

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of disability for the period October 19, 2021 through June 12, 2022 causally related to her accepted employment injury.

FACTUAL HISTORY

On January 9, 2017 appellant, then a 57-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 1, 2016 she sustained right wrist pain as a result of using a computer to print wrist bands for veterans 23 times per day and excessive scanning while in the performance of duty.³ She stopped work on August 1, 2017 and returned to full-time, modified-duty work on December 11, 2017. By decision dated February 14, 2019, OWCP accepted appellant's claim for right carpal tunnel syndrome. It paid her wage-loss compensation on the supplemental rolls for intermittent disability from November 8, 2017 through September 27, 2018.

Appellant continued to receive medical treatment. In an examination note and letter dated August 27, 2021, Dr. Angela Barnes, an osteopath specializing in family medicine, indicated that appellant was evaluated for follow-up of right wrist pain due to a work-related injury in 2016. On examination of appellant's right wrist, she observed positive Phalen's and Tinel's tests on the right. Dr. Barnes diagnosed right carpal tunnel syndrome and excused appellant from work for the period August 30 through September 10, 2021. She indicated that appellant experienced a "flair of the carpal tunnel" due to a recent increase in data entry and repetitious right-hand work. Dr. Barnes reported that she was hopeful that two weeks of rest from the repetitious work would resolve the inflammation.

In a statement dated September 20, 2021, appellant explained that she had not returned to work because her right wrist symptoms had not changed. She reported that, since November 2019, she worked in a limited-duty position with minimal data entry and no repetitious work. Appellant alleged that her current manager, E.T., had given appellant repetitious assignments (data entry) and appellant began to experience pain, numbness, and burning in her hands and fingers.

Appellant submitted an e-mail dated August 13, 2021, wherein E.T. explained that he had assigned her data collection tasks, but she had expressed concerns that she was unable to complete the assignments without experiencing pain.

In a report and employing establishment work capacity evaluation form, both dated September 21, 2021, Dr. Barnes noted appellant's complaints of right wrist pain, numbness, and tingling. Appellant informed her that a new supervisor had given appellant more data entry tasks and that using the mouse and keyboard caused pain. Dr. Barnes noted right wrist examination findings of positive Phalen's and Tinel's signs and diagnosed right carpal tunnel syndrome. She

³ OWCP assigned OWCP File No. xxxxxx441. Appellant previously filed an occupational disease claim (Form CA-2) on October 23, 2006 alleging left wrist pain due to factors of her federal employment. OWCP assigned OWCP File No. xxxxxx594 and accepted it for left wrist sprain.

indicated that appellant could perform full-time, limited-duty work with restrictions of pushing, pulling, lifting, and carrying with her right hand up to three pounds for 2 hours per day and repetitive motion of the wrist, hand, simple grasping, and fine manipulation of the right hand for 30 minutes per day.

In a report and letter dated October 1, 2021, Dr. Barnes indicated that appellant was reevaluated in her office on August 27, 2021. She provided examination findings and diagnosed right carpal tunnel syndrome. Dr. Barnes noted that, if the employing establishment could not accommodate appellant's work restrictions, she should be taken off work.

On October 6, 2021 OWCP offered appellant a temporary limited-duty assignment based on Dr. Barnes' September 21, 2021 report. It noted that appellant's medical restrictions were right hand pushing, pulling, lifting, and carrying only up to three pounds for 2 hours per day, right wrist and hand use for 30 minutes per day, and simple grasping and fine manipulation with right hand for 30 minutes per day. The light-duty assignment included temperature screening, COVID-19 screening, providing face masks, providing directions of appointments to patients and visitors, and utilizing the telephones.

In a report dated October 21, 2021, Heather Leary, a nurse practitioner, indicated that appellant was suffering from carpal tunnel syndrome in her left hand due to daily temperature screening with repetitious motion. Ms. Leary excused appellant from work until November 23, 2021.

In a work excuse note dated October 28, 2021, Dr. Paul Paterson, a Board-certified orthopedic surgeon, excused appellant from work for the period October 28 through December 9, 2021 due to her right wrist injury.⁴

In a statement dated November 15, 2021, appellant explained that she had been working limited duty since her right wrist injury in 2016. She indicated that, in June 2020, E.T. was hired as the department manager and assigned her more duties, including increased data entry. Appellant explained that she was doing more typing and using a mouse and would switch back and forth from her right and left wrist/hand. She indicated that she began to experience symptoms in both right and left wrists. Appellant also explained that her last assignment was as a COVID-19 screener, which involved screening over 100 plus employees by using a thermometer gun to check their temperature. She reported that on October 19, 2021 she began to experience symptoms of tingling and numbness. Appellant indicated that on October 20, 2021 she continued to experience tingling, numbness, and pain and swelling in her shoulder. She noted that on October 21, 2021 the pain was so severe that she was only able to work half a day.

