

causally related to her federal employment as a nursing assistant. In a decision dated May 12, 2010, the Board affirmed a schedule award for a five percent right arm impairment and remanded the case for further development regarding any left arm impairment.² The history of the case as provided by the Board in its prior decisions is incorporated herein by reference.

Dr. William Mason, an attending orthopedic surgeon, advised in a March 12, 2007 report that appellant should continue light duty. An April 11, 2007 letter from the Office of Personnel Management stated that her application for disability retirement was approved.

In a report dated September 3, 2008, Dr. Mason provided a history and noted that right carpal tunnel surgery was performed on July 12, 2006.³ He opined that appellant's bilateral carpal tunnel syndrome was causally related to her job duties as a nursing assistant.

On January 15, 2009 the Office accepted the claim for bilateral carpal tunnel syndrome. It advised that appellant could claim compensation for wage loss pursuant to a (Form CA-7) (claim for compensation). Appellant submitted a claim form dated March 13, 2009 for wage-loss compensation as of April 17, 2007.

In a letter dated March 24, 2009, the Office requested that appellant submit medical evidence with respect to the claimed period of disability. In a report dated April 1, 2009, Dr. Mason opined that she was unable to work during the period claimed due to carpal tunnel syndrome.

The Office referred the case to Dr. Karl Bolstad, an orthopedic surgeon, for a second opinion examination. By report dated May 12, 2009, Dr. Bolstad provided a history and results on examination. He found no objective findings other than a scar from the carpal tunnel surgery. Dr. Bolstad opined that appellant's carpal tunnel had resolved and she was not totally disabled for work for more than two months following the surgery.

The Office found that a conflict in medical opinion arose under 5 U.S.C. § 8123(a). Appellant was referred to Dr. Robert Elkins, a Board-certified orthopedic surgeon, for a referee examination.⁴ In a report dated July 20, 2009, Dr. Elkins provided a history, results on examination and a review of medical records. He diagnosed status postright carpal tunnel syndrome and indicated that he could not find objective findings in the upper extremities. As to disability commencing April 17, 2007, Dr. Elkins stated, "Based on this examination, I can find no objective findings to indicate the amount of severity [appellant] is having with any bilateral

² Docket No. 09-2166 (issued May 12, 2010).

³ A July 26, 2006 note from Dr. Mason stated that appellant's hand looked good, with no pain but still some numbness.

⁴ The Federal Employees' Compensation Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination. 5 U.S.C. § 8123(a). The implementing regulations states that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. 20 C.F.R. § 10.321 (1999).

carpal tunnel syndromes and fail to see how her current condition caused her to be totally disabled other than the time she had surgery and a follow up of eight weeks. There is even a note indicating that [she] did well.” Dr. Elkins opined that appellant could perform the nursing assistant position.

By decision dated August 21, 2009, the Office denied appellant’s claim for compensation commencing April 17, 2007.

Appellant requested a hearing before an Office hearing representative, which was held on December 11, 2009. She stated that she was performing light duty until she stopped work on April 17, 2007. In a report dated October 29, 2009, Dr. Mason reviewed the reports by Dr. Elkins and Dr. Bolstad. He did not find that appellant was cured of her previous problems and still had neck pain and hand numbness. Dr. Mason stated, “[Appellant] has tried to go back to an employed status and unfortunately she was not able to continue that work and I think she has been out of work since April 17, 2007.” He advised that she would not be able to return to her previous job.

By decision dated March 4, 2010, an Office hearing representative affirmed the August 21, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Act⁵ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁷

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 of record establishes that he or 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 he or she cannot perform such light duty. As part of this burden, 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.⁸ 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

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁸ *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *Terry R. Hedman*, 38 ECAB 222 (1986).

and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.⁹

It is well established that when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.¹⁰

ANALYSIS

In the present case, the record establishes that appellant returned to a light-duty position following right carpal tunnel surgery on July 12, 2006 and she stopped work in April 2007. She claimed compensation for wage-loss commencing April 17, 2007. Appellant did not allege that there was a change in the light-duty job on April 17, 2007; but contended that carpal tunnel syndrome disabled her for work as of that date.

Appellant must submit probative medical evidence to establish that there was a change in the nature and extent of the accepted bilateral carpal tunnel syndrome. The Office found a conflict under 5 U.S.C. § 8123(a) on the issue. Dr. Mason opined that appellant was disabled for the claimed period, while Dr. Bolstad a second opinion physician found that she would have been disabled for only eight weeks following the July 12, 2006 surgery.

To resolve the conflict, appellant was referred to Dr. Elkins for a referee examination. Dr. Elkins provided a complete report based on an accurate factual and medical background. He provided an unequivocal opinion that appellant was not disabled as of April 17, 2007 due to her accepted carpal tunnel syndrome. Dr. Elkins noted that the lack of objective findings and the medical record, indicating that her disability would have resolved two months following the July 12, 2006 surgery.

The Board finds that Dr. Elkins' report is entitled to special weight as a referee examiner. Dr. Elkins provided a rationalized medical opinion based on a complete factual and medical background. The additional report from Dr. Mason, who was on one side of the conflict, is insufficient to overcome the weight accorded to Dr. Elkins. Additional reports from a physician on one side of the conflict that is properly resolved by a referee specialist are generally insufficient to overcome the weight accorded the referee's report or create a new conflict.¹¹ The Board accordingly finds that based on the weight of the medical evidence the Office properly denied compensation for wage loss commencing April 17, 2007.

CONCLUSION

The Board finds that the evidence does not establish an employment-related disability commencing April 17, 2007.

⁹ *Maurissa Mack* 50 ECAB 498 (1999).

¹⁰ *Harrison Combs, Jr.*, 45 ECAB 716, 727 (1994).

¹¹ *See Harrison Combs, Jr.*, 45 ECAB 716 (1994); *Dorothy Sidwell*, 41 ECAB 857 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 4, 2010 is affirmed.

Issued: January 4, 2011
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