United States Department of Labor
Employees' Compensation Appeals Board

T.G., Appellant	)	
and	)	**Docket No. 20-0032**
	)	**Issued: November 10, 2020**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Minooka, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On October 4, 2019 appellant, through counsel, filed a timely appeal from a July 11, 2019 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 over the merits of this case.[3]

[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.*

[3] The Board notes that following the July 11, 2019 decision, OWCP received additional evidence. 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 August 27, 2018, causally related to her accepted employment injury.

FACTUAL HISTORY

On October 31, 2016 appellant, then a 28-year-old part-time flexible clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome due to factors of her employment including repetitive use of her hands. She first became aware of her condition on October 24, 2016, and its relationship to her federal employment on March 8, 2016. OWCP initially denied appellant's claim. On September 6, 2017 it accepted her claim for the conditions of bilateral carpal tunnel syndrome and bilateral de Quervain's tendinitis. Appellant stopped work on November 3, 2016. On November 7, 2017 Dr. Paschal J. Panio, a Board-certified orthopedist, performed a left carpal tunnel release, left wrist synovectomy, interfascicular neurolysis of the median nerve, and tenosynovectomy of multiple tendons in the left wrist.[4] On December 19, 2017 Dr. Panio performed a right carpal tunnel release, right wrist synovectomy, intravesicular neurolysis median nerve, and tenosynovectomy of extensor tendons right wrist.[5]

OWCP paid appellant wage-loss compensation on the supplemental rolls from September 30, 2017 to June 22, 2018.[6] Appellant returned to full-duty work on June 28, 2018, but stopped work completely on August 27, 2018.

In a report dated August 30, 2018, Dr. Martin R. Hall, a Board-certified orthopedist, provided a history of injury and medical treatment. He noted examination findings of full bilateral hand motion, no triggering digits, negative Tinel's sign at the wrist, no thenar or hypothenar atrophy, full range of motion of the elbows, and no medial or lateral epicondylitis. Dr. Hall diagnosed history of bilateral carpal tunnel release and status post de Quervain's release surgery.

[4] Dr. Panio diagnosed left carpal tunnel syndrome; left wrist synovitis; and left wrist tenosynovitis, multiple extensor tendons.

[5] Dr. Panio diagnosed right carpal tunnel syndrome, right wrist synovitis, and right wrist tenosynovitis, multiple extensor tendons.

[6] In a duty status report (Form CA-17) dated February 19, 2018, Dr. Panio released appellant to full-time work, with restrictions on lifting and carrying up to 10 pounds with each arm; sitting, standing, walking, kneeling, bending/stooping, and twisting continuously; pulling and pushing up to 10 pounds intermittently; intermittent climbing; intermittent simple grasping, fine manipulation, and reaching above the shoulder; and continuously driving a vehicle, operating machinery, and temperature extremes. On February 21, 2018 the employing establishment offered appellant a limited-duty position, six hours a day as a modified flexible clerk effective February 22, 2018, which was in conformance with Dr. Panio's restrictions. Appellant accepted the position and returned to work. On May 9, 2018 Dr. Panio treated appellant in follow up and she reported that she attended one day of work conditioning and decided not to go back because it was too much for her. He noted appellant's attendance at occupational therapy was not regular. Dr. Panio recommended she consistently attend work conditioning and wrote her a new prescription. He treated appellant again on June 13, 2018. Appellant reported voluntarily removing herself from therapy. Dr. Panio opined that she was not compliant on two separate occasions and returned her to work with splints as her only restriction. He discharged appellant from his care. In a prescription note dated June 13, 2018, Dr. Panio returned appellant to regular duty with splints.

He opined that appellant could resume regular-duty work without restrictions and recommended ibuprofen for pain.

On September 10, 2018 Dr. Emily Mayekar, a Board-certified orthopedist, treated appellant for bilateral hand problems. Examination findings revealed positive Phalen's and Tinel's sign at the wrist. Dr. Mayekar diagnosed bilateral cubital tunnel syndrome and status post bilateral carpal tunnel release. She opined that appellant's present injuries may be related to repetitive motion at work. Dr. Mayekar noted that appellant was working full duty, but was struggling to complete her tasks. She recommended bilateral nighttime elbow braces and nerve gliding. In another note dated September 10, 2018, Dr. Mayekar returned appellant to work full time with restrictions of no lifting, pushing, pulling, or carrying more than 20 pounds. In a duty status report (Form CA-17) dated September 17, 2018, she noted clinical findings of bilateral cubital tunnel syndrome and status post bilateral carpal tunnel syndrome. She returned appellant to work full time with a lifting restriction up to 20 pounds.

Appellant subsequently filed claims for compensation (Form CA-7) requesting leave without pay (LWOP) for the periods August 27 to September 8 and September 29 to October 12, 2018.

In a development letter dated October 26, 2018, OWCP informed appellant that the evidence of record was insufficient to establish her recurrence of disability claim. It provided her with the definition of a recurrence of disability and requested that she submit a physician's opinion explaining how the claimed disability was due to the accepted employment injuries. OWCP afforded appellant 30 days to provide the requested evidence.

OWCP subsequently received an April 18, 2018 report from Dr. Panio. Appellant resumed physical therapy, but due to her minimal strength the therapist referred her for work conditioning/hardening. Dr. Panio recommended that she continue off work until she gained satisfactory strength. Form CA-17 reports from Dr. Panio dated April 18 and May 9, 2018 held appellant off work.

Dr. Panio treated appellant on November 26 and December 3, 2018. He reported reviewing the medical records from her other physicians and concurred with Dr. Hall who returned appellant to regular duty. Dr. Panio opined that appellant did not have cubital tunnel syndrome or nerve disorders of her neck noting that the electromyogram (EMG) was negative for ulnar nerve lesions at the elbow and there was no evidence of cervical nerve irritation. He indicated that he could not offer her further treatment and returned her to regular duty.

