

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

N.C., Appellant)

and)

**DEPARTMENT OF HEALTH & HUMAN
SERVICES, NATIONAL INSTITUTES OF
ENVIRONMENTAL HEALTH SERVICES,
Research Triangle Park, NC, Employer**

**Docket No. 10-1444
Issued: March 2, 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, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 30, 2010 appellant filed an appeal from a March 29, 2010 merit 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 sustained a recurrence of total disability on August 8, 2009 causally related to the accepted bilateral carpal tunnel syndrome and enthesopathy of the wrists.

FACTUAL HISTORY

On January 11, 2006 appellant, then a 44-year-old writer/editor, filed an occupational disease claim, alleging that the repetitive motion in computer work caused flexor tendinitis and carpal tunnel syndrome. The Office accepted the conditions of bilateral carpal tunnel syndrome and bilateral enthesopathy of the wrist/carpus (flexor tendinitis) as employment related.

Appellant stopped work on April 25, 2006 and was placed on the periodic compensation rolls. On April 12, 2007 Dr. James Urbaniak, Board-certified in orthopedic surgery, performed bilateral carpal tunnel releases. In a June 14, 2007 report, he advised that there were no complications of appellant's April 27, 2007 surgery and that she could return to work by June 15, 2007 but should limit her activities until approximately July 1, 2007 when he anticipated that she would reach maximum medical improvement. Dr. Urbaniak stated that a voice-activated dictation system would be of help but that the surgery might not relieve all her symptoms.

The Office continued to develop the claim and in March 2008 referred appellant to Dr. William A. Somers, a Board-certified orthopedist, for a second opinion evaluation. In an April 24, 2008 report, Dr. Somers noted her work history, the work-related injury and that she had a history of fibromyalgia of over 10 years. He described her chief complaint of bilateral hand and forearm pain and medication regimen and provided physical examination findings including a positive Phalen's test. Dr. Somers diagnosed fibromyalgia, controlled; carpal tunnel syndrome, status post release; possible antebrachial cutaneous nerve impingement at the lacertus fibrosus, left greater than right; mild carpometacarpal (CMC) degenerative joint disease of the left thumb; and tenosynovitis, possible small cyst, right, flexor carpi ulnaris region. He advised that appellant's fibromyalgia and CMC degenerative joint disease were both aggravated by her working conditions and that she did not suffer significant residuals of carpal tunnel syndrome but continued to have evidence of flexor tenosynovitis, degenerative joint disease of the CMC joints and fibromyalgia and therefore could no longer produce the volume required as a writer-editor, stating that repetitive use of her hands and wrists provoked significant pain and thus she could not constantly use her hands on a computer keyboard or mouse due to the pain. Dr. Somers advised that she could not return to work without significant modifications, stating that, if she were allowed to work at home, she could probably work a 4-hour day over 8 to 10 hours, which would allow significant rest periods for her hands and arms between writing sessions. He stated that a voice recognition system would significantly decrease the use of appellant's hands and arms which could conceivably get her back to full-time work on a regular eight-hour day because she would not have to type every word on the screen and opined that this would allow her to return to work on a regular basis. Dr. Somers suggested that she return to see Dr. Urbaniak regarding the forearm pain as there could be nerve compression at the lacertus fibrosus at the elbow region producing some of appellant's forearm pain and also advised that it was possible that injections of the CMC joints of the thumbs could significantly decrease her base of thumb and palmar pain and that if these two problems were controlled, she could return to some limited-duty work. In an attached work capacity evaluation, Dr. Somers advised that she could not return to her usual job because she could not use her hands that long but could work four hours a day at home by resting her hands and could probably work full time with a voice recognition system. He provided restrictions that appellant could not push, pull, lift or climb and should have 30-minute breaks every 4 hours.

In a June 16, 2008 report, Dr. Urbaniak advised that he had reviewed Dr. Somers' evaluation and agreed with his findings and recommendations. A June 25, 2008 magnetic resonance imaging (MRI) scan of the right wrist demonstrated a volar ganglion, prominent fluid collections, mild extensor tenosynovitis and no ligamentous injury.

