

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

M.S., Appellant	)	
	)	
and	)	<b>Docket No. 18-0877</b>
	)	<b>Issued: November 21, 2018</b>
U.S. POSTAL SERVICE, NETWORK	)	
DISTRIBUTION CENTER, Urbandale, IA,	)	
Employer	)	
	)	

*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 March 19, 2018 appellant filed a timely appeal from a January 22, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability commencing March 18, 2015 causally related to her accepted employment conditions.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On January 8, 1997 appellant, then a 26-year-old transitional sorting machine operator, filed an occupational disease claim (Form CA-2) alleging that she developed employment-related bilateral carpal tunnel syndrome. OWCP assigned the claim OWCP File No. xxxxxx614 and accepted it for bilateral carpal tunnel syndrome.<sup>4</sup>

On January 12, 2011 appellant filed a recurrence (Form CA-2a) for disability commencing November 29, 2010 when she began her new job assignment. By letter dated March 7, 2011, OWCP advised her that it was developing the recurrence claim as a claim for a new injury. It assigned that claim OWCP File No. xxxxxx013.<sup>5</sup>

Dr. Eugene Cherny, Board-certified in orthopedic and hand surgery, performed decompression surgery on appellant's left arm on October 26, 2011 and on the right arm on December 28, 2011. On March 6, 2012 he reported that she could return to work without restrictions.

By decision dated April 20, 2011, OWCP denied appellant's claim. Appellant subsequently appealed to the Board. By decision dated May 21, 2012, the Board remanded the case to OWCP for further development.<sup>6</sup> OWCP thereafter accepted the conditions of bilateral carpal tunnel syndrome, bilateral ulnar nerve lesions, bilateral other mononeuritis of the upper limbs, a left keloid scar, bilateral pronator syndrome, and an injury to the right ulnar nerve.

On April 20, 2013 Dr. Cherny placed restrictions on appellant's work activities. Appellant accepted a light-duty job offer on May 23, 2013. The duties listed were to load mail onto outbound trailers for four hours daily and work rewrap for four hours daily. The physical requirements included manually loading containers of mail with assistance and performing "first aid" on damaged or opened mail pieces.

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<sup>3</sup> Docket No. 16-0503 (issued September 13, 2016); Docket No. 13-0665 (issued June 11, 2013); and Docket No. 12-0234 (issued May 21, 2012).

<sup>4</sup> At the time of the 1997 claim, appellant was a transitional duty employee at the O'Hare Air Mail Facility, Chicago, IL. In late 2010, she transferred to the employing establishment's facility in Urbandale, IA.

<sup>5</sup> OWCP administratively combined OWCP File No. xxxxxx013 and File No. xxxxxx614, with OWCP File No. xxxxxx614 serving as the master file.

<sup>6</sup> Docket No. 12-0234 (issued May 21, 2012).

In reports dated September 4 to November 11, 2014, Dr. Cherny indicated that appellant reported that approximately four months prior her job had changed and now required increased lifting of mail and increased repetition. He noted symptoms of increasing bilateral hand, wrist, forearm, elbow, and shoulder pain and provided physical examination findings of decreased strength and positive impingement signs bilaterally. Dr. Cherny reported that appellant could work with a 10-pound lifting restriction and no lifting above the shoulder.

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

On a disability slip dated March 26, 2015 Dr. Cherny indicated that appellant should be excused from work from March 18 to 23, 2015 due to increased arm fatigue, swelling, and discomfort. On April 2, 2015 appellant had an electromyography and a nerve conduction velocity (EMG/NCV) test which revealed bilateral moderate median nerve dysfunction at the wrist, right slightly worse than the left. In a form report dated April 9, 2015, Dr. Cherny indicated that appellant was unable to work and requested authorization for bilateral radial tunnel releases.

By decision dated July 22, 2015, OWCP denied the claim for a recurrence of disability commencing March 18, 2015, finding that appellant had not met her burden of proof 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. Appellant also indicated that in February 2015 she lost feeling in her hands, and that the numbness, tingling, and stiffness returned in her arms along with pain and fatigue. She reported that she performed limited gripping, lifting, and grabbing with her arms and hands.

In a report dated June 10, 2015, Dr. Cherny opined that appellant had intermittent symptoms involving her shoulders, but these had resolved. He reported the April 2, 2015 EMG/NCV study findings. According to Dr. Cherny, appellant's job involved repetitive gripping, twisting, and pinching, with pushing and pulling of mail carts and occasional lifting. He noted that she had been off work since March 18, 2015 with increased upper extremity symptoms. Dr. Cherny opined that appellant's recurrent carpal tunnel syndrome was causally related to her job duties. He further opined that a diagnosis of bilateral radial tunnel syndrome could also be related to her work activities. Dr. Cherny continued to advise that she could not work.