⁴ On October 28, 2021 appellant filed a Form CA-2a under OWCP File No. xxxxxx594 alleging that on October 21, 2021 she sustained a recurrence of disability of her accepted left hand injury. In a letter dated December 7, 2021, OWCP advised her that, based on the description of circumstances on the Form CA-2a, she was claiming a new occupational disease claim. Appellant subsequently filed a Form CA-2 on December 5, 2021 alleging that she developed tingling in her fingers due to factors of her federal employment including repetitively checking temperatures and screening over a 100 employees. She noted that she first became aware of her condition on October 19, 2021 and first realized its relationship to her employment on October 20, 2021. OWCP assigned OWCP File No. xxxxxx840, but denied the claim by decision dated March 15, 2022.

On December 5, 2021 appellant filed a notice of recurrence of disability (Form CA-2a) beginning August 27, 2021 causally related to her November 1, 2016 employment injury. She alleged that the recurrence occurred due to overuse of her wrist and repetitive movements of the computer mouse. Appellant explained that she returned to limited-duty work after the original injury with restrictions of typing and use of a computer mouse up to two hours per day, but a new supervisor ignored appellant's work restrictions and assigned data entry that exceeded her restrictions of no more than two hours per day of typing and use of a computer mouse.

In an attached statement, appellant's supervisor explained that appellant was given two assignments involving data collection with no set deadline or established goal. He indicated that she was always instructed to work at her own pace in order to avoid any pain or further aggravation of her preexisting injury.

In a December 7, 2021 development letter, OWCP informed appellant of the deficiencies of her recurrence claim. It advised her of the type of medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted a report and a work excuse note both dated November 23, 2021 by Dr. Barnes, who indicated that appellant was evaluated for follow-up of right wrist pain, numbness, and tingling. She provided examination findings and diagnosed right carpal tunnel syndrome. Dr. Barnes recommended no repetitious work and data entry up to 30 minutes at a time with 2 hours rest in between data entry work.

In a report and a work restriction note both dated December 22, 2021, Dr. Barnes reported that appellant was evaluated for wrist pain, aggravated by repetitive movements. She recommended no repetitious work and noted that appellant was unable to perform her job duties. Dr. Barnes diagnosed right wrist pain and right carpal tunnel syndrome. She excused appellant from work for the period October 21, 2021 through January 18, 2022.

In a January 19, 2022 work excuse note, Dr. Paterson, a Board-certified orthopedic surgeon, excused appellant from work for the period January 9 through March 9, 2022 due to a right wrist work-related injury. He indicated that she would follow up in approximately 6 to 8 weeks for assessment of work abilities.

By decision dated March 8, 2022, OWCP denied appellant's recurrence claim, finding that she failed to submit sufficient evidence to establish a recurrence of total disability, commencing August 27, 2021, causally related to her accepted employment injury.

On March 21, 2022 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review.

In a March 11, 2022 report, Dr. Peterson advised that appellant be excused from work from March 11 through May 2, 2022 due to injury to her right wrist.

In a January 18, 2022 report, Steven Bradley, a physician assistant, noted appellant's complaints of left wrist pain, numbness, and weakness and indicated that she was not working. He reported left wrist examination findings of positive Tinel's and carpal tunnel compression

tests and diagnosed left carpal tunnel syndrome. Mr. Bradley checked a box marked “Yes” indicating that appellant’s complaints were consistent with her history of injury.

A March 17, 2022 electromyography and nerve conduction velocity study revealed abnormal findings suggestive of right carpal tunnel syndrome, moderate in severity, and right chronic C5-7 posterior cervical radiculopathy.

In a May 3, 2022 work excuse note, Dr. Paterson excused appellant from work from May 2 through June 2, 2022 due to a right wrist injury.

In a May 27, 2022 statement, appellant explained that she was doing fine until late 2019 when the demands of her job required her to work outside of her recommended physician’s restrictions. She reported that she began to have pain and numbness in her wrists, but she continued to work. Appellant noted that she is right hand dominant, but over the years since the injury she had learned to use her left hand and wrist in order to give her right hand and wrist a break. She contended that now she was barely able to use either her left or right extremity.

In work excuse notes dated June 2 and 13, 2022, Dr. Paterson excused appellant from work from June 2 through July 7, 2022 due to a right wrist work injury.

On July 7, 2022 OWCP held a telephonic hearing.

By decision dated August 24, 2022, OWCP’s hearing representative affirmed the March 8, 2022 decision, in part, and set aside the decision, in part. He authorized wage-loss compensation for the period August 27 through October 18, 2021, finding that the medical evidence of record established that appellant stopped work due to a worsening of her right-hand symptoms. However, the hearing representative denied wage-loss compensation for total disability for the period October 19, 2021 through June 12, 2022. He indicated that appellant was provided a modified position beginning October 19, 2021 and the medical evidence of record was insufficient to establish that she was unable to perform the limited-duty assignment due to her accepted work-related conditions up until her OWCP-approved surgery on June 13, 2022.⁵

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ has the burden of proof to establish the essential elements of his or her claim, including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁷ The term

⁵ The hearing representative also instructed OWCP to administratively combine OWCP File Nos. xxxxxx594, xxxxxx840, and xxxxxx441. The Board notes that the files have been administratively combined with OWCP File No. xxxxxx441 serving as the master file.

