

**United States Department of Labor
Employees' Compensation Appeals Board**

MAYRA C. PEREZ, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Francisco, CA, Employer**

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**Docket No. 04-540
Issued: April 6, 2004**

Appearances:
Mark Coby, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On December 22, 2003 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated July 30 and October 28, 2003. Pursuant to 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 sustained a recurrence of disability on February 28, 2000 causally related to her accepted work injury.

FACTUAL HISTORY

On September 6, 2000 appellant, then a 46-year-old mail processor, filed an occupational disease claim alleging that her right carpal tunnel syndrome and extensor carpi ulnaris tendinitis were caused by factors of her federal employment. Appellant noted that she was initially aware of her condition and that it was caused by her employment on February 28, 2000. The employing establishment noted that appellant was last exposed to conditions that caused her

disease on April 20, 2000. On November 14, 2000 the Office accepted appellant's claim for bilateral flexor tenosynovitis.¹

On December 12, 2000 appellant filed a Form CA-7, claim for compensation, requesting wage-loss compensation for the period February 28 to June 16, 2000.

On January 11, 2001 the Office denied appellant's claim for compensation beginning February 28, 2000. The Office noted that it had previously denied her claim for leave buy back under a different claim number. The employing establishment had provided appellant with limited duty effective January 28, 1998 and a formal loss of wage-earning capacity decision was issued on December 7, 2000.

In a report dated January 25, 2001, Dr. Robert J. Harrison, appellant's treating physician and Board-certified in internal medicine, stated that he examined appellant on January 21, 2001. He reported marked tenderness over the flexor and extensor compartment of the left wrist. Dr. Harrison noted a marked bilateral Tinel's sign and advised that appellant was unable to return to work due to chronic, severe, bilateral wrist tenosynovitis as well as a recurrence of her right carpal tunnel syndrome.

On February 6, 2001 the Office accepted appellant's claim for bilateral flexor tenosynovitis.

In multiple reports from October 2000 to September 8, 2003, Dr. Harrison declared appellant totally disabled from October 2000 to May 1, 2002. In multiple reports from December 2000 to September 2002, appellant filed claims for compensation for intermittent wage loss from February 28, 2000 to May 1, 2002. In a report dated March 21, 2002, Dr. Harrison stated that appellant had exquisite bilateral wrists tenderness over both dorsal and extensor wrist compartments since the initial consultation on August 23, 1999 which had remained symptomatic. Appellant had a positive Tinel's sign on that day.

By letter dated April 26, 2002, the Office advised appellant that it had received her claim for compensation from October 2, 2000 to February 1, 2001, and indicated that it was insufficient to support a recurrence and further advised her regarding the kind of evidence she needed to submit to establish her claim.² By letter dated July 30, 2002, appellant, through counsel, requested reconsideration to include appellant's claim for lost wages from February to November 2000, and requested to expand the claim to include reflex sympathetic dystrophy.

¹ The record indicates that appellant had an accepted claim, File No. 13-1077454, for right shoulder impingement, bilateral epicondylitis and right carpal tunnel syndrome with right carpal release. On June 9, 1998 she began a permanent light-duty job as a modified mail handler. The instant claim was adjudicated by the Office under File No. 13-2010376.

² In a report dated May 1, 2002, Dr. Jules P. Steimnitz, an employing establishment physician, stated that appellant was not able to perform her regular job and recommended a pain clinic. He did not evaluate appellant with respect to her modified position.

In a report dated August 8, 2002, Dr. Harrison stated that he agreed with the fitness-for-duty doctor who recommended a comprehensive pain management program and requested vocational rehabilitation.

On September 27, 2002 the Office advised appellant that she would be referred to a second opinion physician. On April 1, 2003 the Office referred appellant, her medical records, a statement of accepted facts and a list of questions to Dr. Thomas Schmitz, second opinion physician and Board-certified orthopedic surgeon, for an evaluation. Among the questions presented to Dr. Schmitz were whether appellant had reflex sympathetic dystrophy and whether she was disabled from the light-duty position from February 28, 2000.

