United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 11-1324**
	)	**Issued: January 3, 2012**
DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE, Richmond, VA, Employer	)	

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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 10, 2011 appellant, through her attorney, filed a timely appeal from a March 17, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her claim for a recurrence. Pursuant to the Federal Employees' Compensation Act[1] (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 has established a recurrence of total disability commencing June 24, 2005 causally related to a May 1, 2003 employment injury.

On appeal, appellant's attorney contends that the March 17, 2011 OWCP decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 2, 2003 appellant, then a 40-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome due to factors of her federal employment, including constant typing and computer work. OWCP accepted the claim for bilateral carpal tunnel syndrome. It authorized a right carpal tunnel release performed on July 3, 2003 and a left carpal tunnel release performed on August 7, 2003.

On July 5, 2005 appellant filed a notice of recurrence. She contended that constant and repetitious work by typing on a computer and use of her hands caused a recurrence of her bilateral carpal tunnel syndrome. The employing establishment stated that appellant was provided light duty effective September 8, 2003. Appellant was restricted from lifting more than five pounds, doing any type of repetitive task for over an hour and a half and was given frequent breaks throughout the day.

On June 24, 2005 Dr. Scott Greenfield, a Board-certified family medicine physician, diagnosed carpal tunnel syndrome. He obtained a history that appellant's supervisor had been making appellant do an extreme amount of repetitive-type activities which caused wrist swelling and pain. Dr. Greenfield released appellant to light duty effective June 27, 2005 and specified that she should work no more than four days a week for the next nine weeks. He advised that she could return to full duty on August 27, 2005.

In a June 27, 2005 attending physician's report, Dr. Greenfield reiterated his diagnosis and marked a check box indicating that appellant's condition was caused by her employment activity.

On July 13, 2005 appellant accepted an offer of limited duty effective June 24, 2005 with the following restrictions: no lifting more than five pounds; repetitive tasks not to extend more than one and a half hours and frequent breaks due to hand/arm pain.

In a September 23, 2005 attending physician's report, Dr. Greenfield reiterated his diagnosis and indicated that appellant would need to work four days a week for the next nine weeks.

On September 26, 2005 appellant filed a second notice of recurrence, claiming that her work duties of constant typing, writing and boxing cases for shipment were aggravating her carpal tunnel condition.

By letter dated October 3, 2005, the employing establishment requested a second opinion examination. It stated that appellant returned to full duty on September 16, 2005. Subsequently, appellant had taken every Friday off. The employing establishment conteded that she had not submitted medical documentation supporting leave without pay nor a narrative from her doctor justifying why she needed every Friday off.

In an October 3, 2005 report, Dr. T. Paul McDermott, Jr., a Board-certified orthopedic surgeon, diagnosed possible recurrent carpal tunnel syndrome. He reported that appellant did extremely well after her surgeries and then after six months her symptoms began to recur. Appellant was working four days a week and was concerned that her typing and hand use were

aggravating her symptoms. Dr. McDermott released her to a four-hour workday and made no change to her work status as prescribed by Dr. Greenfield.

On October 10, 2005 Dr. Douglas A. Wayne, a Board-certified physical medicine and rehabilitation physician, found a normal electrodiagnostic examination without evidence for carpal tunnel syndrome, polyneuropathy or radiculopathy involving the bilateral upper extremity motor axons.

On November 14, 2005 Dr. McDermott opined that appellant seemed to be doing well with her current work status.

In attending physician's reports dated November 14, 2005 and February 27, 2006, Dr. McDermott reiterated his diagnosis and released appellant to light duty four days a week, Monday to Thursday, until a follow-up and permanent work restrictions were applied.

Dr. McDermott referred appellant for a functional capacity evaluation (FCE), which she underwent on April 24, 2006 at Tidewater Physical Therapy, Inc. for a permanent impairment rating with respect to her residuals associated with bilateral carpal tunnel releases. Appellant's residual functional capacity was adequate for performance of the essential job tasks associated with her usual and customary job as a secretary without formal restrictions and with some accommodations.

On May 11, 2006 Dr. McDermott concurred with the FCE and recommended that the informal and occasional restrictions from the FCE be used as guidelines for appellant's employment and suggested that she be placed on a four-day workweek schedule in order to maximize her function. In a May 19, 2006 report, he indicated that he released her to regular work on May 4, 2006.[2]

Appellant submitted a January 30, 2007 attending physician's report by Dr. McDermott, who reiterated his diagnosis and released her to regular duty on May 11, 2006 with the recommendation that she be placed on a four-day workweek from Monday to Thursday with permanent restrictions based on the FCE.

By letter dated May 14, 2009, OWCP notified appellant of the deficiencies of her claim and requested a comprehensive medical report from her treating physician, not an attending physician's report, which supported and included appropriate work restrictions with a statement as to when she would be released back to full duty without restrictions. It allotted 30 days for her to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted a May 21, 2009 report by Dr. McDermott, who reiterated his diagnosis and released her to light work effective May 11, 2006 with the four-day workweek and FCE restrictions recommendation.

[2] By decision dated October 25, 2006, OWCP denied appellant's claim for a schedule award on the basis that the medical evidence of record was not sufficient to support that her May 1, 2003 employment injury resulted in a permanent impairment to her left and right upper extremities.

