously been in a nonwork-related motor vehicle accident on March 9, 2000.

The Office referred appellant to Dr. Gary Korenman, a neurologist, for examination. In a report dated August 13, 2002, Dr. Korenman found that there was no evidence of neurologic dysfunction. He stated that the cervical radiculopathy as noted from the May 2000 motor vehicle accident had largely, if not completely, resolved and that there was no evidence of any ongoing carpal tunnel syndrome. Dr. Korenman advised that appellant was able to work eight hours a day with no restrictions.

Dr. Charles Edelson, an attending Board-certified orthopedic surgeon, stated on March 9 and April 19, 2001 that appellant may not return to work and that she was being referred to a neurologist to rule out carpal tunnel syndrome. In a June 25, 2001 report, he stated that she continued to have complaints of numbness and tinkling in her right hand in the distribution of the right nerve. In a separate note of the same date, Dr. Edelson indicated that appellant was still unable to return to work at this time.

In an April 5, 2001 report, Dr. David J. Dickoff, a Board-certified neurologist, reported a normal neurological evaluation. He diagnosed possible right carpal tunnel syndrome and to rule out cervical radiculopathy. Dr. Dickoff recommended further diagnostic studies.

In a report based on a January 4, 2002 examination, Dr. Sholom Gootzeit, an osteopath, diagnosed cervical strain/sprain, rule out cervical radiculitis, lumbar-sacral sprain/strain, rule out lumbar radiculitis, tear in the medial and lateral meniscus of the right knee, bursitis of left hip vs. contracture of the quadriceps. He described these injuries relative to her motor vehicle accident. Dr. Gootzeit did not discuss appellant's employment.

On December 22, 2003 Dr. Sharma, a Board-certified neurologist, examined appellant at the request of the Office. He reported findings on examination, noting various subjective complaints but no neurological deficits. Dr. Sharma advised there were no neurological limitations to appellant's usual work activities or daily living. There was no need for any surgical procedure for right carpal tunnel syndrome and, from a neurological point of view, no indication that any such treatment was necessary.

In an October 1, 2008 letter to the Office, appellant's attorney contended that the reports of Dr. King established appellant's disability from July 26, 2001 through September 28, 2006.

On October 3, 2006 the Office accepted appellant's claim for aggravation of right hand carpal tunnel.

By decision dated November 7, 2008, the Office denied appellant's claim for wage loss from July 26, 2001 to September 28, 2006 as the medical evidence of record was not sufficient to establish that her disability for work was due to her.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of her claim by the weight of the evidence,³ including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁴

As used in the Act, the term disability means incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁵ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁶

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.⁷ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that she hurt too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁸ The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁹

ANALYSIS

The Office accepted appellant's claim for aggravation of right hand carpal tunnel syndrome. The issue is whether appellant has established that she was totally disabled for work due to this condition from July 26, 2001 through September 28, 2006.

² 5 U.S.C. §§ 8101-8193.

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989). *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(f).

⁵ *Richard T. DeVito*, *supra* note 4; *Frazier V. Nichol*, *supra* note 4; *Elden H. Tietze*, *supra* note 4.

⁶ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁷ *See Fereidoon Kharabi*, 52 ECAB 291, 293 (2001); *Edward H. Horton*, 41 ECAB 301, 303 (1989).

⁸ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *see Huie Lee Goal*, 1 ECAB 180, 182 (1948).

⁹ *G.T.*, *supra* note 8; *Fereidoon Kharabi*, *supra* note 7.

The Board finds that appellant has not met her burden of proof to establish disability due to her right carpal tunnel accepted condition. On August 13, 2002 Dr. Korenman advised that she had no neurological disability and was able to work eight hours a day without any restrictions. Dr. Sharma similarly noted no neurological limitations to appellant's usual work activities. Dr. Gootzeit only addressed appellant's motor vehicle accident and not any work-related disability. Dr. Dickoff advised that neurological evaluations were normal. He did not support disability due to appellant's employment. Although Dr. Edelson noted that appellant was unable to work, he never provided a rationalized statement explaining why she was disabled or whether the employment injury contributed to the disability. Rather, he referred her from neurological examination.

On December 27, 2004 Dr. King discussed appellant's job duties and stated that her work was the competent cause in producing her symptoms. However, he did not specifically address the issue of disability for work. Although Dr. King's progress notes briefly noted that appellant could not perform in her duties, he attributed her disability to her cervical condition and not the accepted condition. For example, in a January 7, 2002 note, he noted that her duties at the employing establishing aggravated her preexisting cervical radiculopathy and that she should not work until there was a resolution of this problem. Dr. King reiterated in a February 7, 2002 progress note that appellant could not work at her usual occupation at the employing establishment. In a January 15, 2003 note, he noted that she was having difficulty with her right upper extremity and that her carpal tunnels were again problematic with a positive Tinel's sign and that her Basal joint was also markedly symptomatic. Dr. King noted that appellant could not work due to these problems. There is no fully rationalized medical opinion from him explaining how the accepted condition caused or contributed to her total disability for work. Many of these reports attribute appellant's periods of disability to her radiculopathy or problems with her Basal joint. The only condition accepted is aggravation of right hand carpal tunnel. Dr. King never clearly explained how appellant was disabled with regard to this condition. Medical reports not containing rationale on causal relation are entitled to diminished probative value and are generally insufficient to meet an appellant's burden of proof.¹⁰ Accordingly, appellant has not met her burden of proof in establishing that she was totally disabled for the period claimed.

CONCLUSION

The Board finds that appellant established that she was disabled from July 26, 2001 through September 28, 2006 due to her accepted injury.

¹⁰ *Lois E. Culver (Clair L. Culver)*, 43 ECAB 412 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 7, 2008 is affirmed.

Issued: January 5, 2010
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