

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

V.N., Appellant)

and)

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Fayetteville, NC, Employer**)

**Docket No. 12-687
Issued: August 16, 2012**

Appearances:
Martin Kaplan, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 6, 2012 appellant, by her representative, filed a timely appeal from an October 19, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim of compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 established that she sustained a recurrence of disability from May 13 through June 5, 2010 due to her accepted bilateral carpal tunnel syndrome.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 3, 2006 appellant, then a 47-year-old patient services assistant, filed a claim for occupational disease alleging a bilateral wrist condition as a result of her federal employment. Her claim was accepted on September 7, 2007 for bilateral carpal tunnel syndrome and the claim was expanded on February 6, 2009 to include keloid scar.

In a report dated May 19, 2009, Dr. Richard J. Harrison, an orthopedic surgeon, recommended that appellant have a frictionless window installed in her workplace, as well as a cordless headset for answering telephone calls. He also recommended that she be allowed to take a break at her desk to perform exercises for 10 minutes every 2 hours.

Documentation dated April 20 and May 4, 2009 from the employing establishment indicated that a work order had been placed to repair a cordless telephone headset ear piece in order to comply with appellant's medical profile.

In a September 21, 2009 report, Dr. Josef Eichinger, an orthopedic surgeon, stated that appellant was released without limitations. On January 4, 2010 the employing establishment verified that appellant returned to work with no restrictions as of September 22, 2009.

On April 26, 2010 appellant requested that her claim be accepted for major depression and anxiety. OWCP received an April 26, 2010 report from Mary Ellen Levine, a licensed clinical social worker, who stated that appellant was seen for adjustment disorder with anxiety and depression that was disabling. Ms. Levine stated that the conditions were causally related to appellant's carpal tunnel syndrome, as she lost hand function with constant pain that was emotionally debilitating.

On May 17 and 27, 2010 appellant filed claims for compensation for the period May 13 through 22, 2010 and from May 23 through June 5, 2010.

In a note dated May 6, 2010, Dr. Steven Dudley, a psychiatrist, stated that appellant needed to be out of work from May 6 to July 5, 2010 for treatment of her depression and anxiety, secondary to her carpal tunnel syndrome. The note indicated that, although appellant had been in treatment for her physical condition, the treatment has not been effective because her hands are continually in use and had not had time to heal and she experiences severe pain on a daily basis. The note further stated that her pain had become unbearable and she could not perform her job duties.

Appellant also submitted a May 13, 2010 certificate from Dr. Eichinger which stated that appellant could not return to work for 60 days due to chronic right hand carpal tunnel syndrome.

OWCP received occupational therapy records dated May 25 and 27, 2010 which indicated that appellant was receiving treatment for her carpal tunnel syndrome.

On May 27, 2010 OWCP requested that appellant submit further evidence in support of her claim, including a comprehensive medical report which described with medical rationale the cause of her disability.

By decisions dated June 29 and July 15, 2010, OWCP denied compensation for total disability for the period May 13 through 22, 2010 and the period May 23 through June 5, 2010.

On July 19, 2010 OWCP received a report from Dr. Dudley dated July 12, 2010 which related that appellant had major depressive disorder and adjustment disorder with depression and anxiety, due to a change in her physical health. Dr. Dudley explained that appellant had carpal tunnel syndrome and chronic pain when she performed work duties. He concluded that appellant's pain and change in the level of functioning were the cause of her depression.

In its September 21, 2010 decision, OWCP denied appellant's request to expand acceptance of the claim for conditions of major depression, recurrent depression and anxiety.

On May 6 and 31, 2011 appellant, through her representative, requested reconsideration of the June 29 and July 15, 2010 decisions.

In a May 5, 2011 letter, appellant's attorney argued that appellant had suffered a recurrence from May 13 through June 5, 2010 because the employing establishment did not comply with her medical restrictions. He claimed that the employing establishment, while providing a cordless headset and a frictionless privacy window as suggested by appellant's attending physician, overwhelmed appellant with increased workload such that she was not allowed to take the breaks as recommended by Dr. Harrison. Counsel also claimed that the employing establishment had instead relied upon the opinion of Dr. Eichinger who indicated that appellant could return to work with no limitations. He also indicated that this claim was unrelated to appellant's emotional condition.

