

³ The Board notes that, following the August 19, 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 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 total disability from work for the period July 11 through August 26, 2018 causally related to the October 7, 2017 accepted employment injury.

FACTUAL HISTORY

On October 12, 2017 appellant, then a 51-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on “October 8, 2017” she injured her right elbow when she fell over a street sign post while in the performance of duty. She stopped work on October 12, 2017. On November 30, 2017 OWCP accepted appellant’s claim for a left knee contusion, a strain of an unspecified muscle and tendon in the right ankle and foot, and a strain of unspecified muscle, fascia, and tendons in the right forearm, sustained on October 7, 2017. Appellant returned to modified-duty work on December 20, 2017 and returned to full-duty work on February 7, 2018. OWCP paid her wage-loss compensation for intermittent periods of disability.

A June 18, 2018 medical report by Dr. Jeffrey Carroll, a Board-certified orthopedic surgeon, indicated that appellant complained of right elbow pain. Dr. Carroll indicated that her medical history was reviewed that day and documented separately. He conducted a physical examination of appellant’s right elbow, which revealed tenderness upon palpation of the lateral epicondyle, and he diagnosed right elbow lateral epicondylitis. Dr. Carroll held her off work beginning July 11, 2018 and indicated that her work restrictions included not lifting more than 10 pounds.

A July 6, 2018 letter from Diane Himes, an office manager, indicated that appellant had surgery scheduled for July 11, 2018.

Dr. Carroll, in a July 10, 2018 patient disability statement, indicated that appellant could return to work with the restrictions, of not using her right arm or hand. He specified that, if her restrictions could not be accommodated, then she should remain off of work until her next appointment, which was scheduled as July 31, 2018.

A July 11, 2018 priority for assignment worksheet signed by R.R., appellant’s supervisor, indicated that there was no work available for appellant within her medical restrictions.

On July 19, 2018 appellant informed OWCP that her physician had recommended that she stop work completely on July 10, 2018 and that the employing establishment could not accommodate her restrictions. She also noted that her surgery was now scheduled for July 25, 2018.

On July 24, 2018 appellant filed a claim for compensation (Form CA-7) for total disability from work for the period July 11 through 20, 2018.

In a development letter dated August 7, 2018, OWCP informed appellant of the type of medical evidence needed to support her claim for compensation for disability commencing July 11, 2018. It afforded her 30 days to submit the requested information.

On August 9, 2018 appellant filed a Form CA-7 claim for compensation for total disability for the period July 21 through August 3, 2018.

OWCP subsequently received an August 27, 2018 medical report by Dr. Carroll, which indicated that appellant underwent a successful right elbow lateral epicondylar release with lateral collateral ligament structure/repair. Appellant's diagnosis was listed as right tennis elbow.

An August 30, 2018 field nurse initial evaluation report indicated that appellant stopped work on July 10, 2018 and remained out of work. She related that appellant's restrictions were documented on June 18, 2018 by Dr. Carroll and that the employing establishment was able to provide light-duty work for her. The field nurse noted, however, that appellant had an authorized surgery on August 27, 2018.

On September 7, 2018 appellant filed Form CA-7 claims for compensation for total disability from work for the period August 4 through 31, 2018.⁴

On September 21, 2018 the employing establishment confirmed that appellant had returned to full-duty work on February 6, 2018. It noted that when the employing establishment first received appellant's restriction of lifting up to 10 pounds in April 2018 it removed parcels over 10 pounds from her route. The human resources specialist stated that appellant stopped work on July 11, 2018 and provided a disability statement the day before.

By decision dated September 21, 2018, OWCP denied appellant's claims for compensation, finding that the evidence of record was insufficient to establish total disability from work for the period July 11 through August 26, 2018 causally related to the accepted employment injury.

OWCP subsequently received an undated letter, wherein Dr. Carroll indicated that appellant sustained a work-related injury and diagnosed right elbow lateral epicondylitis. Dr. Carroll explained that appellant's original surgery date was July 11, 2018, but due to incorrect billing codes the procedure was moved to August 24, 2018. He stated that as her original surgery date was approaching she experienced worsening symptoms that interfered with her ability to do her job including increased pain, decreased grip strength, and trouble holding items such as her mailbag and individual pieces of mail. Dr. Carroll indicated that he, therefore, on July 10, 2018, adjusted appellant's work restrictions to completely prohibit the use of her right arm in order to avoid prescribing additional pain medication prior to her surgery.

An October 31, 2018 letter from the employing establishment indicated that, since July 10, 2018, there had been no work available for appellant.

On November 5, 2018 appellant requested reconsideration. In an accompanying letter dated October 31, 2018, she asserted that she immediately provided her new work restrictions from July 10, 2018 to the employing establishment, and it stated that it had no work available within her

⁴ A September 21, 2018 supplemental rolls payment indicated that appellant was compensated for the period August 27 to 31, 2018.

restrictions. Appellant contended that she was, therefore, unable to work and again requested compensation for the period July 11 through August 25, 2018.

On December 12, 2018 OWCP denied modification of its September 21, 2018 decision.

On June 20, 2019 appellant, through counsel, requested reconsideration and resubmitted Dr. Carroll's undated letter.

On August 19, 2019 OWCP denied modification of its December 12, 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 condition. 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. 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

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a recurrence of total disability for the period July 11 through August 26, 2018 causally related to her accepted October 7, 2017 employment injury.

Dr. Carroll's July 10, 2018 report indicated that appellant could return to work with the restriction of not using her right arm or hand. He specified that if her restrictions could not be accommodated then she should remain off of work. Dr. Carroll, in an undated report, indicated that appellant sustained a work-related injury and diagnosed right elbow lateral epicondylitis. He related that she experienced worsening symptoms that interfered with her ability to do her job

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

including increased pain, decreased grip strength, and trouble holding items such as her mailbag and individual pieces of mail. Dr. Carroll stated that he, therefore, on July 10, 2018 adjusted appellant's work restrictions to completely prohibit the use of her right arm in order to avoid prescribing additional pain medication prior to her surgery. On August 27, 2018 he reported that appellant underwent a successful right elbow lateral epicondylar release with lateral collateral ligament structure/repair. The record reflects that OWCP authorized this surgical procedure. On July 11, 2018 appellant's supervisor indicated that work was not available within appellant's restrictions and, by letter dated October 31, 2018, the employing establishment confirmed that, since July 10, 2018, there had been no work available for appellant.

As previously noted 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, or 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 can establish a recurrence of total disability.⁸

The Board, therefore, finds that, as Dr. Carroll provided additional work restriction due to appellant's accepted right upper arm condition on July 10, 2018, pending authorized surgery, and the employing establishment confirmed that work was not available during the claimed period within appellant's restrictions, appellant has met her burden of proof to establish a recurrence of total disability.⁹

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a recurrence of total disability from work for the period July 11 through August 26, 2018 causally related to her October 7, 2017 accepted employment injury.

⁸ *Supra* note 5.

⁹ *Supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 22, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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