

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

V.B., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Durham, NC, Employer))))))))))))))))))))	Docket No. 10-26 Issued: September 1, 2010
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 14, 2009 appellant filed a timely appeal of a March 20, 2009 decision of the Office of Workers' Compensation Programs denying her recurrence of disability claim. 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 sustained a recurrence of disability beginning May 21, 2007 causally related to her accepted employment injury.

FACTUAL HISTORY

On October 29, 2002 appellant, then a 45-year-old mail clerk, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome due to repetitive use of her hands and wrists from throwing mail and flats and keying on a computer at work.¹ She

¹ On July 6, 2002 appellant originally filed this as a traumatic injury claim. She refiled the claim as an occupational disease after being advised by the Office regarding carpal tunnel syndrome claims.

stopped work on August 20, 2003 and returned to light duty on January 12, 2004. Initial medical reports indicated bilateral carpal tunnel syndrome and pain and numbness in both hands. The Office accepted appellant's claim for bilateral carpal tunnel syndrome.

In a July 21, 2003 report, Dr. Peter Bronec, a Board-certified neurosurgeon, noted that appellant developed hand numbness and tingling on June 29, 2002 that progressed to pain, left worse than right. He indicated that an electromyogram (EMG) of both arms performed on August 7, 2002 was normal and that nerve conduction studies were consistent with bilateral medial nerve entrapment at both wrists. Dr. Bronec found bilateral hand pain and paresthesias consistent with carpal tunnel syndrome based on the nerve conduction studies. He also questioned C7 or C8 distribution weakness and possible early ulnar neuropathy. Dr. Bronec performed left carpal tunnel release on August 20, 2003 and right carpal tunnel release on October 31, 2003. He continued submitting reports noting continued satisfactory resolution of carpal tunnel syndrome status post carpal tunnel releases.

Appellant returned to limited duty on January 12, 2004 with restrictions including no lifting over 20 pounds and no pulling or pushing over 10 pounds.

On October 17, 2004 Dr. Bronec indicated that all of appellant's residuals had resolved and that she would have permanent work-related restrictions.

On December 1, 2004 the Office issued a notice of proposed termination of appellant's wage-loss and medical compensation benefits finding that the medical evidence established that her work-related injury had resolved and that she did not have any continuing disability of residuals due to her accepted condition. In a January 12, 2005 decision, it terminated her compensation benefits effective that day finding that she had not submitted any evidence to alter the recommendation to terminate her compensation benefits.

Appellant submitted several physician's assistants reports. A December 16, 2004 report from Dr. Iqbal Singh, a Board-certified orthopedic surgeon, diagnosed bilateral carpal tunnel syndrome.

On November 5, 2005 appellant requested reconsideration. In a November 16, 2005 statement, she requested that the Office reevaluate her case as testing during a neurology appointment on December 16, 2004 revealed that appellant had carpal tunnel syndrome again in both hands.

In a May 24, 2005 decision, the Office denied appellant's reconsideration request without a merit review finding the evidence was repetitive and not relevant.

Appellant requested reconsideration. In a November 16, 2005 statement, she noted requesting reconsideration because of continued problems with her hands after surgery. In an October 27, 2005 health care certification form, Dr. Clifford Wheelless III, a Board-certified orthopedic surgeon, advised light duty with two consecutive days off to rest appellant's hands. On July 29, 2005 he opined that appellant had continued carpal tunnel syndrome with resulting neuropathic pain. In a November 1, 2005 duty status report, Dr. Wheelless diagnosed chronic bilateral carpal tunnel syndrome from repetitive movements. He advised that appellant could work with restrictions.

In a January 27, 2006 decision, the Office denied modification of its May 24, 2005 merit decision finding the evidence was insufficient to warrant modification of its prior decision.

In a November 8, 2006 statement, appellant requested reconsideration and asserted that she had problems after her surgeries as they did not correct her bilateral hand problems. In a November 2, 2006 report, Dr. Latonja Ivery, Board-certified in family medicine, indicated that appellant had continued pain, numbness and tingling in both hands in the medial nerve distribution. She noted that an EMG test on March 8, 2006 confirmed persistent bilateral carpal tunnel syndrome and the development of right ulnar neuropathy of the fifth digit without evidence of left ulnar neuropathy.

In a February 8, 2007 decision, the Office vacated its January 27, 2006 decision finding that the new medical evidence supported that appellant's current bilateral carpal tunnel syndrome continued to persist. It also found that the evidence supported that appellant continued to be capable of working full-time limited duty.

Appellant stopped work on May 21, 2007 asserting that her bilateral carpal tunnel syndrome had worsened. Duty status reports dated May 21 and August 2, 2007 from Dr. Ivery diagnosed chronic bilateral carpal tunnel syndrome and decreased muscle strength of both hands. She noted this condition was exacerbated by work and that appellant was unable to work.

