

Federal Employees' Compensation Act³ (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 has met her burden of proof to establish a recurrence of total disability commencing July 9, 2016 causally related to her accepted employment injury.

FACTUAL HISTORY

On April 6, 2016 appellant, then a 62-year-old mail handler, filed an occupational disease claim (Form CA-2), assigned OWCP File No. xxxxxx673, alleging that she sustained carpal tunnel syndrome in both hands and pain in her lower back and leg as a result of performing repetitive duties, including continuous lifting, pushing, and pulling, while in the performance of duty.⁴ She indicated that she first became aware of her conditions on July 6, 2005, and first realized their relationship to her federal employment on November 1, 2014. On July 6, 2016 OWCP accepted the claim for right and left upper limb carpal tunnel syndrome.

In a July 29, 2016 prescription, Dr. Mark S. Brown, an attending Board-certified chiropractor, indicated that appellant would need to remain off work until further notice due to her bilateral carpal tunnel syndrome.

On August 16, 2016 appellant filed claims for compensation (Form CA-7) for leave without pay (LWOP) for the period July 9 through August 5, 2016.

Dr. Brown, in an August 8, 2016 prescription, indicated that appellant had become disabled on or about June 15, 2016 due to her bilateral carpal tunnel syndrome.

In an August 17, 2016 development letter, OWCP informed appellant of the evidence needed to support her disability claims and afforded her 30 days to provide the requested evidence.

In an August 24, 2016 progress report, Dr. Brown examined appellant and diagnosed chronic bilateral carpal tunnel syndrome causally related to repetitive motion involving constant lifting of boxes and mail handling while working as a mail handler. He again advised that she was totally disabled from work until further notice.

On September 6, 2016 appellant informed OWCP that she had stopped work on May 29, 2016 to the present. On September 7 and 14, 2016 she filed additional Form CA-7 claims

³ 5 U.S.C. § 8101 *et seq.*

⁴ Appellant had previously filed a traumatic injury claim (Form CA-1) due to a July 6, 2005 employment injury that OWCP accepted for bilateral carpal tunnel syndrome and degenerative disc disease of the lumbar spine with radicular symptoms. OWCP assigned this claim File No. xxxxxx815. On December 3, 2014 appellant filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of total disability beginning November 19, 2014 due to her accepted July 6, 2005 employment injury. By decision dated March 4, 2015, OWCP denied appellant's recurrence claim. An OWCP hearing representative, by decision dated November 24, 2015, affirmed OWCP's March 4, 2015 decision and advised appellant to consider filing a claim for a new injury.

requesting LWOP for the periods June 11 through 24, 2016 and August 6 through September 2, 2016.

In a September 7, 2016 medical report, Dr. Wayne Gibbons, an attending physiatrist, noted a history that appellant had work-related bilateral carpal tunnel syndrome due to repetitive motion of both hands while constantly lifting boxes and handling mail. He discussed examination findings and also diagnosed chronic bilateral carpal tunnel syndrome. Dr. Gibbons opined that appellant's condition was directly caused by repetitive motion while working as a mail handler. He further opined that she was totally disabled until further notice. Dr. Gibbons ordered electromyogram/nerve conduction velocity (EMG/NCV) studies to determine the extent of appellant's carpal tunnel injuries. The testing was performed on the same day as his examination and revealed bilateral median sensory-motor neuropraxia at the bilateral wrists with evidence of mild denervation of the left abductor pollicis brevis (bilateral carpal tunnel syndrome, moderate severity).

By decision dated September 23, 2016, OWCP denied appellant's claims for disability compensation commencing July 9, 2016 finding that she had not submitted rationalized medical evidence sufficient to establish that her accepted employment-related condition had materially worsened or changed since she had been placed on light-duty work restrictions by Dr. Barnes on May 3, 2016.

On October 12, 2016 appellant filed an additional Form CA-7 claim requesting LWOP compensation for the period September 17 through 30, 2016.

On October 24, 2016 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the September 23, 2016 decision. During the telephonic hearing, held on April 26, 2016, appellant testified that she had stopped work on May 29, 2016 and used sick leave prior to claiming compensation beginning July 9, 2016.

