



sustained a recurrence of disability on March 7, 1995. In November 1995 appellant underwent a left carpal tunnel release. She returned to modified duty as a lobby monitor on April 27, 1998. In a June 28, 1998 decision, the Office determined that her actual earnings as a lobby monitor fairly and reasonably represented her wage-earning capacity. Appellant sustained a recurrence of disability on September 28, 1998 and was returned to the periodic compensation rolls.<sup>1</sup>

The Office referred appellant to Dr. Gary Korenman, a Board-certified neurologist. In a June 20, 2000 report, he reviewed the medical record, statement of accepted facts and noted appellant's complaints of numbness and pain in the left hand that radiated into the neck on the left. He provided findings on physical examination, noting very mild carpal tunnel sensitivity with reduced vibration sense in the fingerpads of the bilateral middle fingers, negative bilateral Phalen's sign and normal reflexes. Dr. Korenman diagnosed mild carpal tunnel syndrome and advised that appellant could work eight hours daily and was to avoid repetitive wrist movements. A September 21, 2000 magnetic resonance imaging scan of the cervical spine demonstrated herniated discs at C4-5 and C6-7.

By report dated December 12, 2000, Dr. Tsai C. Chao, an attending Board-certified physiatrist, noted appellant's complaints of neck pain and stiffness and weakness, numbness and tingling in both hands. Physical examination demonstrated a positive Spurling and Tinel's tests on the right with a positive Tinel's sign at the left elbow and diminished pinprick and light touch sensation bilaterally. Dr. Chao diagnosed left cubital tunnel syndrome, right carpal tunnel syndrome, status post left carpal tunnel release and cervical intervertebral disc herniations with right cervical radiculopathy. In terms of work restrictions, appellant was to avoid repetitive motion to both wrists; limit lifting and carrying to less than 10 pounds with the right hand and less than 5 pounds with the left intermittently; that if sitting doing a desk job, the left elbow should be cushioned with a soft pad; and that she should initially work four hours daily. On February 2, 2001 Dr. Chao reiterated his diagnoses and work restrictions. By letter dated February 8, 2001, he further added that appellant could bend, stoop and twist for a total of one hour in four working hours.

On February 27, 2001 the employing establishment offered appellant a modified mark-up clerk position for four hours daily, answering the telephone and providing other administrative duties as required with restrictions of no pushing, pulling or fine manipulation including keyboarding; to avoid repetitive motion of both wrists; and a maximum lifting/carrying restriction of 10 pounds. Appellant accepted the position on March 2, 2001 and returned to work that day.

On March 12, 2001 Dr. Dong Hong Shong, a Board-certified internist, advised that appellant experienced a headache, bilateral elbow pain and neck pain and should not work for two days. In a March 19, 2001 report, Dr. Ling O. Cheng, Board-certified in neurology, noted her complaints of increased neck pain radiating to both shoulders and bilateral hand and forearm pain since she returned to work two weeks prior. On examination, there was tenderness in the cervical paraspinal region with reduced range of motion on the right and decreased sensation to pinprick, light touch and temperature in the median nerve distribution bilaterally. Dr. Cheng

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<sup>1</sup> The 1998 recurrence claim was initially denied by decision dated April 14, 1999 but accepted on July 5, 2000.

diagnosed bilateral carpal tunnel syndrome, cervical radiculopathy and left ulnar nerve entrapment at the elbow and recommended physical therapy and repeat electrodiagnostic studies.

Appellant stopped work on April 2, 2001 and did not return. On April 8, 2001 she filed a recurrence of disability claim, stating that constant pain to both wrists and forearms and neck pain kept her from sleeping and was caused by excessive hand repetition at work. The employing establishment contended that her modified duties were within her medical restrictions. In an April 13, 2001 letter, Mike Manganiello, manager customer services, advised that appellant's modified assignment consisted of answering telephones from 12:00 p.m. to 4:00 p.m. daily. When appellant informed him on March 27, 2001 that her wrists and arms were hurting due to answering the telephone and requested a headset, he stated that he would look into buying a headset that was compatible with the telephone system.