Appellant was referred to Kristen Fountain, a rehabilitation counselor, for vocational rehabilitation, who arranged a meeting with Lynn Deese of the North Carolina Assistive Program

where voice recognition software was demonstrated to appellant and an assessment completed with recommendations for appellant's return to work. On May 22, 2009 a meeting was held with employing establishment representatives, including appellant's supervisor Christine Flowers, Ms. Deese, Ms. Fountain and appellant. The recommended assistive devices were discussed at length and appellant's office space assessed. The devices were to be ordered and an employing establishment ergonomic representative would assist her.¹ Appellant returned to modified duty on June 8, 2009, working four hours a day the first week, six hours a day during the second and returned to full-time employment on June 22, 2009. On August 7, 2009 she called Ms. Fountain reporting that she was doing more than four hours of keyboarding daily and that the voice recognition system was not helping with e-mailing, spreadsheets and databases. Ms. Fountain telephoned Ms. Deese who advised that appellant might need more training and offered to go to the work site to better understand what was going on.

Appellant stopped work on August 8, 2009 and filed a recurrence claim, stating that she had to be at the computer all day to type and make telephone calls, all repetitive motions and that the position did not accommodate the four-hour limit on computer use. She stated that working four hours a day was okay but that driving to and from work also aggravated the burning and aching pain in both forearms and hands and finger numbness. Ms. Flowers establishment noted that appellant was provided voice recognition software, was given specialized training and a customized keyboard, chair and tape recorder and reported that appellant recently had a dog bite wound on her left forearm.

By letter dated August 20, 2009, the Office advised appellant of the type evidence needed to support her recurrence claim and asked about the dog bite injury. Appellant submitted a July 28, 2009 report, in which Dr. Robert A. Harrell, III, Board-certified in internal medicine and rheumatology, advised that she had difficulty with her hands and arms after she returned to work and that she had been bitten by a pit bull on her right forearm four nights previously. Dr. Harrell stated that he did not examine the right arm because it was wrapped, but that the flexor tendons in her left hand were thickened with compression tenderness in the left forearm, tender left lateral and medial epicondyles and moderate fibromyalgia trigger points. He concluded that a "difficult situation and her work situation" were not helping matters.

In a September 9, 2009 statement, appellant asserted that the job she returned to in 2009 was not limited duty but was the same job she had in 2006 with a nearly identical workload. She stated that she was provided voice recognition software and an ergonomic chair and that a forearm support had been ordered, but that the position was incompatible with the use of voice-activated software because by using it she could not meet her deadlines and continue to generate the same high quality and quantity of work she performed in 2006. Appellant stated that she struggled to work but had pain even with part-time computer use. She reported that on July 25, 2009 she was bitten on the right forearm by a pit bull, requiring stitches and antibiotics and that this forced her to use only the voice recognition software, which did not allow her to complete the requirements of her job and that on August 4, 2009, her supervisor advised her that her job duties had increased.

¹ Appellant was initially offered a modified position in March 2009 that she refused. By letter dated April 2, 2009, the Office informed her that the position was suitable and advised her of the penalty provisions of section 8106 of the Federal Employees' Compensation Act.

In an October 2, 2009 report, Dr. Harrell noted that appellant stopped work on August 8, 2009 due to severe pain in the hands and forearms. He stated that her job was very similar to what she was doing previously and described her medications and advised that the dog bite seemed to have largely healed but there was some residual ulnar nerve damage. Dr. Harrell provided physical examination findings, stating that there was still thickening of the flexor tendons of appellant's hands with tenderness along the flexor aspect of the right wrist and the left lateral and medial epicondyles and no synovitis. He stated that she had severe flexor tendinitis that had worsened due to her recent attempt to go back to work at her job that required considerable use of a computer keyboard and advised that she not work, stating that he did not think she would be able to return to a typing job.

By decision dated October 29, 2009, the Office denied appellant's recurrence claim on the grounds that the medical evidence did not establish that she could not perform the duties of the modified position. On November 5, 2009 appellant, through her attorney, requested a hearing and on November 10, 2009, she returned to modified position.² In a November 14, 2009 statement, she again described her job duties after her return to work in June 2009, stating that she could not complete the work using voice activation software and stopped work in August 2009, because the pain was so horrendous that she could barely move her hands.

