

On appeal, appellant's attorney contends that OWCP decisions are contrary to fact and law.

FACTUAL HISTORY

On April 27, 1992 appellant, then a 37-year-old patient services assistant, filed an occupational disease claim (Form CA-2) in File No. xxxxxx972 alleging that on December 1, 1990 she first realized that the severe pain in her right hand was caused by daily typing on a computer and handling files.²

On October 18, 1999 appellant, then a program support analyst, filed a Form CA-2 in File No. xxxxxx917 alleging that on June 23, 1999 she first became aware of her bilateral arm and hand pain. On January 24, 1992 she realized that her condition was caused by using a computer all day long and answering telephones. OWCP accepted appellant's claim for right lateral epicondylitis and tendinitis and disorder of the bursa and tendons of the right shoulder. It authorized right shoulder subacromial decompression and partial acromioplasty which she underwent on January 13, 2005.

On March 21, 2005 appellant returned to full-time light-duty work.

On May 28, 2008 appellant filed a Form CA-2 in File No. xxxxxx901 alleging that on January 1, 2007 she first became aware of her bilateral carpal tunnel syndrome. On February 25, 2008 she realized that her condition was caused by using a computer 10 hours per day and carrying heavy charts. OWCP accepted appellant's claim for right carpal tunnel syndrome and authorized right endoscopic carpal tunnel release which was performed on August 28, 2008.

Appellant returned to full-time light-duty work on September 26, 2008.

On January 29, 2009 appellant filed a Form CA-2 in File No. xxxxxx913 alleging that on June 24, 2005 she first became aware of her right thoracic spine condition. On January 22, 2009 she first realized that her condition was caused by computer use and carrying heavy charts. OWCP accepted appellant's claim for thoracic strain.³

On October 26, 2009 appellant filed a claim for wage-loss compensation (Form CA-7) for the period October 26 through November 15, 2009. On the Form CA-7 the employing establishment advised that appellant was on leave without pay from October 26 to November 7, 2009. A time analysis form noted that she missed two hours of work on October 26, 2009 and did not work from October 27 to November 5, 2009.

In an October 26, 2009 medical report, Dr. Richard L. Haynes, a chiropractor, placed appellant off work through November 15, 2009 due to an aggravation of her upper back and shoulder condition. Reports from physical therapists addressed the treatment of appellant's right shoulder from November 5 through 16, 2009.

² OWCP identified the date of injury as January 24, 1992, the date appellant first received medical treatment for her right wrist condition. No final decision has been issued by OWCP regarding this claim.

³ OWCP subsequently combined the case files related to appellant's accepted conditions.

In a November 4, 2009 report, Dr. Maureen M. Johnson, an attending Board-certified internist, advised that appellant had unspecified disorders of the bursae and tendons in the left shoulder region due to her accepted June 30, 2004 employment injuries. She concluded that appellant could perform her regular work duties on a full-time basis.

On November 18, 2009 appellant filed a Form CA-7 claiming wage loss for the period November 8 through 21, 2009. She did not work during the claimed period.

In a November 4, 2009 progress note, Dr. Johnson advised that appellant last worked on October 26, 2009. She complained about cervical and bilateral shoulder pain. Dr. Johnson listed findings on physical examination and diagnosed a history of shoulder impingement, status post surgical treatment of the left and right shoulder with satisfactory results, cervical strain with aggravation of degenerative joint disease due to static postures and seated position required at work combined with postural deficits and deconditioned stated, medial epicondylitis of the left elbow and mild tendinitis of the right radial wrist. She reiterated that appellant could perform full-time full-duty work.

In a December 29, 2009 decision, OWCP found that the medical evidence was insufficient to establish that appellant was totally disabled from October 26 through November 7, 2009 due to her accepted employment injuries.

In a December 31, 2009 decision, OWCP found the medical evidence insufficient to establish that appellant was totally disabled from November 8 through 21, 2009 due to her accepted employment injuries.

On January 7 and 10, 2010 appellant, through counsel, requested a telephone hearing regarding the December 29 and 31, 2009 decisions. Evidence submitted included a December 24, 2009 report with an illegible signature. It stated that appellant had other tenosynovitis of the hand and wrist, lateral epicondylitis and "719.40" due to her June 23, 1999 employment injuries. Appellant was capable of performing her regular-work duties. A November 25, 2009 report from a physical therapist addressed the treatment of appellant's right shoulder.