On April 3, 2001 Dr. Chao repeated his diagnoses of left cubital tunnel syndrome, bilateral carpal tunnel syndrome and right cervical radiculopathy and advised that appellant was totally incapacitated. In reports dated April 6 and May 4, 2001, he provided findings on physical examination, recommended electrodiagnostic studies and stated that it was undetermined when she could return to work. On June 1, 2001 Dr. Chao described appellant's work history and the physical restrictions of her current modified-duty assignment. He reported that, after her return to work on March 2, 2001, she came to his office complaining of worsening neck pain and stiffness and bilateral forearm, wrist and hand pain, tingling, numbness and weakness and could no longer continue her part-time work. When Dr. Chao examined her on April 6, 2001, he found decreased cervical spine range of motion with pain and tenderness between C4-5 and C5-6 spinous processes. Examination of the upper extremities demonstrated normal muscle strength with diminished grip strength on the right, decreased sensation to pinprick and light touch involving the ulnar one-and-a-half digits bilaterally and positive Tinel's signs at the elbows and wrists bilaterally with an equivocal Phalen's test. Dr. Chao reiterated the diagnoses and recommendations for further diagnostic studies. He noted that, within a reasonable degree of medical certainty, if the history provided by appellant was correct, the recent exacerbation of her symptoms was causally related to the initial employment injury and recent job assignment and she remained totally disabled. In reports dated June 29 to November 30, 2001, Dr. Chao advised that her physical findings had not changed and that she remained totally disabled.<sup>2</sup>

The Office found a conflict in medical opinion between Dr. Chao and Dr. Korenman. On January 11, 2002 it referred appellant to Dr. Chandra M. Sharma, Board-certified in neurology, for an impartial evaluation, noting that the conflict in medical opinion was regarding whether a causal relationship existed between appellant's condition and the accepted work injury and whether there was a continuing disability due to the accepted injury.<sup>3</sup>

In a February 5, 2002 report, Dr. Sharma reviewed the medical records, appellant's complaints and employment history. Appellant reported that she used a lot of automated, repetitive equipment that caused pressure and pain in her hands and arms. Dr. Sharma advised

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<sup>2</sup> On August 3, 2001 the physician noted that appellant was being evaluated for a thyroid nodule and on November 30, 2001 advised that she had been treated by a chiropractor in Canada.

<sup>3</sup> Appellant was initially referred on September 20, 2001 to a different neurologist for an impartial examination.

that examination demonstrated normal motor tone in the arms and legs with no atrophy or deformity and normal reflexes. On sensory examination, appellant reported an area of diminished sensation which was nonspecific and did not represent a neurological problem of a central or peripheral nature. Other than a healed left wrist scar, the appearance of the hands and forearms was normal with no swelling. Appellant reported painful neck motion and pain upon squeezing the physician's hand. Dr. Sharma diagnosed status post left carpal tunnel surgery and advised that the objective neurological examination was normal with no objective signs of carpal tunnel syndrome, no neurological disability or neurological limitations for work or activities of daily living. He concluded that appellant could perform all work activities without limitation and that no further medical or neurological treatment was needed.

In March 22, 2002 reports, Dr. Chao reiterated that appellant continued to be totally disabled and requested authorization for a neurosurgery consultation and possible ulnar nerve transposition.

By decision dated July 2, 2002, the Office denied appellant's claim that she sustained a recurrence of disability on April 2, 2001.

On July 9, 2002 appellant, through her attorney, requested a hearing. In a July 22, 2002 report, Dr. Cheng reported that an April 12, 2001 electromyogram (EMG) and nerve conduction studies demonstrated bilateral nerve compression at the elbows with mild to moderate demyelination and evidence of cervical radiculopathy. Physical examination demonstrated tenderness in the cervical paraspinal region, diminished range of motion on the wrist, positive Tinel's signs in the wrists and elbows and decreased sensation to pinprick, light touch and temperature in bilateral median nerve distribution. Dr. Cheng diagnosed bilateral carpal tunnel syndrome, cervical radiculopathy and bilateral ulnar nerve entrapment at the elbows. He concluded that appellant's conditions were causally related to her employment injury due to repetitive use of her hands and arms at work. On August 28, 2002 Dr. Chao reiterated his findings.

In an April 7, 2003 decision, an Office hearing representative found the case was not in posture for hearing and vacated the July 2, 2002 decision. Appellant had initially been referred to a different physician for an impartial evaluation and then referred to Dr. Sharma without further explanation. This raised a question as to whether Dr. Sharma was properly selected as an impartial specialist. The case was remanded for further medical development.

