



Appellant stopped work on August 25, 2008 and returned to work on September 8, 2008 in a limited-duty capacity. On October 28 and December 16, 2008 respectively, she underwent right and left carpal tunnel releases performed by Dr. William R. Bohl, a Board-certified orthopedic surgeon. On November 10, 2008 the Office accepted appellant's claim for bilateral carpal tunnel syndrome and right lateral epicondylitis. On November 19, 2008 appellant filed a claim for disability between August 27 and September 8, 2008.

In an August 25, 2008 report, Dr. Marc A. Baumgard, a Board-certified specialist in emergency medicine at the St. John West Shore Hospital, diagnosed right elbow tendinitis caused by repetitive motions in appellant's job. X-rays were taken of her right elbow, pelvis and right hip and right knee due to a history of pain in these areas. A computerized tomography (CT) brain scan was performed because of a history of headaches.

In an August 28, 2008 duty status report, Dr. Lawrence K. Lief, a family practitioner, noted that appellant had numbness and pain in her right upper extremity. He diagnosed right upper extremity neuropathy. Appellant could return to work on September 18, 2008. In a September 29, 2008 duty status report, Dr. Lief diagnosed right upper extremity neuropathy and indicated that appellant could return to work on September 30, 2008. In an August 28, 2008 authorization form, he requested electromyography and a nerve conduction study of her right upper extremity. In August 28 and September 29, 2008 progress notes that are largely illegible, Dr. Lief provided a minimal history and examination findings and a diagnosis of right upper extremity neuropathy. In the September 29, 2008 progress report, he noted that appellant was off work for two weeks due to personal problems and had not yet returned to a light-duty assignment. Specific dates were not provided.

In an October 23, 2008 report, Dr. Bohl noted the initial denial of appellant's claim in her separate claim. He provided findings on physical examination and diagnosed bilateral carpal tunnel syndrome and right upper extremity epicondylitis. Dr. Bohl attributed her conditions to repetitive motions in her job. He did not address the period August 27 to September 8, 2008.

By letter dated November 26, 2008, the Office asked appellant to provide comprehensive medical evidence supporting her claim for disability between August 27 and September 8, 2008, including examination dates, a definitive diagnosis, examination findings and test results and a rationalized explanation of why she was completely disabled due to her accepted conditions, bilateral carpal tunnel syndrome and right lateral epicondylitis.

In a November 26, 2008 letter, Dr. Lief stated that appellant was under his care for a work-related injury and he instructed her not to work between August 28 and September 14, 2008. He provided no other information.

By decision dated January 8, 2009, the Office denied appellant's claim for disability between August 27 and September 8, 2008 on the grounds that the medical evidence did not establish that her disability was causally related to her accepted conditions, bilateral carpal tunnel syndrome and right lateral epicondylitis.

On January 12, 2009 appellant requested an oral hearing that was held on April 20, 2009. She testified that on August 25, 2008 she awoke with numbness and pain and went to the

emergency room. On August 28, 2008 Dr. Lief told her to take two weeks off from work. After two weeks, he released her to limited duty. Appellant did not see Dr. Lief between August 28 and September 15, 2008.

In a June 29, 2009 decision, an Office hearing representative affirmed the January 8, 2009 decision.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee has the burden of proving by the preponderance of the reliable, probative and substantial evidence that he or she was disabled for work as the result of an employment injury.<sup>3</sup> Monetary compensation benefits are payable to an employee who has sustained wage loss due to disability for employment resulting from the employment injury.<sup>4</sup> Whether a particular employment injury causes disability for employment and the duration of that disability are medical issues which must be proved by a preponderance of reliable, probative and substantial medical evidence.<sup>5</sup>

### **ANALYSIS**

On August 25, 2008 Dr. Baumgard diagnosed right elbow tendinitis caused by repetitive motions in appellant's job. X-rays were taken of her right elbow, pelvis and right hip and knee due to a history of pain in these areas. A CT brain scan was performed because of a history of headaches. Dr. Baumgard did not find appellant disabled from work. Additionally, the diagnostic tests performed show that appellant was experiencing pain in her pelvis, right hip and knee and head prior to the claimed period of disability. The Office has not accepted injuries to these areas of the body in this case. Because Dr. Baumgard did not find appellant disabled between August 27 and September 8, 2008 due to her accepted bilateral carpal tunnel syndrome and right lateral epicondylitis, his report is not sufficient to establish that she had a work-related disability during this period.

In an August 28, 2008 duty status report, Dr. Lief noted numbness and pain in appellant's right upper extremity. Appellant could return to work on September 18, 2008. Dr. Lief diagnosed right upper extremity neuropathy but did not provide a more definitive diagnosis of the specific nerve condition involved. He did not provide a complete history of injury or explain how she was disabled for work due to her accepted bilateral carpal tunnel syndrome and right lateral epicondylitis. An August 28, 2008 authorization request form indicated that Dr. Lief requested electromyography and a nerve conduction study of appellant's right upper extremity but there is no mention of disability. In August 28 and September 29, 2008 progress notes that

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<sup>2</sup> Subsequent to the June 29, 2009 Office decision, additional evidence was associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>3</sup> *David H. Goss*, 32 ECAB 24 (1980).

<sup>4</sup> *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

<sup>5</sup> *Edward H. Horten*, 41 ECAB 301 (1989).

are largely illegible, Dr. Lief provided minimal history and examination findings and the general diagnosis of right upper extremity neuropathy. In the September 29, 2008 progress report, he noted that appellant was off work for two weeks due to personal problems and had not yet returned to a light-duty assignment. Specific dates were not provided. However, the September 29, 2008 progress notes raises the question of whether appellant was off work between August 27 and September 8, 2008 due to a personal problem rather than her work-related upper extremity medical conditions. In a November 26, 2008 letter, Dr. Lief stated that appellant was under his care for a work-related injury and he instructed her not to work between August 28 and September 14, 2008. However, he did not identify the accepted upper extremity conditions or provide medical rationale explaining how she was disabled due to these conditions. Additionally, these dates do not coincide with the disability period claimed by appellant. For these reasons, Dr. Lief's reports are not sufficient to establish that appellant was disabled between August 27 and September 8, 2008 due to her work-related bilateral carpal tunnel syndrome and right lateral epicondylitis.

On October 23, 2008 Dr. Bohl provided findings on physical examination and diagnosed bilateral carpal tunnel syndrome and right upper extremity epicondylitis caused by repetitive motions in appellant's job. However, he did not address the issue of whether she was disabled between August 27 and September 8, 2008 due to her upper extremity conditions. Therefore, Dr. Bohl's report is not sufficient to establish that appellant was disabled during that period due to her accepted bilateral carpal tunnel syndrome and right lateral epicondylitis.

The Office asked appellant to provide comprehensive medical evidence supporting her claim for disability between August 27 and September 8, 2008 that included examination dates, a definitive diagnosis, examination findings and test results and an explanation of why she was disabled due to her accepted conditions, bilateral carpal tunnel syndrome and right lateral epicondylitis. Appellant did not provide such medical evidence. The Board finds that she has not met her burden of proof to establish that she was disabled from August 27 to September 8, 2008 due to her accepted upper extremity conditions.

On appeal, appellant contends that the Office's decision is contrary to fact and law. However, she provided insufficient medical evidence to establish that her disability between August 27 and September 8, 2008 was due to her accepted bilateral carpal tunnel syndrome and right lateral epicondylitis. Therefore, the Office properly denied appellant's claim.

### **CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish that her disability from August 27 to September 8, 2008 was causally related to her accepted upper extremity conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 29, 2009 is affirmed.

Issued: March 12, 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