In a February 11, 2010 report, Dr. Haynes advised that appellant was acute postoperative status for the left shoulder with thoracic outlet syndrome and radicalgia into both arms and depression with pain management. He provided corrective chiropractic care with notable improvements aimed at reducing her subluxations at T3-5 with radical loss of motion in that region and into both shoulders and arms. Dr. Haynes noted that appellant was currently off work due to these very debilitating conditions which prevented her from lifting more than 10 pounds and reaching above shoulder level. She had extreme weakness based on dynameter studies. Dr. Haynes indicated that appellant continued to be off work commencing October 26, 2009 based on his and Dr. Johnson's recommendation. He expected her to return to her prior work within the next 30 to 60 days with restrictions. Dr. Haynes opined that each of the diagnosed conditions resulted from appellant's employment-related injuries.

On March 4, 2010 OWCP accepted appellant's claim for pain disorder related to psychological factors.

In a March 24, 2010 report, Dr. Johnson advised that appellant had a right shoulder rotator cuff sprain and osteoarthritis of the thoracic spine.

In a June 24, 2010 decision, OWCP's hearing representative affirmed the December 31, 2009 decision. She found that the medical evidence was insufficient to establish that appellant sustained a recurrence of disability from November 8 to 21, 2009 due to her accepted employment injuries.

In a July 6, 2010 decision, another OWCP hearing representative affirmed the December 29, 2009 decision. He found that the medical evidence was insufficient to establish that appellant sustained a recurrence of disability from October 26 to November 7, 2009 causally related to her accepted employment injuries.

LEGAL PRECEDENT -- ISSUES 1 & 2

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.⁴ This 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.⁵

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that she can perform the limited-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 to show that she cannot perform such limited-duty work. 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 limited-duty job requirements.⁶

To show a change in the degree of the work-related injury or condition, the claimant must submit rationalized medical evidence documenting such change and explaining how and why the accepted injury or condition disabled the claimant for work on and after the date of the alleged recurrence of disability.⁷

⁴ 20 C.F.R. § 10.5(x).

⁵ *Id.*

⁶ *Albert C. Brown*, 52 ECAB 152, 154-155 (2000); *Barry C. Petterson*, 52 ECAB 120 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

⁷ *James H. Botts*, 50 ECAB 265 (1999).

ANALYSIS -- ISSUES 1 & 2

OWCP accepted that appellant sustained right wrist de Quervain tenosynovitis, right shoulder lateral epicondylitis, tendinitis and disorder of the bursa and tendons, right carpal tunnel syndrome and right thoracic strain while in the performance of duty. Following these injuries, appellant returned to light-duty work. She claimed recurrences of disability from October 26 through November 21, 2009. Appellant must demonstrate either that her conditions have changed such that she could not perform the activities required by her modified job or that the requirements of the limited light-duty job changed. The Board finds that the record contains no evidence that the limited light-duty job requirements were changed or withdrawn or that her employment-related conditions have changed such that they precluded her from performing limited light-duty work.

Dr. Johnson found that appellant had right shoulder, cervical and left elbow conditions. She indicated that appellant was status post bilateral shoulder surgery with satisfactory results. Dr. Johnson noted that appellant had not worked since October 26, 2009 but found that appellant could perform full-duty work on a full-time basis. She did not support that the diagnosed conditions rendered appellant disabled for the periods claimed. The Board finds that Dr. Johnson's reports are insufficient to establish appellant's claim.

On October 26, 2009 and February 11, 2010 appellant's chiropractor, Dr. Haynes, diagnosed subluxation at T3-5 with radical loss of motion in that region and into both shoulders and arms. He advised that appellant was totally disabled for work from October 26, 2009 through February 11, 2010 as a result of an aggravation of her upper back and shoulder conditions. A chiropractor is considered a physician for purposes of the Act only where he diagnosed spinal subluxation by x-ray.⁸ The evidence does not reflect that Dr. Haynes diagnosed a spinal subluxation based on the results of an x-ray. Therefore, the Board finds that he is not a physician as defined under the Act and his reports do not constitute probative medical evidence.

Similarly, the reports from appellant's physical therapists do not have any probative medical value. A physical therapist is not a physician as defined under the Act.⁹ The Board finds, therefore, that these reports are insufficient to establish appellant's claim.

The December 24, 2009 report which contained an illegible signature has no probative value as it is not established that the author is a physician.¹⁰

Appellant has not met her burden of proof in establishing that there was a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the limited light-duty requirements which would prohibit her from performing the limited light-duty position she assumed after she returned to work.

⁸ 5 U.S.C. § 8101(2); *see Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁹ *Id.* at § 8101(2); *see A.C.*, Docket No. 08-1453 (issued November 18, 2008).

¹⁰ *See D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, *supra* note 8.

On appeal, appellant's attorney contends that OWCP's decisions are contrary to fact and law. For the reasons stated, the Board finds that appellant did not submit sufficient medical evidence in support of her claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a recurrence of total disability from October 16 through November 21, 2009 causally related to her accepted employment injuries.

ORDER

IT IS HEREBY ORDERED THAT the July 6 and June 24, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 9, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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