By decision dated June 15, 2017, an OWCP hearing representative affirmed the September 23, 2017 decision. She found that there was no rationalized medical evidence establishing total disability commencing July 9, 2016 due to appellant's accepted employment injury.

OWCP thereafter received additional medical evidence from Dr. Brown and Dr. Gibbons. In prescriptions dated July 7, 2017, the physicians ordered physical therapy for appellant. In progress notes dated July 12 and 24, August 25 and 30, and September 22, 2017, Dr. Brown discussed the status of appellant's conditions, including her bilateral carpal tunnel syndrome.

On October 3, 2017 appellant, through counsel, requested reconsideration of the June 15, 2017 decision and submitted an additional report dated July 14, 2017 from Dr. Gibbons. Dr. Gibbons restated his prior diagnosis of bilateral carpal tunnel syndrome and also diagnosed bilateral upper extremity nerve damage. In addition, he reiterated his prior opinion that appellant was totally disabled from work. Dr. Gibbons indicated that she continued to have bilateral carpal tunnel syndrome with chronic neck and low back pain that radiated to both legs. Appellant also had chronic degenerative joint disease in both knees. Dr. Gibbons opined that within a reasonable degree of medical certainty that these chronic conditions had further deteriorated due to her mail handler job duties, which included lifting, pushing, and pulling in extreme weather conditions over

a period of 28 years. He noted that the September 7, 2016 EMG/NCV studies were positive for bilateral carpal tunnel syndrome and confirmed nerve damage in both upper cervical extremities and hands. Dr. Gibbons further noted that after appellant returned to work her condition began to deteriorate. He referenced an August 24, 2016 examination which showed that her condition had worsened and was again deteriorating. Dr. Gibbons noted that appellant became disabled from work due to her bilateral carpal tunnel syndrome in May 2016 and filed a recurrence of disability claim on July 6, 2016.

On October 9, 2017 Dr. Gibbons diagnosed carpal tunnel syndrome of the right and left upper limbs and prescribed physical therapy for appellant.

Additional progress notes dated September 29, 2017 through February 23, 2018 from Dr. Brown continued to discuss the status of appellant's conditions, including her bilateral carpal tunnel syndrome.

OWCP, by decision dated March 2, 2018, denied modification of the June 15, 2017 decision, finding that Dr. Gibbons' July 14, 2017 report was not sufficiently rationalized to support appellant's claimed total disability commencing July 9, 2016.

Dr. Gibbons, in prescriptions dated January 10 and March 10, 2018, reiterated his diagnosis of carpal tunnel syndrome of the right and left upper limbs, and again ordered physical therapy for appellant. In addition, he continued to opine that she was totally disabled in a May 22, 2018 report. Dr. Gibbons referred appellant to a surgical consultation because her bilateral carpal tunnel syndrome had deteriorated and physical therapy had only provided temporary pain relief.

In additional progress notes dated January 17 through May 4, 2018, Dr. Brown continued to discuss the status of appellant's conditions, including bilateral carpal tunnel syndrome.

On August 16, 2018 appellant, through counsel, requested reconsideration of the March 2, 2018 decision and submitted a June 26, 2018 report cosigned by Drs. Gibbons and Brown who continued to diagnose bilateral carpal tunnel syndrome and bilateral upper extremity nerve damage, and opine that, within a reasonable degree of medical certainty appellant had been totally disabled commencing July 9, 2016. The physicians noted that three weeks following her return to light-duty work in May 2016, her condition deteriorated and she could no longer work due to chronic pain with increased spasm and swelling in both hands.

By decision dated November 14, 2018, OWCP denied modification of the March 2, 2018 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 resulting from a previous injury or illness without an intervening cause or a new exposure to the work environment that caused the illness. It can also mean 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.⁵

When an employee who is disabled from the job he or she held 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 an inability to perform such limited-duty work. As part of this burden of proof, 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.⁶ To establish a change in the nature and extent of the injury-related condition, there must be a probative medical opinion, based on a complete and accurate factual and medical history as well as supported by sound medical reasoning, that the claimed disability is causally related to the accepted employment injury.⁷ In the absence of rationale, the medical evidence is of diminished probative value.⁸ While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability commencing July 9, 2016 causally related to her accepted employment injury.

