

on April 30, 2001 such that she could work limited duty only four hours a day. She claimed a recurrence of total disability on February 23, 2004. On October 20, 2006 OWCP denied appellant's claim. On April 3, 2007 an OWCP hearing representative affirmed.

This case has previously been before the Board. In the first appeal,² the Board found that appellant failed to establish that she sustained a recurrence of disability on February 23, 2004 causally related to her accepted employment injury. The Board remanded the case, however, for OWCP to adjudicate her timely request for reconsideration of the hearing representative's April 3, 2007 decision.

To support that request, appellant's representative submitted the April 23, 2007 report of Dr. David S. Wolkstein, a Board-certified orthopedic surgeon, who first saw appellant on June 15, 2000. Dr. Wolkstein related appellant's history and reviewed his treatment notes through November 15, 2005, describing her complaints, findings on physical examination and his recommendations. He concluded:

"This patient's occupation required repetitive movements of her hands, wrists, and upper extremities. Her job as a mail handler required repetitive pushing, pulling, grasping, lifting, and carrying of mail and parcels causing bilateral carpal tunnel syndrome. It is my opinion within a reasonable degree of medical certainty that the duties described above caused this patient's carpal tunnel syndrome and that her condition deteriorated to the point that she could no longer continue working at her job."

On May 17, 2007 Dr. Wolkstein supplemented his April 23, 2007 report:

"[Appellant] was able to work in a limited-duty capacity, working four hours a day during the course of treatment in this office until February 23, 2004. At that time the patient's condition worsened and deteriorated to the point where she could no longer continue working in a restricted capacity. She became totally disabled from performing her duties at work in any capacity on February 23, 2004."

In a September 8, 2011 decision, OWCP conducted a merit review and denied modification of its prior decision. It found that, although it was clear that Dr. Wolkstein held his opinion for several years, the weight of the July 6, 2007 medical opinion evidence rested with Dr. Michael P. Wujciak, a Board-certified orthopedic surgeon, whom OWCP appointed to serve as a referee medical examiner to resolve a conflict. It was Dr. Wujciak's opinion that appellant was capable of performing her limited-duty job.

Further, although Dr. Wolkstein provided clinical findings and a history of appellant's condition, OWCP found that he did not provide clinical examination results timely to the claimed recurrence. As a result, the record did not contain objective clinical findings supporting a change in the nature of appellant's condition such that she could not perform her duties.

² Docket No. 08-1232 (issued December 18, 2008).

On appeal, appellant's representative argues that Dr. Wolkstein's reports provide *prima facie* evidence that appellant suffered a recurrence. He also cites medical evidence the Board previously addressed. Appellant's representative requests a reversal of OWCP's denial and payment of proper benefits. In the alternative, he requests a supplemental report from the impartial medical specialist on the issue of recurrence.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.⁴

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of establishing that the disability is related to the accepted injury. This burden requires furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and who supports that conclusion with sound medical reasoning.⁶

When an employee who is disabled from the job she held when injured on account of employment-related residuals returns to a light-duty position, or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she 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.⁷

ANALYSIS

As appellant's representative argues, the reports of Dr. Wolkstein, the attending orthopedic surgeon, support appellant's recurrence claim. Dr. Wolkstein found that appellant's carpal tunnel condition had worsened and deteriorated to the point that she became totally disabled from performing her work duties on February 23, 2004. The conclusion is clear and unequivocal. The problem is that Dr. Wolkstein did not support his conclusion with sound

³ 5 U.S.C. § 8102(a).

⁴ 20 C.F.R. § 10.5(f).

⁵ *Id.* at § 10.5(x).

⁶ *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956).

⁷ *Terry R. Hedman*, 38 ECAB 222 (1986).

medical reasoning. He summarized his treatment notes, but he did not analyze them or incorporate them into any discussion of total disability on February 23, 2004. The result is a review that raises questions.

