

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

M.D., Appellant

and

**U.S. POSTAL SERVICE, FALCON FIELD
STATION, Mesa, AZ, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 14-567
Issued: August 26, 2014**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 15, 2014 appellant, through her attorney, filed a timely appeal of a December 10, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her recurrence claim. 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 on or after April 2, 2007 causally related to her accepted employment injury.

FACTUAL HISTORY

On April 13, 2007 appellant, then a 46-year-old clerk, filed an occupational disease claim alleging that on January 15, 2007 she first became aware that her bilateral carpal tunnel condition

¹ 5 U.S.C. § 8101 *et seq.*

was due to her employment duties of sorting mail.² On October 5, 2009 OWCP accepted the claim for bilateral radial styloid tenosynovitis and bilateral de Quervain's tendinitis.

On November 8, 2009 appellant filed a claim for intermittent wage-loss compensation commencing April 2, 2007 due to being unemployed and unable to work due to her accepted employment injury. She noted that she had worked as a script supervisor in the private sector for the period September 24 to 28, 2009.

By letter dated November 17, 2009, OWCP informed appellant that the evidence of record was insufficient to establish disability due to her accepted employment injury. Appellant was advised as to the medical evidence required to establish disability.

In a December 7, 2009 report, Dr. Kraig M. Burgess, a treating Board-certified orthopedic surgeon, diagnosed bilateral de Quervain's extensor tenosynovitis. He noted that appellant had been released to light-duty work.

By decision dated February 10, 2010, OWCP denied appellant's claim for wage-loss compensation commencing April 2, 2007.

In a March 1, 2010 California form report, Dr. George Balfour, an examining Board-certified orthopedic surgeon with a subspecialty in hand surgery, diagnosed right wrist sprain with possible instability. He listed January 15, 2007 as the date of onset. Dr. Balfour checked "yes" to the question of whether appellant could perform her usual work and indicated that she could return to work that day.

In a March 1, 2010 report, Dr. Balfour related that appellant was evaluated that day. He provided an employment history, medical history and physical findings. Dr. Balfour related that appellant resigned from the employing establishment after having worked for 24 years. Appellant was presently currently between jobs as she had last worked two weeks prior. As to her disability, Dr. Balfour stated that she was "not temporarily disabled on a [w]orkers' [c]ompensation basis." In a March 17, 2010 report, he released appellant from his care as he had no further treatment to offer.

In a March 1, 2011 report, Dr. Guven Uzun, a treating Board-certified psychiatrist and neurologist, reported that appellant was first seen on June 23, 2010 for employment-related shoulder, back and neck pain complaints as well as migraine headaches. Appellant was next seen on October 22, 2010 at which time he provided a likely diagnosis of carpal tunnel syndrome.

On January 26, 2011 appellant filed a claim for a recurrence of disability. She alleged total disability since her employment injury date of January 15, 2007. Appellant sought medical treatment and wage-loss compensation. She also provided a position description of script editor.

² Appellant resigned from the employing establishment on April 12, 2007 to pursue another career as a script editor.

In a June 29, 2011 letter, OWCP informed appellant that the evidence was insufficient to establish her recurrence claim. Appellant was advised as to the definition of a recurrence and the evidence required to establish her claim. She was given 30 days to provide this information.

By decision dated August 24, 2011, OWCP denied appellant's recurrence claim. It found that she resigned from the employing establishment on April 7, 2007 to work in the private sector. Further, there was no medical evidence to support total disability for work on or after April 2, 2007.

In a letter dated September 8, 2011, appellant's counsel requested a telephonic hearing before an OWCP hearing representative, which was held on December 14, 2011.³ At the hearing, appellant testified that after she resigned from the employing establishment she worked full time as a script editor and been offered additional movies on which to work. She testified that she had no regular medical treatment since 2009 and started treatment for her right hand complaints with Dr. Uzun in 2010. Appellant stated that she filed a recurrence claim in order to reopen her claim to obtain medical treatment with Dr. Uzun.

In a January 25, 2012 report, Dr. Uzun noted that appellant was last seen on December 20, 2011 as a follow up to her employment injuries. On physical examination, appellant's wrists and hands revealed grip weakness and limited range of motion due to pain. Dr. Uzun reported that testing revealed moderate bilateral carpal tunnel syndrome with wrist median nerve entrapment. He reported that appellant continued to have bilateral arm and hand pain, weakness, tingling, numbness and difficulty with motor function due to her employment injury. Dr. Uzun recommended that her claim be reopened for medical treatment.

By decision dated February 15, 2012, the hearing representative affirmed the August 24, 2011 denial of appellant's claim for a recurrence of disability on and after April 7, 2007. She found the medical evidence was not sufficient to establish appellant's current condition or disability was a result of her federal employment.

