

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

M.S., Appellant)

and)

U.S. POSTAL SERVICE, DISTRIBUTION)
CENTER, Des Moines, IA, Employer)

**Docket No. 16-0503
Issued: September 13, 2016**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 21, 2016 appellant filed a timely appeal from an October 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.²

ISSUE

The issue is whether appellant has established that she sustained a recurrence of disability on March 18, 2015 causally related to the accepted employment conditions.

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal appellant submitted additional medical evidence that was not before OWCP at the time of the October 2, 2015 decision. The Board can review only evidence that was before OWCP at the time of the final decision on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

The case has previously been before the Board. Appellant initially filed an occupational disease claim (Form CA-2) dated January 8, 1997 alleging bilateral carpal tunnel syndrome causally related to her federal employment as a letter sorting machine operator. She indicated that June 21, 1996 was the date she first became aware of the condition. Appellant was off work intermittently. OWCP accepted the claim for bilateral carpal tunnel syndrome.

On January 12, 2011 appellant filed a claim for a recurrence of disability (Form CA-2a). She indicated on the claim form that the recurrence of disability began November 29, 2010. Appellant reported that she had no symptoms until she began performing a new job assignment. By letter dated March 7, 2011, OWCP advised her that it was developing the claim as a claim for a new injury and a new case file was created.³ By decision dated April 20, 2011, it denied the claim for a new injury.

Appellant requested reconsideration and submitted a March 29, 2011 report from Dr. Eugene Cherny, a Board-certified hand surgeon. Dr. Cherny diagnosed the following bilateral conditions: carpal tunnel syndrome, cubital tunnel syndrome, ulnar tunnel syndrome, and pronator syndrome. He opined that the conditions were causally related to repetitive activity in her new position since August 2010.

OWCP reviewed the merits of the claim and denied modification by decision dated July 22, 2011. Appellant again requested reconsideration. By decision dated September 29, 2011, OWCP denied merit review of the claim.

The record indicates that appellant underwent multiple nerve decompression surgery for the left arm on October 26, 2011 and on December 18, 2011 underwent right arm surgery. Dr. Cherny indicated in a March 6, 2012 note that she could return to regular duty, and she returned to work.

Appellant appealed to the Board on November 21, 2011. By decision dated May 21, 2012, the Board remanded the case for further development.⁴ The Board set aside OWCP's July 22 and September 29, 2011 decisions and found that the March 29, 2011 report from Dr. Cherny was sufficient to require further development of the evidence.

On August 7, 2012 OWCP reported that the accepted conditions were bilateral carpal tunnel, cubital tunnel, ulnar tunnel, and pronator syndromes. By letter dated September 19, 2012, the accepted conditions were reported as bilateral carpal tunnel syndrome, bilateral ulnar nerve lesion, and bilateral "other mononeuritis of upper limb." On September 27, 2012 OWCP indicated that additional accepted conditions were left keloid scar and right ulnar nerve injury.

Appellant submitted a claim for compensation (Form CA-7) for the period October 17, 2011 to March 6, 2012. By decision dated December 13, 2012, OWCP denied the claimed

³ The claims have been administratively combined under the current case file.

⁴ Docket No. 12-0234 (issued May 21, 2012).

period of disability through October 26, 2011. It indicated that compensation had been paid following the October 26, 2011 left arm surgery.

Appellant appealed to the Board. In a decision dated June 11, 2013, the Board affirmed the December 13, 2012 OWCP decision, finding that the medical evidence of record was insufficient to establish an employment-related disability from October 17 to 25, 2011.⁵

The record contains a light-duty job offer for a mail handler position, accepted by appellant on May 23, 2013, which became effective on June 1, 2013. On September 6, 2013 appellant submitted a claim for a schedule award (Form CA-7). By report dated June 10, 2014, Dr. Cherny opined that she had six percent permanent impairment of each arm based on her compression neuropathies. Appellant was referred for a second opinion examination by Dr. Anandeeep Kumar, a Board-certified physiatrist. In a report dated August 24, 2014, Dr. Kumar opined that she had 10 percent permanent impairment of each arm. An OWCP medical adviser opined in a September 19, 2014 report that the permanent impairment was five percent to each arm.

By decision dated December 23, 2014, OWCP issued a schedule award for five percent permanent impairment to each arm. The period of the award was August 7, 2014 to March 13, 2015.

