

**United States Department of Labor
Employees' Compensation Appeals Board**

M.D., Appellant)
)
and) **Docket No. 09-1896**
) **Issued: March 19, 2010**
)
DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Fort Wayne, IN, Employer)

Appearances:
Appellant, pro se
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 July 20, 2009 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated June 22, 2009. 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 is whether appellant met her burden of proof establish that she was totally disabled from February 8 through March 7, 2006.

FACTUAL HISTORY

On March 15, 2004 appellant, then a 58-year-old voluntary services specialist, filed a notice of occupational disease alleging carpal tunnel syndrome due to factors of her federal employment. The Office accepted her claim for bilateral carpal tunnel syndrome on May 18, 2004. Appellant continued to work at light duty. She underwent a right carpal tunnel release on May 16, 2005. Dr. Michael Munz, a Board-certified neurologist, found appellant was

totally disabled from June 21 through July 13, 2005. He released her to return to light-duty work on July 13, 2005. Appellant returned to modified work intermittently beginning July 14, 2005. She underwent left carpal tunnel release on August 30, 2005.

On November 17, 2005 Dr. Eric M. Schreier, an osteopath, noted that appellant had not worked since August 2005 and was using sick leave. He found that her postsurgical electrodiagnostic testing showed evidence of mild residual median neuropathy bilaterally. In a December 1, 2005 report, Dr. Schreier stated that appellant continued to report right carpal tunnel symptoms, but opined, "I would suspect that she would be able to return to at least part-time full duty with very minimal handicap/disability." He noted that he could not rule out a "significant anxiety factor." Dr. Schreier recommended a functional capacity evaluation on December 8, 2005. He opined that appellant had reached maximum medical improvement on December 30, 2005 and again recommended a functional capacity evaluation.

Appellant underwent a functional capacity evaluation on January 24, 2006, which demonstrated maximal effort. She was found cable of sedentary light work, with a concern about her ability to keyboard for extended periods of time. On January 24, 2006 Dr. Schreier stated that appellant should continue her current work status from January 24 through March 3, 2006. He examined her on March 2, 2006 and stated that she could return to sedentary duty with limitation on typing and writing 2 hours a day for 30 minutes at a time with a break. Dr. Schreier also recommended that appellant use wrist splints.

On March 2, 2006 Dr. Schreier completed a work restriction evaluation. He found that appellant could return to work on March 3, 2006 with limitations on writing or typing more than 2 hours a day with 15-minute breaks every 90 minutes. Appellant could perform sedentary work and that these restrictions were permanent. She returned to work on March 7, 2006.

On December 20, 2006 appellant accepted a position as a program support clerk. She completed a claim for compensation on April 10, 2007 and requested leave without pay from July 14, 2005 through March 7, 2006. Appellant used eight hours of leave without pay from February 9 through March 6, 2006. The Office requested additional information supporting her claim in a letter dated April 23, 2007.

Appellant requested a schedule award on January 10, 2008. The Office requested additional medical evidence in support of this request on February 12, 2008. It denied appellant's request for a schedule award on March 13, 2008. Appellant requested reconsideration on May 15, 2008. She submitted a report dated April 10, 2008 from Dr. Schreier supporting five percent impairment bilaterally due to her postoperative electromyogram, which showed evidence of mild chronic neuropathic changes at both wrists.

In a letter dated October 22, 2007, the union president contended that appellant was entitled to return to duty in a light-duty capacity and that her supervisor had acted beyond her scope when she denied appellant light duty. He stated that she was entitled to compensation from July 14, 2005 through March 17, 2006. In a letter dated June 5, 2007, Timothy K. Purdom, the occupational health specialist at the employing establishment stated that appellant's supervisor reported that light-duty work was not available for appellant from July 14, 2005 through March 7, 2006. He completed a leave analysis on November 26, 2008 and noted that

she used sick and annual leave following surgery in August 2005 through February 8, 2006 and used leave without pay from February 2 through March 7, 2006. Appellant returned to work on March 7, 2006.

On November 26, 2008 the Office granted appellant a schedule award for five percent impairment of each of her upper extremities.

By decision dated June 22, 2009, the Office denied appellant's claim for compensation for the period February 8 through March 7, 2006, finding that the medical evidence did not support her claim for total disability during this period. Appellant received compensation under the award from December 1, 2005 to July 7, 2006.

LEGAL PRECEDENT

Appellant for each period of disability claimed, has the burden of proving by a preponderance of the reliable, probative and substantial evidence that she is disabled for work as a result of her employment injury. Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical issues which must be provide by preponderance of the reliable probative and substantial medical evidence.¹

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work. The Board has stated that, when a physician's statements regarding an employee's ability to work consist only of a repetition of the employee's complaints that he or she hurts too much to work, without objective signs of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.²

A recurrence of disability is the 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 which caused the illness. The term also means an inability to work that takes place 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 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.³ When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he can perform the limited-duty position, the employee has the burden of establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and to show that he cannot perform such limited-duty work. As part of this burden, the

¹ *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

² *Id.*

³ 20 C.F.R. § 10.5(x).

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 limited-duty job requirements.⁴

ANALYSIS

The Office accepted appellant's claim for bilateral carpal tunnel syndrome on May 18, 2004 and she underwent a right carpal tunnel release on May 16, 2005. Dr. Munz, a Board-certified neurologist, released her to return to modified duty on July 13, 2005. The record is unclear whether or not appellant worked from July 14, 2005 until her left carpal tunnel release on August 30, 2005. Dr. Schreier, an osteopath, opined that she could likely return to light-duty work, but recommended a functional capacity evaluation. On March 2, 2006 he reviewed appellant's functional capacity evaluation and opined that she could return to full-time work with restrictions. Appellant returned to work on March 7, 2006. She filed a claim for compensation on April 10, 2007 and requested leave without pay from July 14, 2005 through March 6, 2006. The Board notes that appellant received competition under her schedule award from December 1, 2005 to July 7, 2006, a period which includes the present claim for wage loss.

The record contains evidence establishing that appellant was physically capable of performing light duty beginning in July 2005, however, evidence from the employing establishment and the union suggests that light-duty work was not available for appellant from July 14, 2005 through March 6, 2006. The evidence establishes that appellant's physician released her to return to light-duty work on July 13, 2005. Following appellant's August 30, 2005 left carpal tunnel release, Dr. Schreier reviewed her functional capacity evaluation and released her to return to light-duty work with specific restrictions on March 6, 2006. However, the record is unclear as to the light-duty work she performed as of July 13, 2005 to the time of surgery. The case requires additional development.

While a claimant has the burden of proof to establish her claim, the Office has a responsibility in the development of evidence. Once the Office has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible, particularly when such evidence is in the possession of the government and is therefore more readily accessible to the Office.⁵ Appellant alleged total disability from July 14, 2005 through March 7, 2006, as there was no light-duty work available for her at the employing establishment. On remand, the Office should request additional clarifying information from the employing establishment and determine whether or not there was light-duty work available for appellant during the period in question.

CONCLUSION

The Board finds that the case is not in posture for decision.

⁴ *Joseph D. Duncan*, 54 ECAB 471, 472 (2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁵ *Edward Schoening*, 41 ECAB 277, 282 (1989).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2009 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded for further development consistent with this decision of the Board.

Issued: March 19, 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