⁶ *Supra* note 1.

⁷ *C.B.*, Docket No. 20-0629 (issued May 26, 2021); *D.S.*, Docket No. 20-0638 (issued November 17, 2020); *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Nathaniel Milton*, 37 ECAB 712 (1986).

disability is defined as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁸ 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.⁹ 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 the reliable, probative, and substantial medical evidence.¹⁰

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 that had resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment. This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations and which is necessary because of a work-related injury or illness is withdrawn or altered so that the assignment exceeds the employee's physical limitations.¹¹

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 to show that he or she cannot perform such limited-duty work. 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 or extent of the limited-duty job requirements.¹²

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, for each period of disability claimed, the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.¹³ Where no such rationale is present, the medical evidence is of diminished probative value.¹⁴

⁸ 20 C.F.R. § 10.5(f); *S.T.*, Docket No. 18-412 (issued October 22, 2018); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

⁹ *K.C.*, Docket No. 17-1612 (issued October 16, 2018); *William A. Archer*, 55 ECAB 674 (2004).

¹⁰ *S.G.*, Docket No. 18-1076 (issued April 11, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

¹¹ 20 C.F.R. § 10.5(x); *see D.T.*, Docket No. 19-1064 (issued February 20, 2020).

¹² *J.S.*, Docket No. 19-1402 (issued November 4, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

¹³ *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

¹⁴ *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability for the period October 19, 2021 through June 12, 2022 causally related to her accepted employment injury.

In support of her disability claim, appellant submitted a September 21, 2021 report by Dr. Barnes who noted appellant's complaints of right wrist pain, numbness, and tingling due to repetitive computer mouse and keyboard use at work. She conducted an examination and diagnosed right carpal tunnel syndrome. Dr. Barnes determined that appellant could perform full-time, limited-duty work with restrictions of pushing, pulling, lifting, and carrying with her right hand up to three pounds for 2 hours per day and repetitive motion of the wrist, hand, simple grasping, and fine manipulation of the right hand for 30 minutes per day. She provided additional reports and noted work restrictions of no repetitive motion of the right wrist or hand. On October 6, 2021 OWCP offered appellant a temporary limited-duty assignment as a COVID-19 screener. It noted that her medical restrictions were right hand pushing, pulling, lifting, and carrying only up to three pounds for 2 hours per day, right wrist and hand use for 30 minutes per day, and simple grasping and fine manipulation with right hand for 30 minutes per day. The limited-duty assignment included temperature screening, asking of COVID-19 symptoms, providing access to face mask, providing directions of appointments to patients and visitors, and utilizing the telephones. The Board finds that the limited-duty position offered on October 6, 2021 was within appellant's most recent work restrictions as noted in Dr. Barnes' September 21, 2021 report. There is no evidence in the record that the employing establishment changed or withdrew her limited-duty position. Appellant, therefore, must provide medical evidence to establish that she was unable to work this limited-duty position due to her accepted right wrist injury.¹⁵

In work excuse notes dated October 28, 2021 through June 13, 2022, Dr. Paterson excused appellant from work for the period October 28, 2021 through July 7, 2022 due to her right wrist injury. Although he opined that she was totally disabled from work during the claimed period of disability due to the accepted employment injury, he failed to provide medical rationale in support of his opinion. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition or disability has an employment-related cause.¹⁶ These reports, therefore, are insufficient to establish appellant's recurrence claim.

Appellant also submitted an October 21, 2021 work status note by Ms. Leary, a nurse practitioner and a January 18, 2022 report by Mr. Bradley, a physician assistant. These reports,

¹⁵ *S.P.*, Docket No 21-0380 (issued November 22, 2022); *L.S.*, Docket No. 19-1231 (issued March 30, 2021); *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹⁶ *W.M.*, Docket No. 21-1217 (issued October 11, 2022); *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

however, are of no probative value to establish appellant's recurrence claim because physician assistants and nurse practitioners are not considered physicians as defined under FECA.¹⁷

As the medical evidence of record is insufficient to establish a recurrent of disability for the period October 19, 2021 through June 21, 2022, causally related to the accepted employment injury, the Board finds that appellant has not met her burden of proof to establish her recurrence 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 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 for the period October 19, 2021 through June 12, 2022 causally related to her accepted employment injury.

¹⁷ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists are not considered physicians under FECA); *T.J.*, Docket No. 19-1339 (issued March 4, 2020) (nurse practitioners are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 3, 2023
Washington, DC

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

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

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