



## **FACTUAL HISTORY**

In 2012 appellant, a 53-year-old rural carrier, filed an occupational disease claim alleging that her bilateral hand condition was a result of performing her duties. OWCP accepted her claim for bilateral carpal tunnel syndrome. Appellant underwent carpal tunnel releases later that year and received compensation for temporary total disability on the periodic rolls.

On February 6, 2013 Dr. James R. Mull, a Board-certified orthopedic surgeon who performed the operations, released appellant to return to work with restrictions beginning February 17, 2013. He noted that she was doing well, had full range of motion, and had improved strength.

Appellant accepted an offer of modified work and returned to full-time limited duty on February 19, 2013.

Electrodiagnostic testing performed on March 1, 2013 revealed findings that were most consistent with right carpal tunnel syndrome and probable early/mid left carpal tunnel syndrome. Clinical correlation was advised.

Dr. Mull saw appellant on March 11, 2013. Appellant reported persistent sensory symptoms. The tingling in her right and left hands, finger tips and palms had remained unchanged. Appellant advised that she was unable to perform her job duties “to the best of her ability,” adding that, if she did not meet her standards, she would get fired. She informed Dr. Mull that her job offered no limited duty. Appellant stated that she would like to be off work until she was fully able to perform her duties.

Dr. Mull’s examination of appellant was normal. Wrists and hands showed no tenderness, swelling, deformities, instability, subluxations, weakness or atrophy. Range of motion in all planes was full and painless. Dr. Mull diagnosed resolved bilateral carpal tunnel syndrome. As appellant’s examination was completely normal, he recommended that she seek a second opinion. Nonetheless, due to appellant’s statement that she was unable to perform her job, he declared her unable to return to work as of March 11, 2013. Dr. Mull instructed her to return to normal activity allowing for minor discomfort.

Appellant filed a claim for wage-loss compensation indicating that she was totally disabled for work beginning March 11, 2013. The employing establishment indicated that full-time work was still available and that she chose not to work.

Dr. Shawn A. Hayden, a Board-certified orthopedic surgeon, examined appellant on May 6, 2013. Light touch was intact with two-point moving discrimination intact at five millimeters on each fingertip of the left and right hands. Strength was normal with the exception of 4/5 strength in the abductor pollicis brevis muscles (thumb) bilaterally, left greater than right. Reflexes were normal. Wrists showed no swelling. Bilaterally, however flexion and extension were restricted and painful. Both wrist showed tenderness consistent with carpal tunnel syndrome. Both also showed a positive Phalen’s sign. Dr. Hayden found that appellant’s examination was consistent with mild clinical residual symptoms of carpal tunnel syndrome bilaterally, left greater than right.

OWCP provided Dr. Hayden with a description of the limited-duty assignment to which appellant had returned on February 19, 2013. It asked him to review it and identify any duties she could not perform and the objective findings that established renewed disability.

Dr. Hayden completed a duty status report returning appellant to work on May 7, 2013. He limited her to lifting 15 pounds continuously and 25 pounds intermittently for two hours a day, and he limited simple grasping to two hours a day. Dr. Hayden indicated that these restrictions would apply through July 7, 2013.

In a decision dated June 13, 2013, OWCP denied appellant's recurrence claim. It found that Dr. Mull did not provide a thorough explanation with objective findings as to how her condition had worsened such that she was no longer able to perform the duties of her modified assignment beginning March 11, 2013. OWCP further found that Dr. Hayden did not indicate that appellant was disabled for work due to the accepted medical condition.

Appellant, through her representative, requested reconsideration. She argued that Dr. Mull offered conflicting work limitations prior to her return to limited duty and that her limited duty exceeded the limitations imposed by him for simple grasping and driving. Specifically, Dr. Mull restricted simple grasping and driving to five hours while the limited-duty assignment required simple grasping and driving for four to six hours. Appellant argued that Dr. Hayden further increased her restrictions such that she was no longer able to perform her limited duty. She added that OWCP failed to justify the termination of her compensation.

Dr. Joseph H. Crumbliss, the attending physician Board-certified in family medicine, examined appellant on June 18, 2013 and diagnosed resolving carpal tunnel syndrome following bilateral releases. He explained to her that a comparison of her pre and postoperative electrodiagnostic studies revealed marked improvement in both median nerves. Findings indicated a steady improvement in physiologic parameters used to diagnose carpal tunnel syndrome. Dr. Crumbliss explained that it was not unreasonable to anticipate that appellant would still have numbness and pain related to persistent damage to both of her median nerves, but that it was also not unreasonable to anticipate that further improvement could occur over time.

Dr. Johan A. Sazy, an orthopedic surgeon, examined appellant on July 24, 2014 and found that she could not return to work due to active symptoms from failed surgery.

On September 26, 2013 Dr. Sazy performed an authorized left carpal tunnel release with tenosynovectomy. OWCP paid appellant compensation for the resulting recurrence of total disability and placed her on the periodic rolls.

In a decision dated December 12, 2013, OWCP reviewed the merits of appellant's case and denied modification of its prior decision. It found that appellant's physicians had not provided a well-reasoned opinion, supported by objective findings, to explain why she was not able to work beginning on March 11, 2013.