On June 19, 2007 the employing establishment indicated that it provided appellant work within her restrictions.

On July 9, 2007 appellant filed a claim for compensation for the period May 21 to July 9, 2007. In an August 17, 2007 report, Dr. Ivery noted that appellant had been off work since May 21, 2007 as a result of the progression of her carpal tunnel symptoms. She also noted that appellant had progressive pain and weakness in both hands, left greater than right.

In an August 29, 2007 decision, the Office denied appellant's claim for compensation between May 21 and July 9, 2007 finding that the medical evidence of record fails to support that appellant was disabled during the claimed period.

In a report dated September 6, 2007, Dr. Marc Richard, a Board-certified orthopedic surgeon, noted the history of injury as reported by appellant and reported that EMG studies showed bilateral carpal tunnel syndrome. The EMG reports were not included. On September 20, 2007 Dr. Richard reviewed an August 29, 2007 nerve conduction study that revealed prolonged sensory only latencies of both medial nerves and no significant progressing from the previous 2006 study. He noted that only the medial nerve was studied at the most recent study and that clinical examination showed weakness in the ulnar nerve distribution demonstrated by manual muscle testing. Dr. Richard recommended EMG and nerve conduction studies for the entire upper extremity to rule out any concomitant or more proximal pathology.

Appellant requested a review of the written record on September 24, 2007. In support of her request, she also submitted reports from Dr. Ivery dated between June 26, 2006 and September 12, 2007 that diagnosed carpal tunnel syndrome. In a September 12, 2007 report, Dr. Ivery noted that appellant had been off work since May 21, 2007 due to the progression of

carpal tunnel symptoms. She also noted that appellant was not working as she needed to rest her hands in an attempt to remove any precipitating activity that contributed to her symptoms.

In an October 8, 2007 nerve conduction and EMG report, Dr. Gloria Liu, a Board-certified physiatrist, found an abnormal study with evidence of bilateral mono-medial neuropathy at the bilateral wrist consistent with carpal tunnel syndrome and only involved demyelination. She noted no evidence of acute axonal loss and no electrodiagnostic evidence of cervical radiculopathy. Dr. Liu recommended clinical correlation.

In a January 17, 2008 decision, an Office hearing representative affirmed the August 29, 2007 decision finding that the medical evidence failed to establish that appellant sustained a recurrence of total disability on or after May 21, 2007 due to the accepted employment injury.

Appellant continued filing claims for compensation for the period between July 10, 2007 and January 8, 2009.

On October 17, 2008 Dr. Ivery noted that appellant had been off work since May 21, 2007 due to symptoms from progressive bilateral carpal tunnel syndrome. She noted the symptoms began on March 8, 2005 and included sharp pain radiating from appellant's hands up to her arms with numbness, tingling and weakness in her hands and fingertips. Dr. Ivery indicated that nerve conduction studies from 2004 and 2006 showed persistent neuropathy. She also indicated that clinical and medical treatment failed to alleviate appellant's symptoms. Dr. Ivery noted continued stiffness of the hands with tingling in the hands and wrist while holding a steering wheel or simple objects. She advised that appellant's symptoms continued to progress and because of this she was unable to return to work. Appellant continued to submit treatment reports from Dr. Ivery.

On January 27, 2009 the Office advised appellant of the evidence necessary to establish her recurrence of disability claim and allowed her 30 days to submit such evidence.

In a February 23, 2009 report, Dr. Ivery reiterated that appellant had been off work due to carpal tunnel symptoms. She noted that even light-duty tasks including sorting mail, keyboarding, writing and cutting were too painful for appellant and that her hand weakness would not allow her to manipulate things effectively. Dr. Ivery opined that, due to the progressive nature of appellant's condition, she was not able to return to any meaningful work that would involve use of her hands.

In a February 27, 2009 statement, appellant indicated that her current disability related to her original work injury as her carpal tunnel syndrome had spontaneously worsened due to exposure to work factors. She noted that, when she returned to work after surgery, her light duties involved cutting out names and addresses off magazines and writing addresses on envelopes which bothered her hands. Appellant further noted that six months after returning to light duty she was also assigned to sort letters and flats and that her hand condition worsened after performing these duties. She submitted a January 22, 2008 statement from Dr. Ivery indicating that she had been off work since May 21, 2007 and that her prognosis was poor. Dr. Ivery noted that appellant was currently unable to perform her work duties indefinitely. On February 13, 2009 she noted appellant's complaints of exacerbated pain and numbness from

light-duty work activities postsurgery. Dr. Ivery diagnosed carpal tunnel syndrome not improved despite bilateral surgery.

