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

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| **C.J., Appellant** | ) | |
| **and** | ) | **Docket No. 15-0589** |
| | ) | **Issued: August 6, 2015** |
| **DEPARTMENT OF STATE, FOREIGN SERVICES INSTITUTE, Washington, DC, Employer** | ) | |

*Appearances:*
*Paul Kalker, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On January 23, 2015 appellant, through counsel, filed a timely appeal of a December 30, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 established that he sustained a recurrence of disability on and after April 10, 2014 causally related to his accepted bilateral carpal tunnel syndrome.

On appeal counsel argues that the evidence of record establishes appellant's recurrence claim.

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On February 28, 2012 appellant, then a 53-year-old human resources specialist, filed an occupational disease claim alleging that on May 9, 2011 he first realized that his bilateral carpal tunnel syndrome was caused or aggravated by his employment duties. OWCP accepted the claim for bilateral carpal tunnel syndrome and paid wage-loss compensation for total disability for the period April 12 to 20, 2012. Appellant stopped work on December 18, 2011 and returned on December 22, 2011.[2]

In an April 8, 2014 report, Dr. Brigit R. Venza, a treating Board-certified neurologist, related that appellant was first seen on February 10, 2012. Appellant reported persistent left posterior trapezius/neck pain and occasional burning pain radiating down the left arm to his finger, which Dr. Venza attributed to cervical radiculopathy. Dr. Venza stated that the February 17, 2012 nerve conduction study revealed mild bilateral elbow slowing of the ulnar motor conduction velocity while a recent April 8, 2014 study showed elbow ulnar neuropathies, which were worse on the left side. She related that appellant's ulnar neuropathies could cause hand and forearm numbness and pain especially with typing or holding the telephone to the ear or activities where the elbow is flexed. In addition, Dr. Venza stated that appellant had a history of cervical spondylosis and degenerative disc disease with multilevel nerve root compression. Appellant complained of persistent left trapezius/left posterior neck pain with occasional burning pain radiating down the left arms to his fingers, which Dr. Venza found to be likely secondary to cervical radiculopathy. In conclusion, Dr. Venza opined that appellant's bilateral ulnar compression neuropathies "are worsened by typing with elbows in a flexed position."

On an attending physician's report dated April 8, 2014, Dr. Venza diagnosed bilateral elbow ulnar neuropathies. She checked "yes" to the question of whether the diagnosed condition was employment related. In support of this conclusion, Dr. Venza reported that appellant's symptoms were aggravated or exacerbated by prolonged elbow flexion and typing. The form indicated a period of partial disability from May 18, 2012 to the present and that appellant was disabled from typing due to severe pain. Dr. Venza also indicated that appellant was unable to perform activities which required prolonged elbow flexion.

In an April 9, 2014 duty status report, Dr. Venza diagnosed elbow ulnar neuropathy as due to the employment injury and cervical spondylosis as other disabling conditions. She related that the work injury was due to typing which caused burning, pain, and numbness in the hands, wrists, elbows, and forearms. Dr. Venza indicated that appellant was capable of working eight hours five days a week with restrictions. Restrictions included continuous sitting no more than seven hours per day, twisting up to five hours per day, intermittent simple grasping up to three hours per day, continuous fine manipulation (including keyboarding) up to seven hours per day, and intermittent reaching above the shoulder and operating machinery up to one hour per day.

In a statement dated April 11, 2014, appellant related that his last day of work was April 10, 2014 and that he had attempted for the past two years to perform his work duties through his pain. He related that, due to the worsening of his condition, he was frequently

[2] On April 13, 2014 appellant filed a claim for a schedule award, which was denied by OWCP in a decision dated July 13, 2014.

unable to work in early 2012. As a result of his being off frequently in early 2012 due to pain from his bilateral ulnar elbow neuropathies, appellant's telework agreement was suspended by his supervisor. He noted that his job involves a lot of typing and that he has been taking pain medication at night as well as putting ice on his wrist, hands, and elbows when arriving home. Appellant requested disability benefits as he was no longer able to perform the major duties of his job due to the loss of his hand function.

Dr. Venza, in an April 30, 2014 attending physician's report, diagnosed elbow ulnar neuropathy and indicated the period of total disability as March 18, 2014 to the present. She indicated that appellant's disability is due to his inability to type because of severe pain or perform any activities involving prolonged elbow bending including reaching, writing, grasping, filing, operating a copier machine, holding a telephone, or lifting. Under findings, Dr. Venza reported that a recent nerve conduction study revealed bilateral elbow neuropathies, which was worse on the left side.

On July 18, 2014 OWCP received progress notes dated May 18, 2012 from Dr. Venza who stated that appellant was seen for cervical spondylosis and multilevel nerve root compression, which she opined was "likely contributing to his chronic neck pain as well as possible radicular symptoms, and bilateral ulnar neuropathies, "which are likely worsened by leaning on his elbows and typing with elbows in a flexed position." Dr. Venza stated that appellant should avoid prolonged elbow flexion while typing and leaning on his elbows. She recommended that appellant "use a soft foam elbow pad to avoid inadvertent compression."

On July 23, 2014 OWCP received an April 7, 2014 electromyography (EMG) test revealing left upper extremity ulnar nerve velocity slowing over the elbow and normal top ulnar nerve sensory latency, but an otherwise normal study. The test also revealed slowing conduction velocity over the right elbow, but not as slow as the left, the ulnar nerve sensory latency was top normal, and normal ulnar nerve sensory, and motor amplitudes.