On appeal, appellant's representative advances the arguments he made in requesting reconsideration.

## LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> “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.<sup>4</sup>

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.<sup>5</sup>

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a light-duty position or the medical evidence of record establishes that he or 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 he or 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.<sup>6</sup>

## ANALYSIS

Dr. Mull, the orthopedic surgeon who performed the initial carpal tunnel surgeries, released appellant to return to work with restrictions. Appellant was doing well, had full range of motion, and had improved strength. She accepted an offer of modified work and returned to full-time limited duty on February 19, 2013. Appellant stopped work on March 11, 2013, however, and claimed compensation for total disability. She thus has the burden to establish a recurrence of disability by showing a change in the nature and extent of her injury-related condition.<sup>7</sup>

The most significant medical evidence on that point comes from Dr. Mull, who saw appellant on the day she stopped work. He indicated no change in the nature and extent of her injury-related condition. Rather, appellant advised that the tingling in her right and left hands, fingertips and palms had remained unchanged. She told Dr. Mull that she was unable to perform her duties “to the best of her ability” and that she would like to be off work until she was fully able to perform her duties. Appellant also told him, incorrectly, that her job offered no limited duty.

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<sup>3</sup> *Id.* at § 8102(a).

<sup>4</sup> 20 C.F.R. § 10.5(f).

<sup>5</sup> *Id.* at § 10.5(x).

<sup>6</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>7</sup> Appellant does not argue and the record does not establish, a change in the nature and extent of the light-duty job requirements.

Appellant's presentation to Dr. Mull tends to support the employing establishment's assertion that she stopped work on March 11, 2013 voluntarily. By history, her injury-related condition had not worsened. Appellant suggested that a work stoppage was a matter of preference. It was not that she could no longer continue. Appellant simply would like to be off work until she could perform the duties to the best of her abilities, which perhaps meant until she no longer had tingling in her hands.

Dr. Mull's examination of appellant on March 11, 2013 further supports that her work stoppage that day was a matter of choice. The examination was normal. Wrists and hands showed no tenderness, swelling, deformities, instability, subluxations, weakness or atrophy. Range of motion in all planes was full and painless. Dr. Mull diagnosed resolved bilateral carpal tunnel syndrome. Although he conceded to appellant's request to be taken off work, he made clear that her examination was completely normal and that she should perhaps see another physician. Dr. Mull released her to return to normal activity allowing for "minor discomfort."

Appellant did see another physician, Dr. Hayden, an orthopedic surgeon, who examined her on May 6, 2013, about 11 weeks after the work stoppage. Dr. Hayden found that her examination was consistent with mild clinical symptoms, but he did not report that the injury-related condition had worsened to the point that she could no longer perform limited duty beginning March 11, 2013. OWCP asked him to address the issue directly. It provided Dr. Hayden with a description of appellant's limited-duty assignment and asked whether there were any duties she could not perform, and if so, what objective findings supported a renewed disability for work.

Dr. Hayden responded indirectly and incompletely, by submitting a duty status report returning appellant to work on May 7, 2013 with a few restrictions over the next two months. He did not address her work stoppage on March 11, 2013. Dr. Hayden did not explain why appellant's mild clinical findings no longer allowed her to perform her modified assignment. Appellant demonstrated no loss of sensation. Strength was normal with the exception of 4/5 strength in the abductor pollicis brevis muscles bilaterally, though Dr. Hayden did not explain whether she had pain during strength testing. Bilateral flexion and extension were restricted and painful, which was fully at odds with the physical examination performed two months earlier by Dr. Mull. Dr. Hayden did not discuss whether the two examinations were inconsistent or whether appellant's condition had simply worsened in the interval. He did not explain whether any of her limited duties required such range of motion.

Two other physicians failed to address whether appellant sustained a recurrence of disability beginning March 11, 2013. Dr. Crumbliss, the attending family physician, saw her on June 18, 2013 and diagnosed resolving carpal tunnel syndrome. He explained that electrodiagnostic studies showed marked improvement in both median nerves and findings indicated a steady improvement in physiological parameters. It was not unreasonable, Dr. Crumbliss explained, that appellant would still have residual symptoms and it was also not unreasonable to anticipate that further improvement could occur over time. Not only did he fail to address her work stoppage on March 11, 2013, his references to resolving carpal tunnel syndrome, marked improvement in studies and steady improvement in physiologic parameters appear inconsistent with the notion that her injury-related condition was worsening.

Dr. Sazy, another orthopedic surgeon, examined appellant on July 24, 2014 and found that she could not return to work due to active symptoms from failed surgery. This was the first medical opinion, since Dr. Mull allowed her to self-certify her work status, to state positively that she was totally disabled for work as a result of her injury-related condition. Dr. Sazy did not address whether a worsening of the injury-related condition caused a recurrence of disability beginning March 11, 2013.

The Board finds that appellant has not met her burden to establish that she sustained a recurrence of disability beginning March 11, 2013. Dr. Mull's March 11, 2013 report, together with the failure of other physicians to directly address the specific issue, fails to establish her claim for recurrence. The Board will therefore affirm OWCP's December 12, 2013 decision.

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 the accepted work injury caused a recurrence of disability beginning March 11, 2013.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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