By decision dated October 2, 2015, OWCP reviewed the merits of the claim, but denied modification of the July 22, 2015 decision, finding the evidence of record was insufficient to establish a recurrence of total disability.

On January 21, 2016 appellant appealed to the Board. By decision dated September 13, 2016, the Board affirmed the October 2, 2015 decision finding that the medical evidence of record

did not establish a spontaneous change in the accepted employment-related conditions as of March 18, 2015.<sup>7</sup>

On March 13, 2017 appellant requested reconsideration of the merits of her claim. She alleged that she continued to be disabled due to the accepted conditions.

In treatment notes dated March 12, 2015 to June 2, 2016, Dr. Cherny noted appellant's continued complaints of worsening bilateral arm pain, numbness, and weakness with a reported history of difficulty lifting heavy objects and dropping things. Examination findings included diminished grip strength and tactile sensation involving the median nerve in both hands. Dr. Cherny indicated that the April 2, 2015 EMG/NCV study findings confirmed the presence of bilateral carpal tunnel syndrome and also indicated that appellant had increased symptoms suggestive of radial tunnel syndrome bilaterally. He advised that she could not work and opined that her compression neuropathies were related to the repetitive nature of her work at the employing establishment. Dr. Cherny recommended additional surgery. On November 19, 2015 and March 10, 2016, he advised that appellant's bilateral upper extremity compression neuropathies and bilateral epicondylitis were due to her work activities as a mail carrier.

In a January 18, 2017 report, Dr. Sonya Agnew, a hand surgeon Board-certified in plastic surgery, noted that appellant was first seen on September 26, 2016 for complaints of bilateral hand numbness and tingling that began in 1996 and recurred after surgery and a return to work. She diagnosed left forearm pain and bilateral carpal tunnel syndrome with numbness and tingling in both hands. As to appellant's ability to perform work-related activities, Dr. Agnew indicated that this required a functional capacity examination (FCE) to determine them.

January 25, 2017 EMG/NCV studies indicated evidence of median mononeuropathy bilaterally. The ulnar nerves were normal. A February 16, 2017 magnetic resonance imaging (MRI) scan of the left forearm demonstrated fusiform thickening and hyperintensity of the median nerve proximal to the carpal tunnel, consider carpal tunnel syndrome, and multiple wrist ganglion.

By decision dated May 5, 2017, OWCP denied modification finding that the medical evidence of record contained insufficient explanation as to how appellant's work duties had caused her current medical condition.<sup>8</sup>

On May 22, 2017 appellant requested reconsideration of the May 5, 2017 decision. She indicated that in a two-year span she accepted two light-duty job offers, and her hands and forearms still "went out." Appellant reported that her condition worsened when she changed facilities<sup>9</sup> and that after her surgery she returned to regular mail handler duties which required lifting up to 70 pounds repetitively, and pushing and pulling up to 800 pounds, which she could not perform.

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<sup>7</sup> Docket No. 16-0503 (issued September 13, 2016).

<sup>8</sup> OWCP is not authorized to review Board decisions. Although the September 13, 2016 decision was the last merit decision, OWCP's October 2, 2015 decision is the appropriate subject of possible modification by OWCP. *See* 20 C.F.R. 501.6(d).

<sup>9</sup> *Supra* note 3.

July 18, 2016 EMG/NCV studies demonstrated evidence of bilateral carpal tunnel syndrome (median neuropathy) bilaterally.

Dr. Agnew reported on May 3, 2017 that appellant had pain in both hands with bilateral hand weakness, tingling, and numbness. She reviewed appellant's February 2017 MRI scan findings. In a May 17, 2017 report, Dr. Agnew related that, based on an FCE of May 5, 2017, appellant had restrictions of less than 10 pounds lifting and carrying bilaterally, with occasional reaching, handling, fingering, feeling, pushing, pulling, balancing, and kneeling. She performed left open carpal tunnel release, revision on June 19, 2017.

On May 17, 2017 Dr. Agnew completed a residual functional capacity form. She noted appellant's complaints of bilateral hand pain which was moderate-to-severe as well as tingling and numbness. Dr. Agnew diagnosed bilateral carpal tunnel syndrome and noted that appellant would undergo additional surgery. She reiterated limitations on appellant's upper extremity activities.

By decision dated August 18, 2017, OWCP denied modification of its prior decision. It found that appellant's attending physicians had failed to provide sufficient medical rationale to explain how her current conditions were causally related to her original injury.

Appellant requested reconsideration of the August 18, 2017 decision on October 23, 2017. She maintained that her light-duty requirements aggravated her injury such that she could not work.

A June 7, 2017 emergency department report noted that appellant was seen by Dr. Claudine Feliciano, an osteopath, for diagnoses of diffuse arm pain and bilateral carpal tunnel syndrome. Appellant's medications were listed, and she was to be seen in follow-up by Dr. Agnew.