In a report dated April 22, 2003, Dr. Schmitz noted a familiarity with the history of injury and noted appellant's current subjective pain in both wrists. Upon examination, appellant was able to close her hand only half way for which, he opined, there was no anatomic basis. She complained of tenderness of the incision site and numbness over fingers one, two and three on the right. Tinel's sign was positive on the left, and her hands were hypersensitive, more right than left. Dr. Schmitz advised that appellant did not demonstrate symptoms of reflex sympathetic dystrophy but he did diagnose status post right carpal tunnel release with extensor tendinitis and decreased hand grip. He advised that appellant's condition was an aggravation of a cumulative condition which appeared permanent. There was no objective change in her condition. He recommended exercise and to return to the workplace in a job she could perform such as a video coding machine worker. Dr. Schmitz advised that appellant could work up to eight hours daily with restriction.

In a supplemental report dated July 21, 2003, Dr. Schmitz stated that he thought appellant could work in a light-duty position which included the unit to which she was assigned. He added that there was no objective basis for appellant's failure to close her hand. He noted that she did not have shiny skin which is seen in reflex sympathetic dystrophy patients. Therefore, there was no objective change in her condition between the time when she returned to light-duty work and February 28, 2000. He opined that appellant could work in a light-duty position. There was no objective evidence to support a worsening of her condition. He also noted that there was no objective evidence to explain why appellant could not lift her arm to the horizontal level of the glenohumeral joint.

By decision dated July 30, 2003, the Office denied modification of the November 11, 2001 decision.

In a report dated September 4, 2003, Dr. Harrison stated that appellant had primarily flexor tenosynovitis as well as carpal tunnel release. He opined that appellant also had reflex sympathetic dystrophy and agreed with Dr. Schmitz that appellant should work in the video coding machine. He repeated his recommendation for vocational rehabilitation. On September 25, 2003 appellant, through counsel, requested reconsideration.

By decision dated October 28, 2003, the Office again denied modification of its previous decision denying benefits. The Office found that Dr. Harrison's reports merely identified pain but provided no objective evidence to support appellant's claim of total disability. The Office

then found that Dr. Schmitz, the second opinion physician, advised that there was not an objective basis for appellant's complaints.³

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.⁴

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS

In this case, appellant claimed that she sustained a recurrence of disability from her light-duty position as a modified clerk on February 28, 2000. That position restricted her lifting to no more than five pounds and allowed her to work at her own pace. However, none of the medical evidence she submitted from Dr. Harrison established by objective medical evidence that she was unable to work at that position. His reports consistently characterized her condition as painful but he did not indicate that her pain was a result of her accepted injury and why it prevented her from working in a position that was modified to accommodate her condition. Although he found a positive Tinel's sign, he again failed to explain how this test precluded her from any work. Further, pain is considered a symptom, not a diagnosis. Statements about an appellant's pain which are not corroborated by objective findings of disability or a diagnosis of pain do not constitute a basis for payment of compensation⁶ and thus Dr. Harrison's reference to appellant's pain is insufficient to establish a causal relationship of her pain and employment. He also failed to establish by objective evidence that his diagnosis of a recurrence of carpal tunnel

³ The Board notes that this case record contains evidence which was submitted subsequent to the Office's October 28, 2003 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

⁴ *Ralph C. Spivey*, 53 ECAB ____ (Docket No. 01-263, issued December 4, 2001); *Terry R. Hedman*, 38 ECAB 222 (1986).

⁵ *Allen C. Hundley*, 53 ECAB ____ (Docket No. 02-107, issued May 17, 2002).

⁶ *Anna Chrun*, 33 ECAB 829 (1982).

syndrome in his January 2001 report was sufficient to disable appellant from her light-duty position. Furthermore, Dr. Schmitz, the second opinion physician, essentially found that appellant could work an eight-hour day with limitations, noting that there was no objective evidence to support her inability to close a fist, and opined that she could return to her previous position.

Appellant's burden of proof in this case is to establish by rationalized medical evidence that she is totally disabled from her light-duty position based on her condition which is causally related to her work-related injury. In this case, appellant failed to meet her burden of proof. Neither Dr. Harrison nor Dr. Schmitz established the critical element of causal relationship by rationalized medical opinion that she was disabled from her light-duty position as a result of her initial work-related injury.

CONCLUSION

The Board will affirm the Office's July 30 and October 28, 2003 decisions denying her claim of recurrence.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 28 and July 30, 2003 be affirmed.

Issued: April 6, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member