On July 30, 2012 appellant's counsel requested reconsideration. He submitted a June 5, 2012 report from Dr. Uzun, who noted that appellant was seen for multiple neck, back, shoulder, arm, hand and wrist complaints and headaches. Her employment history reflected that she quit her job at the employing establishment in April 2007. Dr. Uzun reviewed appellant's medical records and provided physician findings. He noted limited bilateral wrist and hand range of motion due to pain and weakness. Dr. Uzun stated that his review of medical records from appellant's prior physician indicated that her current symptoms were the same as her prior symptoms. He concluded that her current condition was caused by her work at the employing establishment. On January 29 and March 11, 2013 appellant's counsel again requested reconsideration and noted that appellant had previously requested reconsideration in a July 30, 2012 letter.

By decision dated April 12, 2013, OWCP denied appellant's request for reconsideration without a merit review.

³ On October 29, 2011 appellant filed a claim for a schedule award. OWCP has not issued a final decision on this issue as she had not reached maximum medical improvement.

By order dated November 7, 2013, the Board set aside the April 12, 2013 nonmerit decision and remanded to OWCP as it failed to issue a decision within 90 days of the request for reconsideration.⁴

In a November 22, 2013 report, Dr. Uzun reported seeing appellant for upper extremity and back pain sustained as the result of her employment. He related that her forearm condition was a result of her work duties, which required repetitive gripping and twisting motions. Appellant informed Dr. Uzun that she resigned as she was working overtime. Dr. Uzun related that she continued to be symptomatic and that she has not reached maximum medical improvement. He reiterated that appellant's current symptoms were the same as those which occurred while working at the employing establishment. Dr. Uzun attributed her condition to her federal work duties as no job she accepted after resigning could have caused her symptoms.

By decision dated December 10, 2013, OWCP denied modification of its prior decisions denying appellant's claim.

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.⁵ If the disability results from new exposure to work factors, the legal chain of causation from the accepted injury is broken and an appropriate new claim should be filed.⁶

ANALYSIS

OWCP accepted appellant's claim for bilateral radial styloid tenosynovitis and bilateral de Quervain's tendinitis. The record reflects that she resigned from the employing establishment on April 12, 2007 to pursue a career as a script editor, work which she obtained. On January 26, 2011 appellant filed a claim for a recurrence of disability beginning April 2, 2007. OWCP denied her claim finding that the evidence failed to establish her claim. The issue is whether appellant established that she sustained a spontaneous recurrence of disability on and after April 2, 2007 due to her accepted bilateral radial styloid tenosynovitis or bilateral de Quervain's tendinitis condition. The Board finds that she failed to establish that her claim for a recurrence of disability commencing April 2, 2011 was due to her accepted employment conditions.

Appellant submitted medical evidence from her treating physician, Dr. Uzun, who noted a history that she retired from the employing establishment in April 2007. Dr. Uzun reviewed

⁴ Docket No. 13-1344 (issued November 7, 2013).

⁵ 20 C.F.R. § 10.5(x). See also *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁶ *K.C.*, Docket No. 08-2222 (issued July 23, 2009); *Cecelia M. Corley*, 56 ECAB 662 (2005); *Donald T. Pippin*, 54 ECAB 631 (2003); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (May 1997).

medical records, provided findings on physical examination and listed her current symptoms. Appellant was seen for shoulder, back and neck complaints and migraine headaches. Dr. Uzun diagnosed bilateral moderate carpal tunnel syndrome with wrist median nerve entrapment. He stated generally that the symptoms for which he treated appellant were the same for which she had previously been treated. Dr. Uzun did not adequately explain appellant's disability for work on or after April 2, 2007. As of April 12, 2007 appellant was no longer exposed to the duties of a mail clerk and obtained work in the private sector. Dr. Uzun's opinion on causal relationship regarding her disability for work is not based on a full or accurate history and is speculative. The Board has held that opinions unsupported by rationale are of diminished probative value.⁷ Dr. Uzun's reports are insufficient to establish appellant's claim.

The record also contains reports from Drs. Balfour and Burgess. Dr. Burgess concluded that appellant was capable of performing light-duty work. Dr. Balfour found that she was not disabled from work. As neither physician found that appellant had any disability, these reports are insufficient to establish her claim for a recurrence of disability.

It is appellant's burden of proof to provide evidence from a qualified physician to support the recurrence of total disability for any period of time. She failed to submit rationalized medical evidence establishing that her claimed recurrence of disability commencing April 2, 2007 was causally related to the accepted employment conditions and therefore she failed to meet her burden of proof.

The Board therefore affirms the October 28, 2011 OWCP decision concerning the denial of compensation based on a recurrence of appellant's work-related disability.

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 sustain a recurrence of disability beginning on April 2, 2007 causally related to her accepted employment injury.

⁷ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 10, 2013 is affirmed.

Issued: August 26, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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