

FACTUAL HISTORY

On April 30, 2002 appellant, then a 33-year-old part-time, flexible mail processor, filed an occupational disease claim alleging that she sustained injuries to her fingers and wrists due to repetitive work activities. OWCP accepted her claim for left shoulder tendinitis and left cubital tunnel syndrome.³

On July 25, 2007 Dr. Linwood Black, appellant's treating physician, provided work restrictions based on her accepted cubital tunnel syndrome condition. Restrictions included no pushing, pulling or lifting, no reaching above the shoulder and no repetitive work.

Appellant worked in modified mail processing positions, which accommodated her medical restrictions. On August 20, 2007 she accepted a position as a modified mail handler/scanning equipment monitor. Duties required appellant to account for equipment; inventory paper and batteries and tag defective equipment. Physical requirements included good vision and the ability to write notes, communicate verbally and identify defective equipment. Appellant worked in this position until October 20, 2008, when she was taken off work by Dr. Black. On February 14, 2009 Dr. Black released her to return to work subject to her prior restrictions.

Appellant filed a claim for a recurrence of disability beginning October 20, 2008. She alleged that she was totally disabled from October 20 2008 through February 13, 2009, and that her supervisor refused to allow her to return to work on February 14, 2009, when she was released to work with restrictions. By decision dated March 9, 2010, OWCP accepted appellant's recurrence claim for the period October 22, 2008 through March 7, 2010.⁴

On March 29, 2010 appellant accepted a full-time modified position as a debris screener. Duties included screening debris for mailable items; applying correct routing codes and color coding labels. Physical requirements of the position included manipulating light debris (two hours); retrieving and inserting routing codes (two hours); and writing time and date on tags. Reportedly, appellant worked eight hours on March 29, 2010. She did not return to work.

On April 9, 2010 appellant filed a claim for compensation alleging total disability as of March 27, 2010.

On April 19, 2010 OWCP informed appellant that the evidence she submitted was insufficient to establish that she was disabled during the claimed period. It advised her to submit medical evidence with examination findings, a diagnosis and an opinion regarding her disability from work.

Appellant submitted a January 27, 2010 status report from Dr. Black diagnosing cubital tunnel syndrome and reflecting that she was disabled from March 30 through June 27, 2010.

³ Appellant's April 23, 2002 claim was accepted for contusions of the chest and left arm, elbow and shoulder in File No. xxxxxx836. File No. xxxxxx836 was combined with the instant case (File No. xxxxxx142), with File No. xxxxxx142 serving as the master file.

⁴ OWCP subsequently paid appellant compensation through March 26, 2010.

Stating that she could return to work on June 30, 2010, Dr. Black provided restrictions including no pushing, pulling, reaching above the shoulder, grasping and no repetitive movements.

By decision dated May 19, 2010, OWCP denied appellant's recurrence claim for the period March 27 through June 27, 2010 on the grounds that the record did not contain medical evidence establishing that appellant was disabled during the claimed period.

In a letter dated May 20, 2010, appellant requested additional time to obtain a letter from her physician. She stated that she had returned to work on March 29, 2010 "when [her] left arm was aggravated due to the job."

On May 20, 2010 the employing establishment offered appellant another modified job as a debris screener in Des Moines, IA.⁵ Physical requirements of the position included manipulating lightweight debris up to four hours and writing time and date on tags. An employing establishment physician forwarded a copy of the proposed job to Dr. Black for his review.

In a letter dated June 4, 2010, Dr. Black reiterated his diagnosis of cubital tunnel syndrome and indicated that he had reviewed the proposed position. He opined that the job would be ideal for appellant, since her injury was limited to the left arm.

Appellant submitted a May 22, 2010 report from Dr. Tariq M. Awan, a Board-certified family practitioner, who noted that appellant's report that, after returning to work on March 27, 2010, her injury was exacerbated on March 29, 2010 by packages falling on her left arm. On examination of the left shoulder, appellant had tenderness to palpation over the acromioclavicular (AC) joint and full range of motion in forward/lateral elevation and internal/external rotation. Motor tests performed included elevation, abduction, supraspinatus, subscapularis, elbow flexion/extension, wrist flexion/extension, and finger abduction, which were all 5/5. Sensation was intact to pinprick. Tinel's, Hawkin's and Neer's tests were positive. Dr. Awan diagnosed left shoulder AC joint arthrosis; left shoulder rotator cuff tendinitis; left radial tunnel versus cubital tunnel versus cervical radiculitis and lumbar disc disease. Follow-up reports from him dated July 7 and 24, 2010 reflect appellant's continuing complaints of constant left arm pain and examination findings indicating full range of motion and intact muscle strength and sensation in the left shoulder and elbow. On July 24, 2010 Dr. Awan reviewed a report of a July 14, 2010 EMG of the upper extremity, which revealed no diagnostic evidence of peripheral neuropathy or radiculopathy.⁶ He prescribed a left elbow splint to limit flexion to 45 degrees. On August 4, 2010 Dr. Awan noted no change in examination findings and modified his diagnoses to include lower back pain, left rotator cuff tendinitis and left shoulder bursitis.

