United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 17-1345**
	)	**Issued: May 24, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Edison, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant[1]
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 5, 2017 appellant, through counsel, filed a timely appeal from a February 8, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing January 26, 2015 causally related to her accepted condition.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 11, 2003 appellant, then a 37-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, while attempting to give a customer his mail on that date, the mailbox fell onto her left arm and hand. She stopped work on June 13, 2003. On July 15, 2003 OWCP accepted appellant's claim for contusion of the left hand and wrist.[3]

Initial reports from Dr. John K. Lee, a Board-certified internist, in June 2003 noted appellant's treatment for a contusion of the left hand and wrist. He advised that appellant was disabled from work.

Appellant was treated by Dr. Monica Mehta, a Board-certified physiatrist, on August 19, 2003 for a left hand and wrist contusion. Dr. Mehta noted appellant's complaints of left hand tingling and numbness and requested nerve conduction studies. On October 27, 2003 she diagnosed left de Quervain's syndrome and indicated that appellant's condition was work related. Dr. Mehta noted that appellant remained disabled. She continued submitting treatment notes.[4] On July 30, 2004 Dr. Mehta opined that appellant had left carpal tunnel syndrome and median nerve compromise due to trauma at work. Effective August 2, 2004 she released appellant to full-time work with restrictions.[5] Appellant returned to work on August 2, 2004 with a restriction on lifting more than 10 pounds.[6] The modified carrier position that she accepted was full time and involved no pushing, pulling, or lifting over 10 pounds for four hours a day, as well as no climbing or reaching.

A February 14, 2005 electromyogram (EMG) and nerve conduction velocity (NCV) study revealed normal electrodiagnostic study of the left upper extremity and related cervical paraspinals. It was noted that appellant may have tendinopathy of the left upper limb distally as there was no evidence of nerve pathology. On June 14, 2005 Dr. Mehta diagnosed carpal tunnel syndrome and cervical radiculopathy. She indicated that appellant's condition was attributable to her employment.[7]

In a May 14, 2007 duty status report (Form CA-17) Dr. Mehta diagnosed left wrist sprain and carpal tunnel syndrome. She advised that appellant could work with lifting limited to 10 pounds, sitting for 8 hours a day, standing and walking for 4 hours a day, no climbing, simple grasping or fine manipulation, bending and stooping for 30 minutes a day, reaching above the

[3] The record indicates that appellant received continuation of pay from June 13 to July 27, 2003. Beginning July 28, 2003, appellant received wage-loss compensation for total disability.

[4] A December 2, 2003 left hand magnetic resonance imaging (MRI) scan revealed a nonaggressive benign lesion in the proximal left second proximal phalanx. A left wrist MRI scan was normal.

[5] Appellant's wage-loss compensation stopped at that time.

[6] The job offer was dated February 18, 2004 and appellant signed her acceptance on July 20, 2004.

[7] On June 28, 2005 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that, while throwing small packages on May 28, 2005, she experienced left wrist and hand pain and swelling. She stopped work on June 1, 2005. On July 6, 2005 OWCP advised appellant that a new traumatic injury claim was administratively created based on the Form CA-2a. It developed this matter under File No. xxxxxx164. That claim is not before the Board on the present appeal.

shoulder for 1 hour a day, and operating machinery for 2 hours a day. On May 21, 2007 Dr. Mehta noted the June 11, 2003 work injury and indicated that appellant had longstanding left wrist carpal tunnel syndrome and reflex sympathetic dystrophy (RSD).

On May 21, 2007 the employing establishment offered appellant a full-time modified assignment as a carrier, subject to the restrictions set forth by Dr. Mehta. On May 29, 2007 appellant accepted the position.

On January 14, 2009 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that on January 14, 2009 she had a recurrence causally related to her June 11, 2003 accepted work injury. She did not stop work. Appellant's supervisor noted on the Form CA-2a that after the original injury, appellant returned to a long-term, limited-duty assignment and she was requesting authorization for additional medical treatment.