It appears that by the time Dr. Wolkstein first saw appellant in June 2000, only four months after she filed her injury claim, she had made what he described as a satisfactory recovery from her injuries. Appellant had subjective complaints of intermittent symptomatology on the right, but her physical examination was normal. By September 2000, her only complaint was an occasional sharp pain in the palm of her right hand. Appellant's physical examination was again normal. Notwithstanding OWCP's acceptance of a recurrence of partial disability on April 30, 2001, Dr. Wolkstein reported that her condition in November 2001 appeared to be the same as it was in September 2000, now with a complaint of numbness on the right.

In July 2002, appellant "continued to have symptoms of carpal tunnel syndrome." By January 2003, she complained of continued symptoms in both hands, including weakness and pain in both shoulders. Findings on physical examination were now positive. Surgery was discussed as a treatment option. By March 2003, appellant was nonresponsive to conservative treatment. She continued to be symptomatic in November 2003, with paresthesias in both hands. On February 5, 2004 appellant's condition was unchanged. She received low-level laser treatments from February 9 through March 4, 2004 but did not improve.

Although it is clear from this review that appellant's complaints and physical findings worsened from September 2000 to November 2003, Dr. Wolkstein did not explain why. He did not discuss whether this was the natural progression of her bilateral arm tendinitis and right carpal tunnel syndrome, a spontaneous change without intervening injury or new exposure to the work environment. Critical to appellant's recurrence claim, Dr. Wolkstein did not show how his review supported total disability for work beginning February 23, 2004. Appellant's condition did not appear to have worsened from November 2003 to February 2004; he found that her condition was unchanged. Yet, Dr. Wolkstein determined that she became totally disabled for work on February 23, 2004. At least that was his conclusion in 2007. At no point in his treatment review did Dr. Wolkstein indicate that he took appellant off work on or about February 23, 2004.

Medical conclusions unsupported by rationale are of little probative value.⁸ Dr. Wolkstein offered a conclusion supporting appellant's recurrence claim, but he did not fortify his conclusion with sound medical rationale. Further, it does not appear that he based his conclusion on a complete medical history. As the Board discussed on the first appeal, the attending Board-certified neurologist, Dr. Nazar H. Haidri, saw appellant on February 23, 2004, the date she claimed a recurrence a total disability. He opined that she could continue to work four hours a day with restrictions. Dr. Haidri submitted similar progress reports from June to November 2004. Dr. Wolkstein did not address this evidence and did not attempt to reconcile

⁸ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

his opinion with Dr. Haidri's. Medical conclusions based on inaccurate or incomplete histories are of little probative value.⁹

The Board finds that Dr. Wolkstein's opinion, while supportive, is insufficient to discharge appellant's burden to establish a recurrence of total disability on or about February 23, 2004 causally related to her accepted employment injury. The Board will therefore affirm OWCP's September 8, 2011 decision denying her recurrence claim.

In its September 8, 2011 decision, OWCP found that the opinion of Dr. Wujciak, an impartial medical examiner, represented the weight of the medical evidence. On appeal, appellant's representative requests, in the alternative, a supplemental report from the impartial medical examiner on the issue of recurrence. There was no conflict, however, on whether appellant sustained a recurrence of total disability on February 23, 2004 causally related to her accepted employment injury. The conflict that Dr. Wujciak resolved was whether appellant continued to have any residuals of her accepted employment injury. Although there was no evidence of ulnar neuropathy or active tendinitis in the upper extremities, he found that she continued to suffer from right carpal tunnel syndrome. But Dr. Wujciak was not asked and he did not address whether appellant sustained a recurrence of total disability on February 23, 2004. Thus, he does not hold the status of impartial medical specialist on that issue.

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 has not met her burden to establish that she sustained a recurrence of total disability on or about February 23, 2004 causally related to her accepted employment injury.

⁹ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

ORDER

IT IS HEREBY ORDERED THAT the September 8, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board