By letter dated July 28, 2009, OWCP requested additional factual and medical evidence from appellant and requested that she submit a Form CA-2a notice of recurrence to the employing establishment, who would then send it to OWCP. It allotted 30 days for her to submit additional evidence and respond to its inquiries.

Appellant submitted a notice of recurrence dated August 18, 2009. She indicated that after returning to work following the original injury she had permanent limitations on lifting and pushing heavy objects and frequent breaks in order to help relieve carpal tunnel pain and inflammation. Appellant reported that her job hours had been shortened in order to help her cope with her chronic symptoms.

By decision dated November 3, 2009, OWCP denied appellant's claim for a recurrence of total disability. It found that the medical evidence submitted was insufficient to establish that she sustained a recurrence of disability due to a withdrawal of a modified-duty assignment made specifically to accommodate her employment injury. It noted that the FCE was no longer valid and a rationalized medical report was required.

On November 10, 2009 appellant, through her attorney, requested a review of the written record.

By decision dated February 22, 2010, OWCP's hearing representative affirmed the November 3, 2009 decision. The medical evidence was found not sufficient to establish a change in the nature and extent of the employment-related condition and no evidence of any changes in the nature and extent of the previously recognized limited-duty assignment.

On April 14, 2010 appellant, through her attorney, requested reconsideration and stated that there had been no recurrence of carpal tunnel as it was a permanent condition and no special accommodations in the form of light duty had been provided by her supervisor. In a March 29, 2010 report, Dr. McDermott stated that she reported no significant change in her symptoms and was currently working four days a week. He reported that there was no significant subjective or objective change in appellant's physical examination from 2007 and reiterated his recommendation to abide by the FCE and Monday through Thursday workweek. On April 2, 2010 Dr. McDermott reiterated his diagnosis and recommendations.

By decision dated March 17, 2011, OWCP denied modification of the February 22, 2010 decision finding that the medical evidence submitted was insufficient to establish that appellant sustained a recurrence of disability due to a change in the nature and extent of the light-duty job requirements or a change in the nature and extent of the employment-related condition.

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 has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[3] This term also means an inability to work that takes place when a light-duty

[3] 20 C.F.R. § 10.5(x). *See T.S.*, Docket No. 09-1256 (issued April 15, 2010).

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.[4]

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.[5]

ANALYSIS

OWCP accepted appellant's claim for bilateral carpal tunnel syndrome and authorized corrective carpal tunnel release surgeries. Appellant returned to work following the acceptance of the employment injury in a limited-duty capacity. The issue on appeal is whether she has established a recurrence of total disability commencing June 24, 2005 causally related to the accepted employment injury. Appellant, therefore, has the burden of proof to show a change in the nature and extent of her injury-related condition or a change in the nature and extent of her limited-duty job requirements.

Appellant accepted an offer of limited duty effective June 24, 2005 with the following restrictions: no lifting more than five pounds; repetitive tasks not to extend more than one and a half hours; and frequent breaks due to hand/arm pain. On August 18, 2009 she indicated that after returning to work following the original injury she had permanent limitations on lifting and pushing heavy objects and frequent breaks in order to help relieve carpal tunnel pain and inflammation. Appellant reported that her job hours had been shortened in order to help her cope with her chronic symptoms. The evidence of record does not establish that the employing establishment had taken any formal action to cause any change in the nature and extent of appellant's light-duty job requirements.

Dr. Greenfield released appellant to light duty effective June 27, 2005 advising that she should work no more than four days a week for the next nine weeks. On April 24, 2006 the FCE established that she was capable of performing the essential tasks of her usual job as a secretary without formal restrictions. Dr. McDermott recommended that appellant be placed on a four-day workweek schedule, from Monday to Thursday, with permanent restrictions based on the FCE. On March 29, 2010 he reported that she was currently working four days a week and stated that there was no significant subjective or objective change in her physical examination since 2007. The Board finds that there is no evidence substantiating that appellant was required to perform

[4] *Id.*

[5] *See Joseph D. Duncan*, 54 ECAB 471, 472 (2003); *Terry R. Hedman*, 38 ECAB 222, 227 (1986). *See also A.M.*, Docket No. 09-1895 (issued April 23, 2010).

duties that exceeded her medical restrictions.[6] Although Drs. Greenfield and McDermott recommended a four-day workweek, they did not indicate a particular change in the nature of appellant's physical condition arising from the employment injury, which prevented her from performing her light-duty position.[7]

Similarly, Dr. Wayne's October 10, 2005 report did not provide a well-reasoned medical narrative report explaining how factors of appellant's federal employment materially worsened or aggravated her condition to the point where she could no longer perform the function of her duties causing her to be totally disabled for work. Thus, appellant did not meet her burden of proof with this submission.

On appeal, counsel contends that the March 17, 2011 OWCP decision is contrary to fact and law. The Board finds that the evidence submitted by appellant lacks adequate rationale to show a change in the nature and extent of her accepted condition or a change in the nature and extent of her limited-duty job requirements. Therefore, appellant did not meet her burden of proof to establish disability as a result of a recurrence.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden to establish that she sustained a recurrence of total disability commencing June 24, 2005 causally related to the May 1, 2003 employment injury.[8]

[6] *See Richard A. Neidert*, 57 ECAB 474 (2006).

[7] *See Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[8] The Board notes that the record contains evidence pertaining to a claimant under OWCP File No. xxxxxx874.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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