By development letter dated March 16, 2009, OWCP advised appellant of the type of evidence needed to establish her recurrence claim. Appellant subsequently provided a January 15, 2009 report from Dr. Mehta who treated her for left wrist pain, tingling, and numbness. She noted findings of limited range of motion of the left wrist, positive Tinel's sign, and diminished sensation at the C5-6 dermatome.

By decision dated May 18, 2009, OWCP denied appellant's claim for recurrence of disability on January 14, 2009. The case record was dormant after the May 18, 2009 decision until March 19, 2015.

On March 19, 2015 appellant filed a notice of recurrence of disability alleging that on January 26, 2015 the employing establishment reduced her hours due to lack of work. She noted that her condition and limitations remained the same since 2004. When she returned to work after the original injury appellant had restrictions of no pushing or pulling over 10 pounds for four hours a day, no climbing or use of machinery, and she could work an eight-hour day.

On June 29, 2015 OWCP advised appellant of the type of evidence needed to establish her claim.

By decision dated August 13, 2015, OWCP denied appellant's claim for a recurrence of disability, finding that the evidence of record was insufficient to establish that disability occurred or increased due to a change in the nature and extent of her light-duty job requirements or due to a withdrawal of a light-duty assignment made specifically to accommodate her work-related condition.

OWCP subsequently received appellant's July 21, 2015 response to an OWCP development questionnaire. Appellant reported that, on the date of recurrence, the employing establishment informed her that there was no work within her restrictions. She indicated that her original injury had not improved and her symptoms were always present although medication reduced her symptoms. Appellant did not sustain any subsequent injuries or illnesses since the original illness. She submitted the limited-duty assignment offer of February 18, 2004 for a modified carrier.

On September 22, 2015 appellant requested reconsideration. She noted that her work duties were not modified on the date of recurrence and management did not ask her to perform

duties beyond the limitations included in the limited-duty job offer. On June 11, 2015 appellant was told by management not to report to work because there was no work available within her restrictions. Appellant indicated that she was paid eight hours straight time rate for that day. She further indicated that she was denied work on several occasions in the months prior and the grievances related to those instances were resolved in the same manner. Appellant was unsure why the limited-duty job was withdrawn, as there was work available within her restrictions. She advised that her disability did not increase and she continued to have the same pain and limitations since the 2003 injury. Appellant noted that her injury had not gotten worse or improved and she was able to continue to work for eight hours or more each day, within the restrictions of her limited-duty job offer. She further indicated that she had not sustained any other injuries, either on or off the job since the original injury and since returning to work in 2004. Appellant submitted settlement agreements dated June 5 and 29, 2015 in which appellant's pay status was changed to reflect eight hours work for straight time rate for April 22, 25, 27, May 4, 5, and June 11, 2015.

Appellant also provided an October 11, 2013 report from Dr. William Oppenheim, a Board-certified orthopedist, who treated her for left forearm and elbow pain. She reported to him that in June 2003 while at work a mailbox fell and struck the dorsal radial aspect of her left forearm and her elbow regions. Appellant received several cortisone injections with varying amounts of improvement being appreciated. Dr. Oppenheim noted findings and diagnosed de Quervain's syndrome, carpal tunnel syndrome, ulnar nerve entrapment at the medial femoral condyle, ulnar nerve entrapment of the medial cubital tunnel, and medial epicondylitis. He opined that, if there was a correlation between the symptoms in his report and the symptoms that appellant complained about at the time of her accident in June 2003, he would attribute her present issues with regard to the left upper extremity to her 2003 accident.

A January 9, 2014 duty status report (Form CA-17) from Dr. Mehta diagnosed carpal tunnel syndrome, ulnar tunnel syndrome, epicondylitis, and de Quervain's syndrome. Appellant resumed work on January 9, 2014 with lifting/carrying limited to 10 pounds for 4 hours, sitting, standing and walking for 8 hours a day, no climbing or kneeling for 2 hours a day, bending/stooping limited to 4 hours a day, twisting up to 8 hours a day, simple grasping with the left hand limited to 2 hours a day, and no left-handed fine manipulation and keyboarding.