On July 25, 2014 OWCP received a June 5, 2014 report by Dr. Kelly A. Martens, a treating physician, who stated that appellant was seen for complaints of bilateral tingling, pain and forearm numbness. Dr. Martens diagnosed bilateral cubital syndrome, which was worse on the left side. Under history of illness, she noted that the symptoms were first noted in 2011 by appellant and have worsened to the extent that he was unable to work. Dr. Martens related that appellant's job duties involve a lot of typing which appellant is unable to do because he gets burning bilateral forearm pain and numbness. A physical examination revealed evidence of ulnar nerve subluxation on flexion or extension, and bilateral elbow Tinel's testing reveals burning elbow pain. Review of diagnostic testing revealed no arthritic changes on x-ray interpretation and slowed ulnar conduction velocities on an April 7, 2014 EMG test.

By letter July 29, 2014, appellant submitted Dr. Venza's June 5, 2014 response to questions posed by OWCP. Dr. Venza related that appellant has been a patient since February 10, 2012 and that a recent nerve conduction study revealed ulnar elbow neuropathies, which was worse on the left side. She stated that this condition can cause hand and forearm numbness and pain especially "with activities in which the elbow is flexed such as typing or holding the [tele]phone to the ear."

On August 25, 2014 appellant filed a claim for a recurrence of total disability commencing April 10, 2014 causally related to his accepted bilateral carpal tunnel syndrome. He related that he has had persistent pain and worsening of his condition since May 9, 2011. Appellant stopped work on April 10, 2014 and has not returned.

In a November 20, 2014 letter, OWCP informed appellant that the evidence of record was insufficient to support his recurrence claim. It provided him with the definition of a recurrence and advised him as to the type of medical evidence required to support a recurrence claim. Appellant was given 30 days to provide the requested information.

On December 1, 2014 OWCP received an October 15, 2014 report by Dr. Joel D. Fechter, a treating Board-certified orthopedic surgeon, who provided a medical and work history and physical examination findings. Under history of injury, appellant related that he performed about six hours of data entry per day and that he first became aware of his bilateral upper extremity tingling and numbness in May 2011. In reviewing the medical evidence, Dr. Fechter noted that appellant was seen by Dr. Steven C. Scherping, Jr., a Board-certified orthopedic surgeon, on June 10, 2013 who recommended delaying neck surgery and "reported that typing seemed to irritate his left neck pain and left elbow. The medical report also stated that since 2013 appellant's workload had increased as did the left elbow burning and numbness to the hand. Appellant noted having "increased difficulties with symptoms with data entry as well as with bending, lifting, pushing, pulling and twisting activities." Dr. Fechter stated that appellant continued working following his injury until he stopped due to pain in April 2014. A physical examination revealed full bilateral elbow range of motion, no tenderness, positive Tinel's sign bilateral over the cubital tunnels more over the left side, increased numbness and tingling on elbow flexion in bilateral hands and forearms, and some digital left-sided digital abduction and adduction weakness. Dr. Fechter stated that he would like to review all of appellant's medical records including reports by two physicians from Kaiser, Dr. Sean T. Johnson, a Board-certified orthopedic surgeon and Dr. Scherping. He recommended that appellant avoid activities requiring prolonged elbow flexing, leaning on the elbow, and repetitive data entry.

By decision dated December 30, 2014, OWCP denied appellant's recurrence claim. It found that the medical evidence failed to establish that his disability was due to material worsening of his condition or the accepted bilateral carpal tunnel 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] If the disability results from new exposure to work factors, the legal

[3] 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).

chain of causation from the accepted injury is broken and an appropriate new claim should be filed.[4]

## ***ANALYSIS***

The Board finds that the medical evidence of record does not establish a recurrence of disability.

In support of his claim, appellant submitted reports from Drs. Venza and Martens. Dr. Venza noted that appellant's ulnar neuropathies had worsened, more on the left side. She stated that appellant's symptoms were aggravated by prolonged elbow flexion and typing in an April 8, 2014 attending physician's report and medical report. In the April 30, 2014 attending physician's report, Dr. Venza attributed appellant's disability to his work beginning March 18, 2014 because he could not type or perform any activities involving prolonged bending of his elbow due to severe pain. Dr. Martens, in a June 5, 2014 report, diagnosed bilateral cubital syndrome and opined that appellant was currently totally disabled due to a worsening of his condition. She further noted that appellant experienced bilateral forearm pain and numbness as his job involved a lot of typing. Neither Dr. Venza nor Dr. Martens provided sufficient rationale to explain how appellant's diagnosed condition and disability was causally related to the accepted condition bilateral carpal tunnel syndrome other than attributing it to appellant's pain.[5] Thus, their opinions are of little probative value.[6] For these reasons, the Board finds that these reports are insufficient to establish appellant's claim.

Appellant also submitted an October 15, 2014 report by Dr. Fechter who noted that appellant stopped working in April 2014 due to pain and stated he would like to review additional medical evidence from appellant's other treating physicians, Drs. Johnson and Scherping. Because Dr. Fechter did not offer any opinion regarding appellant's recurrence of disability on April 10, 2014, this report is of diminished probative value and insufficient to establish appellant's recurrence claim.[7]

On appeal appellant's counsel contends that medical evidence submitted by appellant is sufficient to establish appellant's recurrence claim. The Board finds that the weight of the medical evidence does not establish that appellant's recurrence of disability beginning April 10, 2014 was causally related to his accepted bilateral carpal tunnel syndrome.

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.

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

[5] *See Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[6] *Albert C. Brown*, 52 ECAB 152 (2000).

[7] *See Sandra D. Pruitt*, 57 ECAB 126 (2005).

## ***CONCLUSION***

The Board finds that appellant has failed to establish that he sustained a recurrence of disability on and after April 10, 2014 causally related to his accepted bilateral carpal tunnel syndrome.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 30, 2014 is affirmed.

Issued: August 6, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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