By decision dated February 28, 2019, OWCP denied appellant's claims for compensation for a recurrence of disability commencing August 27, 2018, finding that she had not submitted rationalized medical evidence sufficient to establish that her accepted employment-related conditions had materially worsened since she had been returned to work full duty by Dr. Panio's on June 13, 2018.

On March 5, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on June 10, 2019.

Appellant was treated by Dr. David Barnes, an osteopath specializing in family medicine, on April 22, 2019 for bilateral carpal tunnel syndrome and tenosynovitis. She reported trouble performing her daily activities as a clerk, which included reaching, carrying, pulling, or throwing, without exacerbating her bilateral arm condition. Dr. Barnes diagnosed bilateral carpal tunnel syndrome and bilateral synovitis and tenosynovitis and recommended a course of physical therapy for 10 weeks. On May 10, 2019 he reiterated examination findings and diagnoses. Dr. Barnes recommended physical therapy to help her regain range of motion and strength so that she could return to work full duty. In Form CA-17 reports dated May 30 and July 1, 2019, he noted clinical findings of bilateral hand and arm pain. Dr. Barnes returned appellant to work six hours a day, no bending, stooping, or reaching above the shoulder and 10-minute breaks every hour.

By decision dated July 11, 2019, an OWCP hearing representative affirmed the February 28, 2019 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.[7]

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. 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.[8] 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.[9] In the absence of rationale, the medical evidence is of diminished probative value.[10] 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.[11]

[7] *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).

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

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

[10] *Id.*; *Robert H. St. Onge*, 43 ECAB 1169 (1992).

[11] *L.S., supra* note 7; *Ricky S. Storms*, 52 ECAB 349 (2001).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing August 27, 2018, causally related to her accepted employment injury.

Appellant stopped work on August 27, 2018, and filed Form CA-7 claims for compensation alleging a recurrence of disability commencing August 27, 2018. 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 and bilateral de Quervain's tendinitis. 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 conditions.[12]

In support of her recurrence claim, appellant submitted a September 10, 2018 report from Dr. Mayekar who diagnosed bilateral cubital tunnel syndrome and status post bilateral carpal tunnel release. Dr. Mayekar opined that appellant's present injuries may be related to repetitive motion at work. She noted that appellant was working full duty, but was struggling to complete her tasks. Dr. Mayekar returned appellant to work full time with restrictions of no lifting, pushing, pulling, or carrying more than 20 pounds. In a Form CA-17 report dated September 17, 2018, she diagnosed bilateral cubital tunnel syndrome and status post bilateral carpal tunnel syndrome and returned appellant to work full time with a lifting restriction up to 20 pounds. Bilateral cubital tunnel syndrome, however, has not been accepted as caused by the factors of her federal employment. Dr. Mayekar did not provide a rationalized explanation as to why the additional conditions should be found employment related.[13] She did not otherwise explain how appellant's condition worsened to the point that she was no longer able to perform her full-duty job.[14] Dr. Mayekar's opinion is therefore of diminished probative value in establishing a recurrence of the accepted employment injury.

Appellant was treated by Dr. David Barnes on April 22, 2019 for pain and weakness in her arms due to bilateral carpal tunnel syndrome and tenosynovitis. She reported trouble performing her daily activities as a clerk. Dr. Barnes diagnosed bilateral carpal tunnel syndrome and bilateral synovitis and tenosynovitis and recommended a course of physical therapy. Similarly, on May 10, 2019, he recommended physical therapy to regain range of motion and strength so that she could return to work full duty. Likewise, in Form CA-17 reports dated May 30 and July 1, 2019, Dr. Barnes returned appellant to work six hours a day, no bending, stooping, or reaching above the shoulder and 10-minute breaks every hour. While he provided additional work restrictions, he did not sufficiently explain why appellant required additional restrictions on or after August 27, 2018, such that she was unable to perform her regular duties due to a worsening of her accepted bilateral carpal tunnel syndrome and bilateral de Quervain's tendinitis or specifically explain whether she sustained a recurrence of disability.[15] A cursory opinion without explanation is of limited

[12] *L.S., supra* note 7; *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).

[13] *See M.S.*, Docket No. 16-1907 (issued August 29, 2017).

[14] *See J.P.*, Docket No. 18-1396 (issued January 23, 2020).

[15] *See id*.

probative value.[16] Without such an explanation, these reports are insufficient to establish a recurrence of disability, as alleged.

Reports from Dr. Hall dated August 30, 2018 and Dr. Panio dated November 26 and December 3, 2018, do not support appellant's claim for a recurrence of disability rather they opine that appellant could return to work without restrictions. The Board has held that medical evidence that negates causal relationship is of no probative value.[17] Therefore, this evidence is insufficient for appellant to meet her burden of proof to establish her claim.

Other reports from Dr. Panio dated April 18 and May 9, 2018 are of no probative value in establishing the claimed recurrence of disability of August 27, 2018, since they predate the time of the claimed recurrent condition.[18]

The record also contains an EMG dated October 24, 2016. The Board has held that reports of diagnostic tests, standing alone, lack probative value, as they do not provide an opinion on causal relationship.[19]

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 August 27, 2018 causally related to her accepted employment injury.

[16] *See L.B.*, Docket No. 07-1861 (issued December 13, 2007).

[17] *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *M.C.*, Docket No. 19-1074 (issued June 12, 2020); *T.W.*, Docket No. 19-0677 (issued August 16, 2019).

[18] *S.W.*, Docket No. 19-1579 (issued October 9, 2020).

[19] *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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