In a report dated May 17, 2011, Dr. Eichinger related that appellant should have the same limitations outlined by Dr. Harrison in his memorandum dated May 19, 2009. He concluded that there had been no change to her limitations.

The employing establishment controverted appellant's argument in a letter dated September 15, 2011, stating that they have purchased the necessary equipment for appellant, and that appellant was allowed to take breaks at her desk as recommended by her physician. The letter further stated that appellant never reported to her supervisor that she was unable to adhere to the medical restrictions.

By decision dated October 19, 2011, OWCP denied appellant's claim of compensation on the grounds that the record did not reflect that she was totally disabled or that the employing establishment failed to provide her with work accommodations recommended by her physician. It stated that the "medical evidence of record does not contain contemporaneous medical evidence that explains how your accepted work-related condition worsen (sic) to the point you could not work during the period May 13 through June 5, 2010. The contemporaneous medical evidence shows you were held off work during this time due to an emotional condition that has not been accepted as work related."

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the evidence.² For each period of disability claimed, the employee has the burden of establishing that he was disabled for work as a result of the accepted employment injury.³ Whether a particular injury causes an employee to become disabled for work and the duration of that disability are medical issues that must be proved by a preponderance of probative and reliable medical opinion evidence.⁴ To meet his burden, a claimant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting a causal relationship between the alleged disabling condition and the accepted injury.⁵

When an employee who is disabled from the job he held when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence establishes that he can perform the limited-duty position, the employee has the burden of proof to establish a recurrence of total disability and that he cannot perform such limited-duty work. As part of this burden, the employee must show a change in the nature or extent of the injury-related condition or a change in nature and extent of the light-duty job requirements.⁶

OWCP's definition of 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. The term also means the 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 for when such withdrawal occurs for reasons of misconduct, nonperformance of the job duties or a reduction-in-force.⁷ The Board has held that when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA.⁸

ANALYSIS

OWCP denied appellant's claim for compensation because the contemporaneous medical evidence showed that she was held off work during this time due to an emotional condition that was not accepted as work related. It found she had not established that she was required to

² See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

³ See *David H. Goss*, 32 ECAB 24 (1980).

⁴ See *Edward H. Horton*, 41 ECAB 301 (1989).

⁵ *A.D.*, 58 ECAB 149 (2006).

⁶ See *John I. Echols*, 53 ECAB 481 (2002); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁷ See 20 C.F.R. § 10.5(x).

⁸ *John W. Normand*, 39 ECAB 1378 (1988).

perform work outside her medical restrictions. The Board notes initially that appellant has not submitted evidence to substantiate her allegation that she was in fact required to work outside of her medical restrictions.

OWCP received various medical reports which addressed appellant's restrictions from all work during the relevant time period due to her accepted carpal tunnel condition, not due to anxiety or depression. Appellant submitted the reports of Dr. Dudley dated May 6 and July 12, 2010 which explained that she needed to be out of work from May 6 to July 5, 2010 because her carpal tunnel condition had not improved. The severe pain she experienced daily prevented her from performing her job duties. Appellant also submitted evidence from Dr. Eichinger. In a May 13, 2010 report, Dr. Eichinger stated that she could not return to work for 60 days due to chronic right hand carpal tunnel syndrome. Appellant had complaints regarding her carpal tunnel syndrome and continued to receive occupational therapy. As noted by Dr Eichinger, Dr. Harrison had placed appellant on restrictions as of May 19, 2009, which continued through the relevant time period.

OWCP found that the contemporaneous medical evidence showed appellant was held off work during this time due to an emotional condition that has not been accepted as work related. It failed to address the medical report which addressed appellant's carpal tunnel condition, accepted as work related, that rendered her incapable of performing her job duties. The Board will remand the case to OWCP for further consideration of the medical evidence. After such further development as necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant's claim for compensation for the period of May 13 through June 5, 2010 is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for proceedings consistent with this decision of the Board.

Issued: August 16, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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