On July 24, 2015 Dr. Mehta noted treating appellant since 2003 and advised that appellant had not been treated in a long time and presented with severe neck pain radiating to the left arm and wrist. She noted limited cervical spine and left shoulder range of motion as well as limited left wrist dorsiflexion, palmar flexion, radial deviation, and ulnar deviation. Sensation was diminished in the C5-6 dermatome, and she had a positive Tinel's sign. Dr. Mehta diagnosed probable carpal tunnel syndrome and cervical radiculopathy due to trauma sustained while at work in 2003. She opined that appellant's complaints were due to the trauma sustained at work. Dr. Mehta recommended limited- light-duty work with restrictions on pushing, pulling, carrying, and lifting objects more than 10 pounds, no left hand usage, no left arm usage for grasping over the shoulder, and no operating machinery, kneeling activities, and climbing activities. She opined that appellant's complaints were permanent.

By decision dated December 16, 2015, OWCP denied modification of its August 13, 2015 decision. It advised that the medical evidence submitted at the time of the claimed recurrence of disability did not support that her disability was due to the accepted conditions of contusions of the left hand and wrist.

On May 5, 2016 appellant, through counsel, requested reconsideration. Counsel requested that the claim be expanded to include left carpal tunnel syndrome, de Quervain's syndrome, RSD, and cervical radiculitis. In support of the request, appellant provided an April 19, 2016 report from Dr. Mehta. Dr. Mehta noted treating appellant since August 15, 2003 for tingling and numbness in the left hand and left forearm after a June 11, 2003 work injury. She noted limited range of motion of the cervical spine, left shoulder, left elbow, left wrist, and left thumb. There was tenderness in the left lateral epicondyle area. Appellant was unable to make a fist and sensations were diminished in the left C5-6 dermatome. Dr. Mehta diagnosed carpal tunnel syndrome, cervical radiculitis/radiculopathy, de Quervain's syndrome, and RSD, all due to the June 11, 2003 work trauma. She opined that appellant's conditions were permanent and appellant was permanently disabled from any activity that required repetitive usage of the left hand, left arm, and left forearm. Appellant continued to remain on light duty.

On June 14, 2016 counsel again requested that the claim be expanded to include left carpal tunnel syndrome, RSD, and cervical radiculopathy. Further, he noted that appellant was working pursuant to an offer of modified assignment accepted on May 29, 2007 which was withdrawn by the employing establishment and constituted a recurrence of disability.

By decision dated August 2, 2016, OWCP denied modification of its December 16, 2015 decision. It found that appellant failed to provide well-rationalized medical evidence to support that her current work stoppage or additional diagnosed conditions were causally related to the prior accepted work injury of June 11, 2003.

On November 17, 2016 appellant, through counsel, requested reconsideration of the August 2, 2016 decision and sought expansion of her claim to include left carpal tunnel syndrome, RSD, cervical radiculitis, de Quervain's syndrome, and cubital tunnel syndrome/epicondylitis as a result of her work injury of June 11, 2003. Appellant based her expansion requests on the medical reports of Dr. Mehta and Dr. Oppenheim. Counsel asserted that appellant returned to a full-time position, but not full duty. He noted that, dating as far back as October 27, 2003, Dr. Mehta diagnosed de Quervain's syndrome and left median neuritis due to her work injury.

In an October 12, 2016 statement, appellant indicated that her condition after the June 11, 2003 injury never improved where she could return to full duty. In July 2004, she was offered a modified carrier position which she accepted and returned to work full-time limited-duty subject to Dr. Mehta's restrictions. Appellant noted her duties and indicated that, when certain duties were phased out in 2005, she was given another job offer based on her restrictions. She indicated that she continued to have symptoms and problems since 2003, but she was able to continue working eight or more hours daily within restrictions. Appellant submitted job offers dated July 20, 2004 and April 13 and May 21, 2007, all previously of record.