In reports dated from July 29 to August 31, 2009, Dr. J. Mack Aldridge, III, a Board-certified hand surgeon, stated that appellant had multiple superficial dog bites and evidence of a neuropraxic injury of the ulnar nerve with a sensory deficit only, which had healed nicely by August 31, 2009 with a little residual numbness in the little and ulnar column of her hand. At that time he noted a strong history of fibromyalgia and hand problems. Dr. Aldridge provided examination findings, noting full shoulder and elbow motion and a negative Tinel's sign at the elbow with no muscular atrophy in either upper extremity and decreased sensibility subjectively over the dorsal aspect of the metacarpophalangeal joints of both hand with intact sensibility in the median and ulnar dermatomes and decreased sensibility in the dorsoradial aspects of her hands. He diagnosed complete healing of dog bite and multifactorial, nonanatomic sensory complaints involving both upper extremities and recommended evaluation by a spine surgeon.

At the hearing, held telephonically on February 1, 2010, appellant testified that she had an 18-year history of fibromyalgia and began working as a writer/editor at the employing establishment in 2000, that she returned to the same job in June 2009 and that Dr. Harrell recommended that she stop work. She stated that the voice recognition software did not work well with her job, that it took too long and prevented her from meeting deadlines and would have affected her job performance, so that she would turn it off and that she got to the point that she hurt all the time.

On February 25, 2010 Ms. Flowers reported that appellant returned to work on June 7, 2009 and was provided with prescribed assistive technologies and that she was given a two-week adjustment period, beginning full-time work on June 21, 2009. She stated that appellant first notified her of difficulty on June 26, 2009 and that during this time appellant had no formal

² On November 14, 2009 appellant filed an occupational disease claim for flexor tendinitis, carpal tunnel syndrome and fibromyalgia, stating that her work duties aggravated these conditions. The Office adjudicated this claim as a new case.

assignments other than to practice using her assistive technologies and that during July 2009 she had a very light workload with only one writing assignment, a two-page press release. Ms. Flowers stated that appellant requested a four-hour workday, that was not accommodated and that on August 3, 2009 appellant informed her that she intended to transition to medical retirement. She noted that, when appellant stopped work, appellant had not completed the one assignment she had been given and that after her return to work on November 10, 2009, she was apparently working with assistive software and other accommodating devices and was able to perform her assigned tasks successfully.

By decision dated March 29, 2010, an Office hearing representative affirmed the October 29, 2009 decision, finding that the case file contained no convincing evidence, either medical or factual, that appellant's restrictions were not met, that she was worked outside her restrictions or that she suffered a disabling recurrence of her accepted conditions such that she was unable to work beginning August 8, 2009.³

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 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 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 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.⁶

³ By decision dated February 9, 2010, the Office found that appellant's employment, effective November 10, 2009, fairly and reasonably represented her wage-earning capacity with zero loss. Appellant requested a hearing and in an October 22, 2010 decision, an Office hearing representative affirmed the February 9, 2010 decision. She has not filed an appeal with the Board of the October 22, 2010 decision.

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

⁵ *Id.*

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

ANALYSIS

The Board finds that appellant has not established a recurrence of total disability on August 8, 2009 causally related to the accepted bilateral carpal tunnel syndrome and entropathy of the wrists because she did not establish that the nature and extent of her injury-related condition changed on August 8, 2009 so as to prevent her from continuing to perform her limited-duty assignment. The Office accepted her January 11, 2006 claim and she underwent bilateral carpal tunnel releases on April 12, 2007. Appellant also has a long-standing history of fibromyalgia that is not employment related.

Dr. Somers, an Office referral orthopedist, provided an April 24, 2008 report in which he advised that appellant had residuals of the employment injury and could not return to her previous job without modifications including voice recognition software. He stated that, without the modifications, she would need to take significant rests between writing and typing assignments but that she could probably work full time with the voice recognition software. Appellant thereafter was referred to Ms. Fountain, a vocational rehabilitation counselor, who arranged an assessment with Ms. Deese of the state assistive program. A meeting was held at the employing establishment where the recommendations for assistive devices were discussed and voice recognition software and other devices were ordered.⁷ Appellant returned to modified duty on June 8, 2009. Ms. Flowers, her supervisor, described her modified duties after her return to work, stating, the prescribed assistive technologies were provided, she was given a two-week adjustment period and when she began full-time work on June 21, 2009, she had no formal assignments other than to practice using her assistive technologies. During July 2009, she was only assigned one 2-page, writing project, which she did not finish before she stopped work on August 8, 2009.