On March 2, 2009 the employing establishment noted that it had sought to obtain updated work restrictions from Dr. Ivery but that she had not been responsive.

In a March 20, 2009 decision, the Office denied appellant's recurrence of disability claim beginning May 21, 2007 finding that prior Office decisions had already denied compensation beginning May 21, 2007.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."² A "recurrence of disability" 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 she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden the 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 light-duty job requirements.⁴ To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history, and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.⁵

ANALYSIS

Appellant returned to limited-duty work as a mail clerk on January 12, 2004. She claimed a recurrence of disability beginning May 21, 2007 due to her accepted bilateral carpal tunnel injury. Therefore, appellant has the burden of proof to show a change in the nature and

² R.S., 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

³ K.C., 60 ECAB ___ (Docket No. 08-2222, issued July 23, 2009); 20 C.F.R. § 10.5(x).

⁴ K.S., 60 ECAB ___ (Docket No. 08-2105, issued February 11, 2009).

⁵ K.C., *supra* note 3.

extent of her injury-related condition or a change in the nature and extent of her limited-duty job requirements.

In a February 23, 2009 report, Dr. Ivery opined that appellant was unable to return to work due to the progressive nature of her carpal tunnel syndrome. She noted that appellant's work activities, which consisted of sorting mail, keyboarding, writing and cutting, were too painful for appellant to perform. Although Dr. Ivery listed activities that caused appellant pain, she did not explain how appellant experienced disability from a spontaneous change in her accepted condition without an intervening injury or new exposure to the work environment that caused the illness. She also failed to provide any evidence of bridging symptoms.⁶ Similarly, in a September 12, 2007 report, Dr. Ivery indicated that appellant was not working in order to rest her hands and in an attempt to remove any precipitating activities that contributed to her symptoms. However, she did not provide medical rationale to explain how the current disability was due to a spontaneous change in her accepted condition. As noted, medical evidence must contain a rationalized opinion demonstrating that the disabling condition is causally related to employment factors.⁷

In duty status reports dated May 21 and August 2, 2007, Dr. Ivery generally concluded that appellant's work exacerbated her condition and that she was unable to work. As she failed to clearly explain how appellant's disability was caused by a spontaneous change in the accepted condition, her opinion is of little probative value.⁸ Likewise, in reports dated between August 17, 2007 and October 17, 2008, Dr. Ivery broadly opined that appellant had been unable to work since May 21, 2007 due to the progression of her carpal tunnel symptoms. Although she described symptoms resulting from appellant's condition, she did not provide medical rationale to explain the reasons the disability was caused by the accepted employment condition.

Dr. Ivery's reports dated September 12, 2007 and February 13, 2009 diagnosed carpal tunnel syndrome but did not address the issue of appellant's disability beginning May 21, 2007.⁹ Likewise, the reports of Drs. Richard and Liu described findings regarding appellant's condition but did not clearly address the issue of causal relationship.

Consequently, the medical evidence is insufficient to establish that appellant sustained a recurrence of disability beginning May 21, 2007 due to her accepted employment injury.

⁶ See *Mary A. Ceglia*, 55 ECAB 626 (2004) (to establish that the claimed recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between appellant's present condition and the accepted injury must support the physician's conclusion of a causal relationship).

⁷ See *supra* note 5.

⁸ See *T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

⁹ See *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Appellant may also establish a recurrence of disability by showing a disabling change in the nature and extent of her limited-duty job requirements. On January 12, 2004 she returned to limited duty as a mail clerk based on her current medical restrictions. On February 27, 2009 appellant indicated that her limited-duty activities involved cutting out names and addresses off magazines and writing addresses on envelopes. She also indicated that six months after her return to limited duty, she was also assigned to sort letters and flats. Appellant alleges that all of these duties worsened her bilateral hand condition. However, she has not shown that her duties were outside of her medical limitations and there is no evidence contemporaneous with the onset of her claimed disability supporting that her duties were outside her established work restrictions beginning May 21, 2007. In particular, appellant did not submit any evidence corroborating that her limited-duty activities exceeded her work restrictions on lifting, pushing or pulling. As a result, the factual evidence does not establish a disabling change in the nature and extent of appellant's limited-duty job requirements.

For these reasons, appellant has not met her burden of proof to establish that she sustained a recurrence of disability on May 21, 2007 due to a disabling change in the nature and extent of her injury-related condition or a disabling change in the nature and extent of her limited-duty job requirements.

CONCLUSION

The Board finds that appellant has not sustained a recurrence of total disability beginning May 21, 2007 causally related to her accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 20, 2009 is affirmed.

Issued: September 1, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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