In a September 18, 2010 report, Dr. Awan noted appellant's complaints of constant lower back and left arm pain with swelling, numbness and tingling. He stated that appellant was not

⁵ Correspondence in the record reflects that appellant was contemplating a move to Des Moines, IA and that the May 20, 2010 offer was an attempt to accommodate appellant.

⁶ The record contains a July 14, 2010 report of a nerve conduction study from Dr. Ateeg K. Rehman, a Board-certified physiatrist.

working and needed household assistance. Examination revealed full range of motion in all planes, including elbow flexion/extension, wrist supination and wrist pronation. Muscle strength was intact in all planes. Sensation was intact to pinprick. There was positive Tinel's at cubital tunnel. Evaluation of the left shoulder revealed tenderness to palpation over biceps tendon. There was full range of motion in forward/lateral elevation and internal/external rotation. Motor tests performed were elevation, abduction, supraspinatus, subscapularis, elbow flexion/extension, wrist flexion/extension, and finger abduction, which were all 5/5. Sensation was intact to pinprick. Dr. Awan diagnosed lower back pain; left shoulder rotator cuff tendinitis and left cubital tunnel syndrome. In a September 18, 2010 disability certificate, he indicated that appellant was disabled from work and housework from August 30 through October 31, 2010.

Appellant filed claims for compensation for total disability from March 30 to November 5, 2010. In a letter dated November 3, 2010, OWCP advised her that the information submitted was insufficient to establish that she was totally disabled during the claimed period. Noting that appellant's recurrence claim for the period March 27 through June 27, 2010 had been denied by decision dated May 19, 2010, OWCP informed her that it would develop the evidence relating to her disability beginning June 28, 2010.

In an October 23, 2010 disability certificate, Dr. Awan diagnosed low back pain, left shoulder rotator cuff tendinitis and left cubital tunnel syndrome. He stated that appellant was disabled from work and housework from March 30 through November 30, 2010. In a report dated October 29, 2010, Dr. Awan stated that appellant's left upper extremity condition flared up when she was transferred to a position with the employing establishment in Iowa. He indicated that she could perform deskwork, provided that she was not required to do any repetitive or overhead work.

On June 3, 2010 the employing establishment again offered appellant a modified position as a debris screener. Duties included screening debris for mailable items and applying color code labels to standard mail. On October 6, 2010 appellant refused the June 3, 2010 offer, stating that she was disabled from work and had not been released to work by her physician.

By decision dated December 20, 2010, OWCP denied appellant's claim for compensation for the period June 28 through December 20, 2010 on the grounds that the medical evidence of record failed to establish that she was disabled for work during that period due to the accepted work injury.⁷

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations define "recurrence of disability" as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical

⁷ OWCP did not address the period between March 30 and June 27, 2010, as appellant's claim for total disability during that period of time was denied by decision dated May 19, 2010. As the appeal in this case was filed on May 6, 2011, more than six months after the date of OWCP's decision, the Board does not have jurisdiction over the merits of the May 19, 2010 decision. See 20 C.F.R. § 501.3(e) (2011). (An appeal of an OWCP decision must be filed within 180 days of the decision.)

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.⁸

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence establishes that he 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 cannot perform such light duty. 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 light-duty job requirements.⁹

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence.¹⁰ This consists of a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.¹¹ The physician's opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

The Board will not require OWCP to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹³

ANALYSIS

OWCP accepted appellant's compensation claims for the period October 22, 2008 through March 26, 2010. In its May 19, 2010 decision, it denied her claim for disability compensation from March 27 through June 27, 2010 following her return to work. As noted, the Board does not have jurisdiction over the merits of the May 19, 2010 decision. The Board finds, however, that appellant has not met her burden of proof to establish that she sustained a recurrence of total disability for the period June 28 through November 5, 2010.¹⁴

⁸ 20 C.F.R. § 10.5(x) (2002). See *Carlos A. Marrero*, 50 ECAB 117 (1998).

⁹ *Conard Hightower*, 54 ECAB 796 (2003).

¹⁰ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

¹¹ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

¹² *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

¹³ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹⁴ In its December 20, 2010 decision, OWCP identified the period of requested compensation through December 20, 2010. The record reflects however that appellant requested compensation only through November 5, 2010 as of the date of OWCP's decision.

