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<b>B.W., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-0721</b>
	)	<b>Issued: February 14, 2023</b>
<b>DEPARTMENT OF THE INTERIOR, FISH &amp;</b>	)	
<b>WILDLIFE SERVICE, NORTH MISSISSIPPI</b>	)	
<b>REFUGES COMPLEX, Grenada, MS, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

<sup>2</sup> The Board notes that following the April 8, 2021 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 December 7, 2020, causally related to the accepted September 1, 2003 employment injury.

## **FACTUAL HISTORY**

On April 12, 2004 appellant, then a 30-year-old office automation assistant, filed an occupational disease claim (Form CA-2) alleging that she developed tendinitis in her right wrist due to factors of her federal employment, including repetitive typing and writing. She explained that the tendons in her right hand would swell and tighten up to her arm and shoulder and she was initially diagnosed with tendinitis. Appellant noted that she first became aware of her condition on September 1, 2003 and first realized its relation to her federal employment on September 8, 2003. She did not stop work. OWCP accepted appellant's claim for right wrist de Quervain's radial tenosynovitis and carpal tunnel syndrome.

On December 2, 2020 appellant filed a notice of recurrence (Form CA-2a), alleging a recurrence of a medical condition on October 1, 2020 causally related to her accepted September 1, 2003 employment injury. She stopped work on December 7, 2020.

In a note dated December 7, 2020, Dr. Cooper L. Terry, a Board-certified orthopedic surgeon, noted that appellant was treated that day and that she was totally disabled from work for one month or until she was examined for pain management.

In a December 28, 2020 development letter, OWCP informed appellant of the deficiencies of her recurrence claim. It advised her of the type of medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant completed the development questionnaire on February 9, 2021. She asserted that her condition had never improved, her new job title changed, she was assigned extra work, her job duties continued to require typing and word processing, and she was experiencing symptoms of bilateral carpal tunnel syndrome. Appellant requested authorization for hand surgery.

On February 2, 2021 appellant underwent additional electromyography (EMG) and nerve conduction velocity (NCV) studies which demonstrated median neuropathy at the wrists, right greater than left or moderate carpal tunnel syndrome. There was no electrophysiologic evidence of an ulnar entrapment in either arm. Appellant also provided March 31, 2010 EMG/NCV studies, which were consistent with moderate-to-severe right carpal tunnel syndrome and mild-to-moderate left carpal tunnel syndrome.

By decision dated February 9, 2021, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish causal relationship between her claimed disability and the accepted employment injury.

On February 18, 2021 appellant requested reconsideration. She submitted additional documentation regarding her current position. Appellant also resubmitted her response to

OWCP's development questionnaire, and copies of her February 2, 2021 and March 31, 2010 EMG/NCV studies, which were previously of record.

By decision dated April 8, 2021, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> Under FECA the term disability means incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>5</sup> For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.<sup>6</sup> Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.<sup>7</sup>

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 compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>8</sup>

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>9</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that,

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> 20 C.F.R. § 10.5(f); *J.S.*, Docket No. 19-1035 (issued January 24, 2020).

<sup>6</sup> *T.W.*, Docket No. 19-1286 (issued January 13, 2020).

<sup>7</sup> *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>8</sup> 20 C.F.R. § 10.5(x); *T.J.*, Docket No. 18-0831 (issued March 23, 2020).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>10</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>11</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability commencing December 7, 2020, causally related to the accepted September 1, 2003 employment injury.

In support of her claim, appellant submitted a December 7, 2020 note in which Dr. Terry found that she was totally disabled from work for one month or until she was examined for pain management. However, Dr. Terry did not provide an opinion on causal relationship between the claimed disability and 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.<sup>12</sup> Therefore, this note is insufficient to establish appellant's recurrence claim.

Appellant also submitted EMG/NCV study reports dated March 31, 2010 and February 2, 2021. However, the Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's claimed disability.<sup>13</sup>

As the medical evidence of record is insufficient to establish a recurrence of disability commencing December 7, 2020, causally related to her accepted September 1, 2003 employment injury, the Board 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 December 7, 2020, causally related to the accepted September 1, 2003 employment injury.

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<sup>10</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019).

<sup>11</sup> *G.G.*, Docket No. 18-1788 (issued March 26, 2019).

<sup>12</sup> *See L.D.*, Docket No. 20-0894 (issued January 26, 2021); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>13</sup> *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board