Counsel also provided October 7 and November 2, 2005 reports from Dr. Mehta who treated appellant for neck pain radiating down the left arm. Dr. Mehta noted that appellant could work light duty and refrain from activities that required repetitive use of both hands and reaching over the shoulder. Other reports from Dr. Mehta dated January 4 to November 14, 2006, noted appellant's complaints of pain on the palmar aspect of the left wrist and neck pain radiating to the left shoulder. She noted that appellant was developing signs of RSD and de Quervain's syndrome. Dr. Mehta continued light-duty restrictions. On January 9, 2014 appellant complained of severe weakness in the left arm with pain radiating from the left elbow. Dr. Mehta diagnosed carpal

tunnel syndrome by history, ulnar tunnel syndrome, de Quervain's syndrome, and ulnar and median nerve compromise of the left wrist due to trauma in 2003.

By decision dated February 8, 2017, OWCP denied modification of its August 2, 2016 decision.

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[8] Recurrence of disability 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 or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[9] Generally, a withdrawal of a light-duty assignment would constitute a recurrence of disability where the evidence established continuing injury-related disability for regular duty.[10] A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties, or other downsizing or where a loss of wage-earning capacity determination is in place.[11]

Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.[12]

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of establishing that the recurrence is causally related to the original injury.[13] This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.[14] The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.[15]

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[8] 20 C.F.R. § 10.5(x).

[9] *Id.*

[10] *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

[11] 20 C.F.R. §§ 10.5(x), 10.104(c) and 10.509; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013).

[12] *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

[13] 20 C.F.R. § 10.104(b); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 and 2.1500.6 (June 2013).

[14] *See S.S.*, 59 ECAB 315, 318-19 (2008).

[15] *Id.* at 319.

ANALYSIS

OWCP accepted that appellant sustained a contusion of the left hand and wrist. Appellant stopped work on June 13, 2003 and returned to a full-time light-duty job on July 20, 2004 and continued to work until January 26, 2015 when she alleged that the employing establishment advised that it no longer had work within her restrictions. On March 19, 2015 appellant filed a claim for a recurrence of disability. The Board finds that appellant has not established a recurrence of disability on January 26, 2015 causally related to the June 11, 2003 employment injury.

A recurrence of disability is defined as 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 and an inability to work 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, or when the physical requirements of such an assignment are altered such that they exceed the employee's physical limitations.[16] Appellant alleged that the employing establishment reduced her hours due to lack of work. She noted that her condition and limitations remained unchanged since 2004. When she returned to work after the original injury in 2004, appellant had restrictions of no pushing or pulling over 10 pounds for four hours a day and no climbing or use of machinery and she could work an eight-hour day. The Board finds that the medical record lacks a well-reasoned narrative from appellant's treating physicians relating appellant's claimed recurrent disability to her employment injury.

Appellant submitted a July 24, 2015 report from Dr. Mehta who noted treating appellant since 2003 after a work-related injury to the left wrist causing pain radiating upwards from the left wrist to the cervical spine and left shoulder. Dr. Mehta noted that appellant had not been treated in a long time and presented with severe pain in the neck radiating to the left arm and wrist. She noted findings and diagnosed probable carpal tunnel syndrome and cervical radiculopathy due to the 2003 work trauma. Dr. Mehta recommended limited light duty. Similarly, on April 19, 2016, she noted the history of the June 11, 2003 injury and diagnosed carpal tunnel syndrome, cervical radiculitis/radiculopathy, de Quervain's syndrome, and RSD due to the June 11, 2003 work trauma. Dr. Mehta opined that appellant was permanently disabled from repetitive usage of the left hand, left arm, and left forearm. However, she did not specifically address whether appellant had a recurrence of disability on or about January 26, 2015 causally related to the accepted conditions of contusion of the left hand and wrist. Dr. Mehta also did not explain how carpal tunnel syndrome, cervical radiculitis/radiculopathy, de Quervain's syndrome, and reflex sympathetic dystrophy, were causally related to the accepted conditions of contusion of the left hand and wrist.[17] Other reports from Dr. Mehta as well as Dr. Oppenheim's October 11, 2013 report do not establish the claimed recurrent disability as they predate the time of the claimed January 26, 2015 recurrence and do not address the relevant time period.

[16] *Albert C. Brown*, 52 ECAB 152 (2000); *Mary A. Howard*, 45 ECAB 646 (1994); *supra* note 8.

[17] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

Therefore, the Board finds that appellant has not met her burden of proof to establish a change in the nature or extent of her injury-related condition.