By report dated October 9, 2014, Dr. Cherny reported that appellant was seen September 4, 2014 with symptoms of increased bilateral shoulder and cervical spine pain. He indicated that the shoulder pain had improved, but she was still symptomatic. Dr. Cherny diagnosed bilateral upper extremity pain and reported that appellant could work with a 10-pound lifting restriction with no lifting above the shoulder.

Appellant filed a claim for a recurrence of disability (Form CA-2a) on April 23, 2015. On the claim form she reported that the date of the recurrence was October 9, 2014, and that the date she stopped work after the recurrence was March 18, 2015. She reported that numbness, tingling, and swelling in her arms had returned. In addition, appellant indicated that she had returned to her regular duties and the same problems had returned.

By decision dated July 22, 2015, OWCP denied the claim for a recurrence of disability. It found that the medical evidence of record was insufficient to establish the claim, as appellant failed to establish disability due to a material change or worsening of her accepted work-related conditions.

Appellant requested reconsideration on July 30, 2015. She indicated that she experienced arm symptoms in September 2014 and returned to light duty. In a report dated June 10, 2015, Dr. Cherny opined that appellant had intermittent symptoms involving her shoulders, but these had resolved. He noted that an April 2, 2015 electromyogram (EMG) showed moderate bilateral carpal tunnel syndrome. Per, Dr. Cherny, appellant's job involved repetitive gripping, twisting, and pinching, with pushing and pulling of mail carts and occasional lifting. He wrote that she had been off work since March 18, 2015 with increased upper extremity symptoms. Dr. Cherny

⁵ Docket No. 13-0665 (issued June 11, 2013).

opined that appellant's recurrent carpal tunnel syndrome was causally related to her job duties, and a diagnosis of bilateral radial tunnel syndrome "can also be related to her work activities" at the employing establishment.

By decision dated October 2, 2015, OWCP reviewed the merits of the claim and denied modification. It found that the evidence of record was insufficient to warrant modification.

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 had resulted from a previous injury or illness without an intervening or new exposure to the work environment that caused the illness.⁶

An employee who claims a recurrence of disability due to an accepted employment injury has the burden of proof to establish by the weight of substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish 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 supports that conclusion with sound reasoning.⁷ Where no such rationale is present, medical evidence is of diminished probative value.⁸

ANALYSIS

In the present case, OWCP accepted that appellant sustained bilateral arm conditions that included carpal tunnel syndrome. The issue is whether appellant has established a recurrence of disability causally related to her accepted employment injury. The Board notes that on the Form CA-2a filed on April 23, 2015, she referred to a date of recurrence as October 9, 2014. Appellant did receive treatment from Dr. Cherny on that date. However, Dr. Cherny, in the report of that date, refers briefly to some bilateral shoulder pain and cervical pain. He does not discuss an accepted condition or a change in an employment-related condition resulting in disability.

Appellant received compensation paid for a schedule award through March 13, 2015. She indicated that she stopped work on March 18, 2015 and in support of her claim for a recurrence of disability submitted a June 10, 2015 report from Dr. Cherny. This evidence is insufficient to establish a recurrence of disability. Dr. Cherny refers to appellant's repetitive job duties and opines that her "recurrent" carpal tunnel syndrome is causally related to those duties. It is unclear whether he opines that the work she performed after she returned to work in March 2012 had caused an aggravation of her carpal tunnel syndrome.

⁶ 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB 362 (2007).

⁷ *I.J.*, 59 ECAB 408 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

⁸ *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

To establish a claim for a recurrence of disability commencing March 18, 2015, appellant must submit probative medical evidence establishing a change in an employment-related condition that resulted in disability commencing March 18, 2015. Dr. Cherny refers to increased upper extremity symptoms in his June 10, 2015 report, without further explanation. He does not provide a rationalized medical opinion establishing a spontaneous change in an accepted employment-related condition causing disability. Dr. Cherny also opined that a new diagnosis of bilateral radial tunnel syndrome could also be employment related. Thus, there is no probative evidence of a spontaneous change in an accepted employment-related condition as of March 18, 2015.

On appeal, appellant writes that her “recurrent injuries” were associated with her accepted conditions, and she resubmitted the April 2, 2015 EMG report. For the reasons discussed above, the evidence of record is insufficient to establish a recurrence of disability on March 18, 2015.

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 established a recurrence of disability on March 18, 2015 causally related to the accepted employment conditions.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 2, 2015 is affirmed.

Issued: September 13, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board