On June 5, 2003 the Office referred appellant to Dr. William Robert Buschmann, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a July 20, 2003 report, Dr. Buschmann advised that elbow examination demonstrated a normal range of motion and a positive Tinel's sign bilaterally. Wrist range of motion was normal with no thenar atrophy and no intrinsic muscle atrophy. Tinel's and Phalen's signs were positive bilaterally and appellant had decreased sensation in the thumb, index and long fingers. Dr. Buschmann diagnosed bilateral cubital and carpal tunnel syndromes and advised that appellant could work in a light-duty capacity with a restriction on repetitive use of the wrists and hands. Regarding causal relationship, he stated that the carpal tunnel syndrome was employment related but he could not state whether the cubital tunnel was related. Dr. Buschmann advised that appellant could work eight hours a day with reaching, reaching above the shoulder, operating a motor vehicle and

repetitive movements of the wrists and elbows limited to two hours daily and a 15-pound restriction on pushing, pulling and lifting. In a July 16, 2003 report, he advised that she had a repetitive stress injury resulting from work but could have continued to work on April 2, 2001 with restrictions of no repetitive use of the hands and no lifting greater than 15 pounds.

In an April 15, 2005 report, Dr. Chao advised that appellant could return to work for four hours of limited-duty daily. He advised that her symptoms had not changed.

Appellant was separated from the employing establishment effective May 25, 2007. On November 21, 2005 she submitted a Form CA-7, claim for compensation commencing April 2, 2001. The employing establishment controverted the claim.

In a November 24, 2006 report, Dr. Chao described appellant's physical examination and clinical course from April 6, 2001 to date. He diagnosed bilateral ulnar entrapment at the elbows, right carpal tunnel syndrome and status post left carpal tunnel release. Dr. Chao advised that appellant's injuries were causally related to repetitive keying and labeling at work. He recommended further neurological evaluation and advised that she was permanently partially incapacitated.

By decision dated July 30, 2007, the Office denied appellant's claim that she sustained a recurrence of disability on April 2, 2001; however, it paid appellant wage-loss compensation for four hours a day for the period July 1, 2005 through June 30, 2007. On August 27, 2007 appellant requested a hearing. In a November 2, 2007 work capacity evaluation, Dr. Jose L. Medina, a Board-certified neurologist, advised that she needed light duty with lifting limited to three pounds or less.

At the December 20, 2007 hearing, appellant contended that the light-duty job beginning in March 2001 was outside her physical restrictions. She had to repetitively answer the telephone and search high shelves for missing packages which could weigh up to 20 pounds. Appellant also had to cut mail labels off newspapers and magazines. She had requested a telephone headset but was not given one. In a November 27, 2007 report, Dr. Chao described appellant's treatment and diagnosed cervical spondylosis; rule-out cervical radiculopathy; left lateral epicondylitis; bilateral medial epicondylitis with ulnar nerve entrapment at the elbows; and bilateral carpal tunnel syndrome. He opined that her April 2, 2001 recurrence was caused by working beyond her medical restrictions, if the history she provided was correct.

By decision dated March 27, 2008, an Office hearing representative remanded the case to the Office to obtain a description of the job duties appellant was performing on April 2, 2001 and incorporate this into an updated statement of accepted facts.

On April 8, 2008 the employing establishment described appellant's work history and advised that she was not required to work outside her physical restrictions beginning on March 2, 2001. The restrictions were described as no pulling, pushing or fine manipulation including keyboarding or repetitive motion to both wrists with a lifting restriction of 10 pounds and work limited to four hours a day. The employing establishment advised that appellant's modified position required her to answer the telephone. The employer disagreed with her assertion that she had to search for packages on high shelves, stating that, if she was unable to

answer a telephone question, she would put the call on hold and ask for a supervisor to take the call or, if no one was around, to write down a message or relay it to someone verbally. The employing establishment provided a copy of the February 27, 2001 job offer, accepted by appellant on March 2, 2001.

The Office prepared an updated statement of accepted facts that included a description of appellant's job duties and physical requirements as of March 2, 2001. On April 14, 2008 it forwarded it to Dr. Chao for comment. In an undated letter, received by the Office on May 7, 2008, Dr. Chao referred to his November 27, 2007 report. The Office again wrote him on June 12, 2008, asking him to specifically address whether appellant's job duties on April 2, 2001 caused a worsening of her condition and asked that he respond within 10 days. In a July 2, 2008 decision, the Office denied her recurrence claim, noting that Dr. Chao did not respond to its inquiries.

Appellant requested a hearing and submitted a December 1, 2008 report from Dr. Chao who again referred the Office to his November 27, 2008 report, advising that his opinion on her work capacity and physical state had not changed.