Appellant asserted that on January 26, 2015 the employing establishment withdrew her limited-duty position. In a statement dated July 21, 2015, she indicated that on the date of recurrence the employing establishment informed her that there was no work within her restrictions. Appellant was unsure why the limited-duty job was withdrawn on the date of recurrence as there was work available within her restrictions and she had performed the same work since 2004. She advised that her disability had not increased and she continued to experience the same pain and limitations since the injury in 2003.

However, the Board finds that appellant has not established a change in the light duty necessitated by her accepted condition. OWCP's procedures[18] provide that if the employing establishment has withdrawn a limited-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury, and the withdrawal did not occur for cause, reduction-in-force, or closure of the facility, then continuing injury-related disability for regular duty must be established. It was appellant's burden to submit evidence including an accurate description of the nature and extent of injury-related disability, clearly stating that she continues to suffer residuals of the work injury that are disabling and establishes continued causal relationship between work restrictions and the accepted conditions. She has not submitted sufficient medical evidence of current work restrictions causally related to the accepted conditions. The record indicates that the employing establishment stopped providing light duty when it did not receive updated medical evidence supporting a continuing need for light duty due to the accepted left hand and wrist contusion from June 11, 2003.[19] Appellant did not provide current medical evidence showing that she could not perform her work duties, or that she had continuing restrictions necessitated by the accepted contusions, beginning January 26, 2015. The record does not contain current medical records validating her restrictions for her work injury.[20]

The most current medical evidence from Dr. Mehta diagnosed the additional conditions of carpal tunnel syndrome, cervical radiculitis/radiculopathy, de Quervain's syndrome, and RSD. However, these conditions have not been accepted by OWCP as causally related to the June 11, 2003 work injury. The Board has found that compensation is not payable for withdrawals of limited-duty work if the medical evidence does not establish the disability at the time of the claimed recurrence was due to the medical conditions causally related to the accepted injury.[21] Thus, appellant has not shown a change in the nature and extent of the limited-duty job requirements.

[18] *See supra* note 10.

[19] As noted, the record was dormant for nearly six years from May 2009 to March 2015.

[20] *Supra* note 10.

[21] *See E.L.*, Docket No. 10-196 (issued October 4, 2010) (the record contained no bridging medical evidence to establish that appellant's continuing need for light duty was necessitated by the accepted condition and not due to other diagnosed conditions); *C.S.*, Docket No. 08-2218 (issued August 7, 2009) (when a light-duty position is withdrawn, it is the claimant's burden to establish that any increase in disability for work is due to the accepted injury, rather than another cause).

Appellant has not submitted medical evidence sufficient to establish that she sustained a recurrence of disability commencing January 26, 2015 causally related to her June 11, 2003 work injury. Thus the Board finds that she has not met her burden of proof.

On appeal counsel asserts that Dr. Mehta diagnosed other neurological conditions to the left upper extremity as a result of her work injury which were not accepted by OWCP despite numerous reports supporting causal relationship. He contends that OWCP abused its discretion by not earlier accepting these conditions. Appellant further indicates that she has provided sufficient evidence to support a recurrence on January 26, 2015 causally related to her accepted work condition. As noted, Dr. Mehta did not specifically address whether appellant had a recurrence of disability on or about January 26, 2015 causally related to the accepted employment conditions of contusion of the left hand and wrist. Additionally, she also did not sufficiently explain how carpal tunnel syndrome, cervical radiculitis/radiculopathy, de Quervain's syndrome, and RSD, were causally related to the accepted left hand and wrist contusions.[22] With regard to appellant's assertion that the employing establishment withdrew limited duty, the record contained no bridging medical evidence to establish that appellant's continuing need for light duty, following a lengthy gap without medical treatment, was necessitated by the accepted condition and not due to other diagnosed conditions. Appellant did not otherwise submit medical evidence showing that she sustained a recurrence of disability beginning January 26, 2015 causally related to her June 11, 2003 work injury.

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 of proof to establish a recurrence of disability commencing January 26, 2015 causally related to her accepted condition.

[22] *See supra* note 17.

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2018
Washington, DC

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

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

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