OWCP accepted appellant's claim for left shoulder tendinitis and left cubital tunnel syndrome. From August 20, 2007 until October 20, 2008, appellant worked as a modified mail handler subject to medical restrictions, which included no pushing, pulling or lifting; no reaching above the shoulder and no repetitive work. Having been released by her treating physician to return to work, she accepted a full-time modified position as a debris screener effective March 29, 2010. The duties of the position, which included screening debris for mailable items, applying correct routing codes and color coding labels, were consistent with appellant's restrictions. The record reflects, however, that she worked only one day, after which she claimed total disability. The evidence of record does not establish that appellant was disabled from her light-duty job due to her accepted condition.

Appellant suggests that the light-duty assignment exceeds her restrictions because it required repetitive movement. There is no evidence of record supporting her claim that her light-duty assignment exceeded her restrictions. None of the many medical reports submitted by appellant reflects that her job duties exceeded her recommended restrictions. The Board finds that she has failed to establish an inability to work due to the withdrawal of her light-duty assignment, or due to the alteration of the physical requirements of her assignment so that they exceeded her established physical limitations.¹⁵ On the contrary, Dr. Black opined on June 4, 2010 that the modified position was ideal for appellant.

Appellant did not submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she was totally disabled as of June 28, 2010 due to residuals of her accepted injury. Instead, contemporaneous medical evidence of record establishes that she was capable of working with restrictions. In a January 27, 2010 status report, Dr. Black diagnosed cubital tunnel syndrome and stated that appellant was disabled from March 30 through June 27, 2010. Stating that appellant could return to work on June 30, 2010, Dr. Black provided restrictions including no pushing, pulling, reaching above the shoulder, grasping and no repetitive movements. His report does not contain examination findings or any explanation for his opinion regarding appellant's disability during the dates identified. Therefore, it is of diminished probative value. It does, however, support the conclusion that appellant was capable of working with restrictions during the applicable period. Moreover, as noted Dr. Black opined on June 4, 2010 that the proposed modified job was ideal for appellant. On October 29, 2010 Dr. Awan also indicated that appellant could perform desk work, provided that she was not required to do any repetitive or overhead work.

Reports from Dr. Awan do not support appellant's recurrence claim. On May 22, 2010 Dr. Awan noted appellant's report that her injury was exacerbated on March 29, 2010 by packages falling on her left arm. On October 29, 2010 he stated that appellant's left upper extremity condition flared up when she was transferred to a position with the employing establishment in Iowa. Such an event would constitute a new injury, rather than a spontaneous change resulting from her prior injury.¹⁶ In follow-up reports dated July 7 and 24, 2010, Dr. Awan noted full range of motion and intact muscle strength and sensation in the left shoulder

¹⁵ *Id.*

¹⁶ *See supra* note 8.

and elbow and no diagnostic evidence of peripheral neuropathy or radiculopathy. On August 4, 2010 he noted no change in examination findings. In his September 18, 2010 report, Dr. Awan provided examination findings and diagnoses. None of the aforementioned reports, however, contained an opinion that appellant was disabled from work due to her accepted injury. A September 18, 2010 disability certificate indicated that appellant was disabled from work and housework from August 30 through October 31, 2010. On October 23, 2010 Dr. Awan stated that she was disabled from March 30 through November 30, 2010. These reports did not contain any explanation as to how the purported disability was causally related to appellant's accepted condition. Such an explanation is especially important given the relatively normal examination findings contained in prior reports. For these reasons, Dr. Awan's reports are of limited probative value and are insufficient to establish appellant's claim.

Appellant did not submit any medical reports from a physician who, on the basis of a complete and accurate factual and medical history, concluded that she was totally disabled as of or after June 28, 2010 due to residuals of her accepted injury or that she was unable to perform the duties of the modified position. Instead, the medical evidence of record establishes that appellant was capable of working with restrictions. The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his disability and entitlement to compensation.¹⁷ Appellant has provided no evidence that OWCP required her to work outside of her restrictions, or that her condition worsened to the degree that she was unable to perform the duties of the position.

On appeal, appellant contends that her left arm flared up due to repetitive motion during her job assignment. As stated, an injury due to employment activities in her modified position would constitute a new cause of injury, rather than a recurrence of disability.

Appellant has failed to establish by the weight of the reliable, probative and substantial evidence, a change in the nature and extent of the injury-related condition resulting in her inability to perform the duties of her modified employment. She has provided absolutely no rationalized opinion evidence establishing that she was disabled as of June 28, 2010, or any evidence that the employing establishment withdrew, or was unable to provide her with, a light-duty job within her medical restrictions. As appellant has not submitted any medical evidence showing that she sustained a recurrence of disability due to her accepted employment injury, the Board finds that she has not met her burden of proof.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability that was causally related to her accepted injury as of June 28, 2010.

¹⁷ *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, *supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: February 3, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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