



## ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of total disability causally related to his October 30, 2008 employment injury.

## FACTUAL HISTORY

This case has previously been before the Board. By decision dated April 3, 2015, the Board set aside OWCP's August 15, 2014 decision denying appellant's claim for a new injury and remanded the case for OWCP to combine the current case record, OWCP File No. xxxxxx656, with OWCP File No. xxxxxx217, and determine whether he sustained either a recurrence of disability due to his October 30, 2008 employment injury or a new employment injury.<sup>3</sup> The facts of the case, as set forth in the prior Board decision, are incorporated herein by reference. The relevant facts are as follows.

On December 16, 2013 appellant, a 64-year-old mail processor, filed a notice of recurrence (Form CA-2a), under OWCP File No. xxxxxx217, alleging that he sustained a recurrence of his October 30, 2008 accepted employment injury. He indicated that he returned to limited-duty work on November 4, 2013, but stopped work again on November 23, 2013 because the position required him to use his thumbs and hands in excess of four hours per day. The employing establishment contended that appellant had not performed a full day of work as he was in training for three continuous weeks. It also contended that his work did not exceed his medical restrictions as there was no speed requirement and he was able to use either hand or the "one finger hunt and peck" method to keyboard as needed.

In reports dated November 12, 2013 through January 16, 2014, Dr. Robert Lombardi, a Board-certified orthopedic hand surgeon, indicated that appellant was a federal employee and continued to have bilateral thumb pain "with light lifting and typing." He also reported right elbow pain with rotational movement. Dr. Lombardi diagnosed bilateral osteoarthritis of the hand, bilateral carpal tunnel syndrome, and severe degenerative joint disease of the bilateral wrists, thumb, and right elbow. He restricted appellant from lifting more than one pound, no use of thumbs, limited use of hands to four hours, no fine manipulation or grasping, and no repetitive motion of the right and left thumb.

An electromyography and nerve conduction velocity (EMG/NCV) study dated January 15, 2014 revealed no evidence of peripheral entrapment neuropathy or cervical radiculopathy regarding the right upper extremity and suggested ulnar nerve irritation at the elbow.

In an April 7, 2014 development letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted reports dated September 26, 2013 through April 10, 2014 from Dr. Lombardi who reiterated his diagnoses and opinions.

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<sup>3</sup> Docket No. 15-0359 (issued April 3, 2015).

Entered into the record was a September 5, 2013 rehabilitation assignment offer for the customer care agent position from the employing establishment which indicated that the duties required “occasional simple grasping (mouse); occasional pushing/pulling using a computer mouse, interchangeable to right/left side as needed for comfort; and occasional fine manipulation or use of single finger when using a keyboard.” The employing establishment noted that the learning process encompassed three weeks of training: the first two weeks in a classroom setting and the third week with an instructor on “live” customer calls.

In a second development letter dated May 12, 2016, OWCP advised appellant of the deficiencies of his recurrence claim and afforded him 30 days to submit additional evidence and respond to its inquiries. It noted that the Board had remanded the case in its April 3, 2015 decision and the accepted conditions under the combined claims were: bilateral carpal tunnel syndrome; right radial styloid tenosynovitis; and right hand villonodular synovitis.

Counsel submitted a brief dated June 8, 2016 contending that the factual and medical evidence of record established that appellant’s work stoppage of November 23, 2013 was compensable as a recurrence of total disability.

By decision dated June 14, 2016, OWCP denied appellant’s recurrence claim, finding that the evidence of record did not show a change in the nature and extent of the injury-related conditions or a change in the nature and extent of the limited-duty job requirements.

### **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.<sup>4</sup> This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his established physical limitations.<sup>5</sup>

When an employee who is disabled from the job he or she had when injured on account of employment-related residuals returns to a limited-duty position or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work. 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 limited-duty job requirements.<sup>6</sup> This burden includes

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<sup>4</sup> 20 C.F.R. § 10.5(x). *See T.S.*, Docket No. 09-1256 (issued April 15, 2010).

<sup>5</sup> *Id.*

<sup>6</sup> *See A.M.*, Docket No. 09-1895 (issued April 23, 2010).

the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the disabling condition is causally related to the employment injury. The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated, or aggravated by the accepted injury.<sup>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>9</sup>

### ANALYSIS

OWCP accepted that appellant developed bilateral carpal tunnel syndrome, right radial styloid tenosynovitis, and right hand villonodular synovitis while in the performance of duty. On December 16, 2013 appellant filed a notice of recurrence alleging that he sustained a recurrence of his employment injury after returning to a limited-duty position. He returned to limited-duty work as a customer care agent on November 4, 2013, but stopped work again on November 23, 2013 because he alleged that the position required him to use his thumbs and hands in excess of his four hours per day medical restriction. Appellant has the burden of proof to provide medical evidence establishing that he was totally disabled due to a change in his job duties such that he was unable to perform his light-duty work.

On the recurrence claim form the employing establishment indicated that appellant had not performed a full day of the job as he was in training for three continuous weeks and did not exceed his medical restrictions as there was no speed requirement and he was able to use either hand or the “one finger hunt and peck” method to keyboard as needed.

Appellant alleged that his recurrence of total disability was caused by an inability to perform his light-duty job requirements. However, the record shows that the rehabilitation assignment offer for the customer care agent position from the employing establishment dated September 5, 2013 indicated that the duties required “occasional use of single finger when using a keyboard.” The employing establishment further noted that the learning process encompassed three weeks of training.

Further, appellant did not submit sufficient medical evidence to establish that his assigned duties had changed such that he was no longer medically able to perform them. He did not submit adequate medical evidence to support that his assigned duties exceeded his medical limitations or that he otherwise had a spontaneous change in his accepted conditions in the present claim. In his reports, Dr. Lombardi asserted that appellant continued to have bilateral thumb pain “with light

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<sup>7</sup> See *L.F.*, Docket No. 14-1817 (issued February 2, 2015); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (January 2013).

<sup>8</sup> See *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

<sup>9</sup> See *I.J.*, 59 ECAB 408 (2008); see also *Victor J. Woodhams*, 41 ECAB 465 (2005).

lifting and typing” and restricted him from repetitive motions of the right and left thumb and using his hands for more than four hours. However, he failed to provide a rationalized medical opinion explaining how appellant’s assigned duties exceeded his physical limitations or caused or aggravated his accepted conditions. The Board finds that there is insufficient evidence of record to establish that appellant’s light-duty job requirements changed such that the job requirements were no longer within the restrictions provided by Dr. Lombardi and appellant was unable to perform his limited-duty position.<sup>10</sup> As such, appellant has not met his burden of proof.

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 his burden of proof to establish a recurrence of total disability causally related to his October 30, 2008 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 14, 2016 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: June 14, 2018  
Washington, DC

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

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

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

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<sup>10</sup> See *J.F.*, 58 ECAB 124 (2006); see also *Terry R. Hedman*, 38 ECAB 222 (1986).