

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

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C.M., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
LOUIS STOKES CLEVELAND VETERANS )  
ADMINISTRATION MEDICAL CENTER, )  
Brecksville, OH, Employer )

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**Docket No. 10-1371  
Issued: February 8, 2011**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
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 April 20, 2010 appellant filed an appeal from a March 29, 2010 decision of the Office of Workers' Compensation Programs. 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 to establish that she sustained a recurrence of disability for the period March 4 through 9, 2009

**FACTUAL HISTORY**

On September 17, 2008 appellant, then a 46-year-old pharmacy technician, filed a traumatic injury claim, alleging that she injured her right index finger when it got caught in a medication cart. In reports dated November 6 to December 16, 2008, Dr. Devra B. Becker, a Board-certified plastic surgeon, noted the history of injury and provided examination findings.

On December 16, 2008 she noted appellant's complaint that she felt the finger was getting worse with continued swelling and limitation of range of motion of the finger and complained of a funny sensation. Dr. Becker recommended referral to a neurologist regarding possible complex regional pain syndrome. On April 8, 2009 appellant filed a recurrence claim, alleging that the recurrence occurred on March 3, 2009. She stated that she had been on limited duty since the September 16, 2008 injury and the injured finger was still swollen and had not healed. Donald R. Sambrook, an employing establishment injury compensation specialist, advised that appellant had restrictions of no pulling or grasping with the right index finger since the September 2008 injury. Appellant returned to work on March 10, 2009.

A March 3, 2009 emergency room report indicated that appellant was seen for a painful, swollen right hand.<sup>1</sup> Physical examination demonstrated tenderness of the right index finger metacarpophalangeal joint. Sensory and motor examinations were normal. A right hand x-ray demonstrated soft tissue swelling. A contusion was diagnosed and a dorsal splint was applied to the finger. Appellant was discharged home. A return to work form requested that she be excused from work for two days due to finger injury.<sup>2</sup> On March 5, 2009 Dr. Becker advised that appellant could return to work with appropriate right hand restrictions on March 9, 2009.

On April 16, 2009 the Office accepted that appellant sustained a contusion to the right index finger on September 16, 2008 and advised her to submit additional medical evidence documenting additional conditions due to the employment injury. By letter dated April 20, 2009, it advised appellant of the type of evidence needed to support her recurrence claim for the period March 4 to 10, 2009.

In a March 5, 2009 report, Dr. Becker advised that she had last seen appellant on December 16, 2008 and noted that on examination she continued to have pain, swelling and limitation of motion of the right index finger with new swelling in the dorsum of her hand between the index and middle fingers. She recommended physical therapy and referral to a neurologist. In reports dated April 2 and May 28, 2009, Dr. Becker noted mild swelling and limited range of motion and reported that a right hand magnetic resonance imaging scan on May 7, 2009 demonstrated an unencapsulated lipoma between the second and third metacarpal heads. By letter dated June 2, 2009, she described appellant's treatment and stated that appellant's job duties included opening and closing drawers, counting pills, lifting items, manipulating pill bottles, using lockboxes for medications and using a computer. Dr. Becker advised that appellant could perform the duties while undergoing management for her symptoms with a minimal risk of causing further injury to her index finger.

By decision dated July 10, 2009, the Office denied appellant's claim for disability compensation for the period March 4 through 9, 2009 on the grounds that the medical evidence did not support a disability from work. On December 20, 2009 appellant, through her attorney, requested reconsideration and submitted a November 4, 2009 emergency room report indicating a complaint of right hand pain that occurred when appellant strained her hand while lifting at home. Examination demonstrated tenderness and swelling of the hand with normal sensory and

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<sup>1</sup> The signatures on the report are illegible.

<sup>2</sup> The signatures on the form are illegible.

motor examinations. A right hand x-ray was negative and a hand contusion was diagnosed. In a December 7, 2009 report, Dr. Joseph Zayat, Board-certified in internal medicine and neurology, advised that, when he first evaluated appellant in July 2009, she had residual inability to flex the second and third digits of the right hand with decreased sensation in the distal distribution of the median nerve, demonstrating a right median nerve injury.<sup>3</sup>

By decision dated March 29, 2010, the Office reviewed the merits of appellant's claim for disability for the period March 4 through 9, 2009 and denied modification of the July 10, 2009 decision.

### **LEGAL PRECEDENT**

Section 10.5(x) of the Office's regulations provide that 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 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 Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability for the period March 3 through 9, 2009 due to the accepted right index finger contusion because she did not establish that the nature and extent of her injury-related condition changed on March 3, 2009 so as to prevent her from continuing to perform her modified duties. Furthermore, appellant did not establish that the nature and extent of her injury-

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<sup>3</sup> Appellant also submitted evidence regarding an employment-related back injury, adjudicated separately by the Office under file number xxxxxx781.

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

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

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

related conditions or her modified duties changed on March 3, 2009 so as to prevent her from continuing to perform her limited-duty assignment.<sup>7</sup>

The medical evidence relevant to the claimed period of disability includes an emergency room report dated March 3, 2009 noting that appellant was seen for a painful, swollen right hand. A contusion was diagnosed and a splint applied. A return to work form requested that appellant be excused from work for two days due to a finger injury. As the signatures on both reports are illegible, they would not constitute competent medical evidence.<sup>8</sup> Moreover, the emergency room report did not discuss appellant's work capabilities and the excuse from work form contained no explanation as to why appellant could not perform her restricted work duties. On March 5, 2009 Dr. Becker advised that appellant continued to have pain, swelling and limitation of motion and advised that she could return to work with appropriate right hand restrictions on March 9, 2009. However, she did not acknowledge that appellant had been working in a modified position with restrictions of no pulling or grasping with the right index finger or provide a rationalized explanation as to why appellant could not perform the modified work.

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>9</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>10</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 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>11</sup> The record in this case does not contain a medical report providing a reasoned medical opinion that appellant's claimed recurrence of disability for the period March 3 through 9, 2009 was caused by the accepted right index finger contusion.<sup>12</sup>

### CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of disability for the period March 4 through 9, 2009.

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<sup>7</sup> *Id.*

<sup>8</sup> *K.W.*, 59 ECAB 271 (2007).

<sup>9</sup> *See William M. Bailey*, 51 ECAB 197 (1999).

<sup>10</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>11</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>12</sup> *Cecelia M. Corley*, *supra* note 10. The Board notes that the Office has not rendered a final decision on whether appellant's claim should be expanded to include additional right hand conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 29, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: February 8, 2011  
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