A hearing was held on December 10, 2008. Dr. Chao testified that appellant had been totally disabled for three years but had returned to work in April 1998 and sustained a recurrence of total disability on August 26, 1998 when she first came to his office for medical care. He described a history that she was first disabled in 1990 and began light duty in October 1990 and stated that she reported that, when she returned to work in March 2001, her condition worsened because she had to perform repetitive hand movements such as sorting and filing and writing addresses and that she had to lift packages that weighed over 15 pounds. When appellant came to his office on April 26, 2001, she complained of worsening pain, stiffness, weakness and tingling in the hands and wrists. Dr. Chao opined that her condition worsened such that she could no longer continue part-time work. He acknowledged that appellant's report of her job duties in March 2001 did not agree with those in the statement of accepted facts but based on the history provided by her and his physical findings, she sustained a recurrence of total disability on April 2, 2001. Appellant testified that the job description provided by the employing establishment was incorrect. The hearing representative requested that she submit any witness statements regarding her job duties in March 2001.

By decision dated February 26, 2009, an Office hearing representative affirmed the July 2, 2008 decision.

### **LEGAL PRECEDENT**

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.<sup>4</sup> This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of

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<sup>4</sup> 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>5</sup>

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 light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show 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.<sup>6</sup>

### ANALYSIS

The Office accepted appellant's March 7, 1990 claim for bilateral carpal tunnel syndrome and a tendon joint ganglion. Appellant began working modified duty on October 1, 1990 and sustained a recurrence of disability on March 7, 1995. She underwent a left carpal tunnel release in November 1995 and returned to modified duty on April 27, 1998. Appellant again sustained a recurrence of disability on September 28, 1998. Her attending physiatrist, Dr. Chao, released her to return to light duty on December 12, 2000. The employing establishment offered appellant a position within the restrictions provided by Dr. Chao, which she accepted on March 2, 2001. Mr. Manganiello, an employing establishment manager, advised that her modified assignment consisted of answering the telephone from 12:00 p.m. to 4:00 p.m. daily. The employing establishment stated that appellant was never asked to work outside her physical restrictions and that if she was not able to answer a telephone inquiry, she put the call on hold and asked for a supervisor or took a message, either in writing or verbally. Appellant stopped work on April 2, 2001 and claimed wage loss commencing that day.

The Board finds that appellant has not established a recurrence of total disability on April 2, 2001 causally related to her accepted bilateral carpal tunnel syndrome and ganglion. Appellant did not establish that the nature and extent of her injury-related condition changed on April 2, 2001 so as to prevent her from continuing to perform her limited-duty assignment. The Board has held that a partially disabled claimant who returns to a light-duty job has the burden of proving that he or she cannot perform the light duty, if a recurrence of total disability is claimed.<sup>7</sup> The issue of whether an employee has disability from performing a modified position is primarily a medical question and must be resolved by probative medical evidence.<sup>8</sup> A claimant's burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally

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<sup>5</sup> *Id.*

<sup>6</sup> *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>7</sup> *See William M. Bailey*, 51 ECAB 197 (1999).

<sup>8</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005).

related to the employment injury and supports that conclusion with sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.<sup>9</sup>

In March 19, 2001 and July 22, 2002 reports, Dr. Cheng provided no opinion regarding appellant's ability to work. He reported that EMG studies on April 12, 2001 demonstrated bilateral nerve compression at the elbows and evidence of cervical radiculopathy. Neither an elbow nor a cervical condition have been accepted as employment related. While Dr. Cheng advised that appellant's conditions were caused by repetitive use of her hands and arms at work, he did not acknowledge that she had been working modified assignments since 1990, demonstrate any knowledge of the job requirements of the sedentary duties of her limited-duty position or provide a rationalized explanation as to why she could not perform the light-duty work. His reports are insufficient to establish that appellant sustained a recurrence of total disability on April 2, 2001.

On a form report dated April 3, 2001 Dr. Chao diagnosed left cubital tunnel syndrome, bilateral carpal tunnel syndrome and right cervical radiculopathy and advised that appellant was totally disabled. In a June 1, 2001 report, he described her complaints of increased neck pain and stiffness and bilateral forearm, wrist and hand pain, tingling, numbness and weakness such that she could no longer continue her part-time work. Dr. Chao noted the physical restrictions of appellant's modified-duty job and provided physical examination findings including cervical spine tenderness and decreased range of motion, diminished grip strength and decreased sensation of the upper extremities and positive Tinel's signs at the wrists and elbows. He advised that the recent exacerbation of her symptoms was caused by the initial employment injury and recent job assignment. Dr. Chao submitted numerous additional reports, including deposition testimony on February 10, 2008 in which he advised that appellant was totally disabled. While he noted the physical restrictions of the modified position she performed beginning on March 2, 2001, he did not address any of the specific duties that she performed prior to April 2, 2001. Dr. Chao acknowledged that the job duties described by appellant did not agree with those provided by the employing establishment. Furthermore, he did not specifically address why the accepted bilateral carpal tunnel syndrome and ganglion prevented appellant from continuing her modified duties. These reports do not reflect that appellant sustained a recurrence of disability on April 2, 2001 due to the accepted wrist conditions.