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.⁸ 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.⁹ 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

⁷ These consisted of an ergonomic chair, keyboard and mouse. An arm rest was on order when appellant stopped work.

⁸ See *William M. Bailey*, 51 ECAB 197 (1999). The Board notes that in this case appellant returned to work for a period of just under two months before claiming a resumption of total disability. There is a presumption that this return to work constitutes a successful return to work and appellant has not submitted the necessary evidence to rebut that presumption in this case. See Office (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6 (January 1995); compare *Elaine Sneed*, 56 ECAB 373 (2005) (The Board found that, a return to work of two weeks was successfully rebutted because, following a return to work, appellant sought medical advice for additional restrictions after one day of work and continued to seek medical treatment which resulted in additional restrictions).

⁹ *Cecelia M. Corley*, 56 ECAB 662 (2005).

sound medical rationale. Where no such rationale is present, the medical evidence is of diminished probative value.¹⁰

In a July 28, 2009 report, Dr. Harrell, an attending rheumatologist, advised that appellant had difficulty with her hands and arms after she returned to work. He also noted that she had been bitten on the right arm by a pit bull four nights previously. Dr. Harrell provided examination findings and concluded that appellant's work situation was not helping. In an October 2, 2009 report, he noted that she had stopped work on August 8, 2009 due to severe pain in her hands and forearms. Dr. Harrell stated that appellant's job was very similar to her previous position and required considerable use of a computer keyboard and advised her to stop work. He did not acknowledge that she had been working in a modified position where she had been provided assistive devices including voice recognition software and an ergonomic chair, mouse and keyboard and did not demonstrate knowledge of the specific requirements or assignments of the position or provide a rationalized explanation as to why she could not perform the modified work. Moreover, Dr. Harrell did not discuss the significance of the dog bite, an intervening injury that was not employment related. His reports are therefore insufficient to establish that appellant sustained a recurrence of total disability on August 8, 2009. Dr. Aldridge merely discussed his treatment of the dog bite which had healed by August 31, 2009 and stated that she had multifactorial, nonanatomic sensory complaints involving both upper extremities and recommended evaluation by a spine surgeon. As he provided no opinion regarding appellant's work capabilities, his reports are insufficient to meet her burden to establish that she sustained a recurrence on August 8, 2009.

The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.¹¹ It is appellant's burden of proof to submit the necessary medical evidence to establish a claim for a recurrence. A mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure would result in a diagnosed condition is not sufficient to meet the claimant's burden of proof. The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.¹² The record in this case does not contain a medical report providing a reasoned medical opinion that appellant's claimed recurrence of disability was caused by the accepted conditions.¹³ Appellant also failed to establish that she was working outside her restrictions. Ms. Flowers explained that appellant was provided the recommended assistive devices and she was given few assignments prior to stopping work on August 8, 2009. Appellant provided no witness statements to support her contention that she had to work outside her restrictions or to describe the duties that she stated that she performed. Thus, the record contained no credible evidence substantiating that she had a change in the nature and extent of her light-duty requirements or was required to

¹⁰ *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹¹ *See Albert C. Brown*, 52 ECAB 152 (2000).

¹² *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹³ *Cecelia M. Corley*, *supra* note 9.

perform duties that exceeded her medical restrictions.¹⁴ Appellant therefore did not meet her burden of proof to establish that she sustained a recurrence of total disability on August 8, 2009.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a recurrence of disability on August 8, 2009 causally related to her accepted bilateral upper extremity conditions.¹⁵

ORDER

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

Issued: March 2, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁴ *Richard A. Neidert*, 57 ECAB 474 (2006).

¹⁵ Appellant also filed a schedule award claim that is under development by the Office.