OWCP accepted appellant's occupational disease claim for bilateral carpal tunnel syndrome. On May 3, 2016 Dr. Barnes released her to light-duty work. Appellant stopped work on May 29, 2016, but filed Form CA-7 claims for LWOP for the period commencing July 9, 2016. She has not alleged a change in her light-duty job requirements. Instead, appellant attributed her inability to work to a change in the nature and extent of her accepted bilateral carpal tunnel syndrome. She therefore has the burden of proof to provide medical evidence to establish that she was disabled from work due to a worsening of her accepted work-related condition.¹⁰

Appellant submitted reports and EMG/NCV studies dated September 7, 2016, July 14, 2017, May 22 and June 28, 2018 from her attending physician, Dr. Gibbons. Dr. Gibbons diagnosed work-related chronic bilateral carpal tunnel syndrome and bilateral upper extremity nerve damage. He opined that appellant was totally disabled from work commencing July 9, 2016.

⁵ *L.S.*, Docket No. 18-1494 (issued April 12, 2019); *F.C.*, Docket No. 18-0334 (issued December 4, 2018); *J.F.*, 58 ECAB 124 (2006). 20 C.F.R. § 10.5(x). See also *Richard A. Neidert*, 57 ECAB 474 (2006).

⁶ *L.S.*, *id.*; *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁷ *L.S.*, *supra* note 5; *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁸ *Id.*; *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁹ *L.S.*, *supra* note 5; *Ricky S. Storms*, 52 ECAB 349 (2001).

¹⁰ *L.S.*, *supra* note 5; *D.H.*, Docket No. 18-0129 (issued July 23, 2018); *D.L.*, Docket No. 13-1653 (issued November 22, 2013); *Cecelia M. Corley*, 56 ECAB 662 (2005).

In a June 26, 2018 report, Dr. Gibbons indicated that three weeks after being released to return to light-duty work in May 2016, her condition deteriorated and she could no longer work due to chronic pain with increased spasm and swelling in both hands. The Board finds that Dr. Gibbons did not provide sufficient medical reasoning explaining how the accepted employment injury caused appellant's disability, commencing July 9, 2016. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how the claimed disability was causally related to an employment injury.¹¹ For these reasons, the Board finds that Dr. Gibbons' reports are insufficient to establish appellant's recurrence claim.¹²

Dr. Gibbons' remaining prescription notes lack probative value as he did not offer an opinion as to whether appellant's total disability commencing July 9, 2016 was causally related to the accepted employment injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's disability is of no probative value on the issue of causal relationship.¹³ Therefore, this evidence is insufficient to satisfy appellant's recurrence claim.

Appellant also submitted prescriptions, progress notes, and a report signed and cosigned by her chiropractor, Dr. Brown. While Dr. Brown opined, in an August 8, 2016 prescription, that appellant was totally disabled from work due to her employment-related chronic bilateral carpal tunnel syndrome, he did not diagnose spinal subluxations as demonstrated by x-ray to exist and, thus, he is not considered a physician under FECA and his reports are of no probative value.¹⁴

On appeal counsel for appellant contends that the June 26, 2018 report from Dr. Gibbons provides the necessary evidentiary basis for an award of wage-loss compensation. As noted above, Dr. Gibbons did not provide sufficient medical rationale supporting that the accepted bilateral carpal tunnel syndrome disabled appellant from work commencing July 9, 2016. As such, appellant has not met her burden of proof to establish her claim.

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.

¹¹ See *A.P.*, Docket No. 19-0446 (issued July 10, 2019); *G.G.*, Docket No. 18-1788 (issued March 26, 2019); *E.W.*, Docket No. 17-1988 (issued January 29, 2019).

¹² *A.P.*, *id.*; *G.G.*, *id.*; *K.G.*, Docket No. 15-0669 (issued April 8, 2016).

¹³ See *M.G.*, Docket No. 19-0610 (issued September 23, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ 5 U.S.C. § 8101(2); see also *D.P.*, Docket No. 13-1721 (issued February 21, 2014); *P.D.*, Docket No. 13-2034 (issued May 8, 2014); *Paul Foster*, 56 ECAB 208 (2004).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability commencing July 9, 2016 causally related to her accepted employment injury.¹⁵

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 3, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁵ Upon return of the case record OWCP should consider administratively combining the present claim file with her claim in OWCP File No. xxxxxx815.