Appellant was seen by Dr. Sharma in February 2002.<sup>10</sup> Physical examination findings included painful neck motion and pain upon squeezing the physician's hand and an area of diminished sensation that, was nonspecific which, he advised, did not represent a neurological problem. Dr. Sharma diagnosed status post surgery of left carpal tunnel syndrome and advised that objective neurological examination was normal with no objective signs of carpal tunnel syndrome, no neurological disability and no neurological limitations of work or activities of daily living. He concluded that appellant could perform all work activities without limitation and advised that no further medical or neurological treatment was needed.

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<sup>9</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>10</sup> While Dr. Sharma was identified as a referee examiner, because the circumstances surrounding the referral are not found in the case record, his opinion would not be entitled to the special weight accorded an impartial medical examiner and is that of a second opinion physician.

In his July 5, 2003 report, Dr. Buschmann advised that wrist range of motion was normal with no thenar atrophy and no intrinsic muscle atrophy. Tinel's and Phalen's signs were positive bilaterally and appellant had decreased sensation in the thumb, index and long fingers. Elbow examination demonstrated normal range of motion and a positive Tinel's sign bilaterally. Dr. Buschmann diagnosed bilateral cubital and carpal tunnel syndromes and advised that appellant could work in a light-duty capacity with a restriction on repetitive use of the wrists and hands. Regarding causal relationship, he stated that the carpal tunnel syndrome was employment related but he could not state that the cubital tunnel was. Dr. Buschmann advised that appellant could work eight hours a day with reaching, reaching above the shoulder, operating a motor vehicle and repetitive movements of the wrists and elbows limited to two hours daily and a 15-pound restriction on pushing, pulling and lifting. In a July 16, 2003 report, he advised that she had a repetitive stress injury resulting from work but could have continued to work on April 2, 2001 with restrictions of no repetitive use of the hands and no lifting greater than 15 pounds.

The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.<sup>11</sup> It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence. A mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure would result in a diagnosed condition is not sufficient to meet the claimant's burden of proof. The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.<sup>12</sup> The record in this case does not contain a medical report providing a reasoned medical opinion that appellant's claimed recurrence of disability was caused by the accepted cervical spondylosis.<sup>13</sup> In this case, Dr. Chao did not provide a rationalized explanation as to why she could not perform her modified position after April 2, 2001 due to the accepted wrist conditions.

Appellant also failed to establish that she was working outside her restrictions. The employing establishment explained that her part-time duties were sedentary and did not entail repetitive use of the hands or wrists. Appellant provided no witness statements to support her contention that she had to work outside her restrictions or to describe the duties that she stated she performed. Thus, the record contained no credible evidence substantiating that she had a change in the nature and extent of her light-duty requirements or was required to perform duties that exceeded her medical restrictions.<sup>14</sup> Appellant therefore did not meet her burden of proof to establish that she sustained a recurrence of total disability on April 2, 2001.<sup>15</sup>

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<sup>11</sup> See *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>12</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>13</sup> *Cecelia M. Corley*, *supra* note 8.

<sup>14</sup> *Richard A. Neidert*, 57 ECAB 474 (2006).

<sup>15</sup> The Board notes that appellant submitted evidence subsequent to the February 26, 2009 decision. The Board cannot consider this evidence as its review of the case is limited to the evidence that was before the Office at the time it rendered the February 26, 2009 decision. 20 C.F.R. § 501.2(c)(1). The Board further notes that appellant remained entitled to four hours compensation following the April 2, 2001 claimed recurrence. While the record indicates that she received wage-loss compensation for four hours daily for the period July 1, 2005 through June 30, 2007, it does not indicate that she received four hours compensation for periods before or after that time.

**CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a recurrence of disability on April 2, 2001 causally related to her accepted bilateral wrist conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 26, 2009 is affirmed.

Issued: July 20, 2010  
Washington, DC

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

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

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