On September 20, 2017 Dr. Agnew noted that appellant had been undergoing hand therapy on the left. She performed revision right open carpal tunnel release and incision of A1 pulley of the right thumb on October 2, 2017.

In correspondence dated October 16, 2017, appellant maintained that she had been performing light-duty work for two years prior to the recurrence of disability in March 2015, but then her condition worsened.

Appellant also submitted copies of evidence previously of record, including the modified job offer accepted by her on May 23, 2013 which indicated that she would manually load containers of mail with assistance and perform "first aid" on damaged or opened mail pieces.

By decision dated January 22, 2018, OWCP denied modification of its August 18, 2017 decision. It found that the medical evidence submitted did not explain how appellant's work conditions worsened or aggravated the accepted conditions such that she could no longer work after March 18, 2015.

### **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 injury or new exposure to the work environment that caused the illness.<sup>10</sup> This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to the 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 or her established physical limitations.<sup>11</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 establishes that, light duty can be performed, the employee has the burden of proof to establish by the weight of reliable, probative, and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>12</sup>

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>13</sup>

An individual who claims a recurrence of disability resulting from an accepted employment injury has the burden of proof to establish that the disability is related to the accepted injury. This burden requires furnishing 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 medical reasoning.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing March 18, 2015 causally related to her accepted employment conditions.<sup>15</sup>

The Board notes that it previously reviewed Dr. Cherny's reports dated through June 10, 2015 and found them to be insufficient to establish a recurrence of disability. By decision dated September 13, 2016, the Board found that the evidence of record did not establish that the work appellant performed after her return to work had caused an aggravation of her carpal tunnel

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<sup>10</sup> 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

<sup>11</sup> *Id.*

<sup>12</sup> *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>13</sup> See *H.C.*, Docket No. 16-0145 (issued March 2, 2016).

<sup>14</sup> *S.S.*, 59 ECAB 315 (2008).

<sup>15</sup> See *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

syndrome.<sup>16</sup> Absent further merit review of this issue by OWCP, pursuant to section 8128 of FECA, the Board's prior findings with regard to Dr. Cherny's earlier reports are *res judicata*.<sup>17</sup> The Board will therefore not review the evidence addressed in the prior appeal.

As to Dr. Cherny's subsequent reports, he advised that appellant could not work due to worsening bilateral hand and arm pain, numbness, and tingling and related that her increased symptoms were due to repetitive duties of her mail carrier position. The record does not indicate that appellant was ever a mail carrier, but rather, at the time she stopped work on March 18, 2015 she was working in a modified mail handler position, not as a mail carrier. The Board finds that, as Dr. Cherny did not relate her diagnosed hand and arm condition to her modified duties described above, his opinion is of insufficient probative value. Dr. Cherny only generally described appellant's work duties. He expressed no knowledge of the amount of time she spent performing any work activities he described, and he provided no explanation as to the mechanics of how the listed work duties resulted in her claimed recurrence of disability. Thus, Dr. Cherny's reports are insufficient to meet appellant's burden of proof.<sup>18</sup>

Dr. Agnew began treating appellant in September 2016. Although she diagnosed bilateral carpal tunnel syndrome, performed revision carpal tunnel releases on both arms, and noted appellant's physical restrictions, Dr. Agnew did not specify any period of total disability causally related to the accepted conditions. Dr. Agnew's reports are insufficiently detailed to establish a specific period of disability due to appellant's accepted conditions.<sup>19</sup> She did not explain exactly when and why appellant stopped work and did not explain how her accepted conditions rendered her totally disabled. Medical evidence that does not explain the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>20</sup>

Similarly, Dr. Feliciano reported on July 7, 2017 that appellant was seen for diffuse arm pain. She diagnosed bilateral carpal tunnel syndrome, but offered no opinion regarding appellant's alleged period of disability causally related to the accepted employment conditions.<sup>21</sup>

Appellant also submitted diagnostic studies to the record. Diagnostic studies lack probative value as they do not address whether the diagnosed conditions caused a recurrence of disability causally related to the accepted injury.<sup>22</sup>

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<sup>16</sup> See *A.C.*, Docket No. 18-0484 (issued September 7, 2018).

<sup>17</sup> See *T.B.*, Docket No. 15-0001 (issued July 1, 2015). A decision of the Board is final upon the expiration of 30 days from the date of the decision. 20 C.F.R. § 501.6(d).

<sup>18</sup> See *E.M.*, Docket No. 18-0275 (issued June 8, 2018).

<sup>19</sup> *Supra* note 13.

<sup>20</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>21</sup> *Supra* note 15.

<sup>22</sup> See *Thirston Jenious Jr.*, Docket No. 04-2215 (issued June 13, 2005); see also *E.R.*, Docket No. 18-0391 (issued August 24, 2018).

The Board therefore finds that appellant has not met her 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 her burden of proof to establish a recurrence of disability commencing March 18, 2015 causally related to her accepted employment conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 22, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2018  
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