

duty positions for the employing establishment and the Office paid compensation.² In mid 1997 she began to develop left arm symptoms and the Office later accepted that she sustained left carpal tunnel syndrome.

On June 18, 1998 Dr. Brenner indicated that appellant complained of exertional aching in her left hand and stated, “She is doing well at the [employing establishment] provided certain restrictions can be maintained.”³

In January 1999, appellant filed a claim for leave buyback indicating that she had exhausted her leave and needed to use leave for a nonwork-related condition.⁴ She began to use leave without pay on a continuous basis. Appellant retired from the employing establishment in March 2000.

On July 30, 2001 Dr. Brenner stated that he had not seen appellant for approximately two years. He indicated that she had full unrestricted motion of her hands but showed clinical signs of bilateral carpal tunnel syndrome with “tolerable symptoms.” Dr. Brenner stated that appellant had a six percent permanent impairment of her right hand and a four percent permanent impairment of her left hand due to carpal tunnel syndrome. On August 31, 2001 he provided a similar assessment of appellant’s upper extremity condition.

In an October 3, 2001 award of compensation, the Office granted appellant a schedule award for a six percent permanent impairment of her right arm and a four percent permanent impairment of her left arm. On April 24, 2002 Dr. Brenner diagnosed myofascial upper extremity pain and degenerative arthritis of the thumbs. On April 29, 2003 he indicated that appellant had swelling of her right hand and arm and stated that she had an additional one percent impairment of her right arm due to her “subjective increased level of pain.” In an August 1, 2003 award of compensation, the Office granted appellant a schedule award for an additional one percent permanent impairment of her right arm.

On November 15, 2005 Dr. Brenner indicated that appellant reported having numbness and tingling in both hands for several months. He diagnosed bilateral carpal tunnel syndrome. Effective November 15, 2005, appellant switched from Office of Personnel Management benefits to coverage by the Office and she began to receive Office benefits effective that date.

In late 2005, appellant alleged that she sustained a recurrence of total disability between January 1999 and November 14, 2004 due to her accepted condition of bilateral carpal tunnel syndrome. She alleged that in late 1998 she had to perform duties beyond her work restrictions including extensive driving, handling mail, taking notes and typing on the computer.

² On June 6, 1997 Dr. Mark E. Brenner, an attending Board-certified orthopedic surgeon, performed a right carpal tunnel release. The procedure was authorized by the Office.

³ In late 1998, appellant’s limited-duty work restricted her from engaging in repetitive hand motions for prolonged periods and lifting, pushing or pulling more than 20 pounds.

⁴ On November 14, 2005 an Office official indicated that appellant called and indicated that she had been off work since January 1999 due to an “unrelated emotional problem.”

In a December 16, 2005 decision, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a recurrence of total disability between January 1999 and November 14, 2004 due to her accepted condition of bilateral carpal tunnel syndrome.

On April 26, 2006 Dr. Brenner indicated that appellant exhibited a positive Phalen's sign and bilateral volar wrist and intrathenar pain but noted that the examination was "basically unremarkable." He indicated that appellant could not work due to her "variety of medical problems and deconditioning."

Appellant requested a review of the written record by an Office hearing representative. In a September 28, 2006 decision, the Office hearing representative affirmed the Office's December 16, 2005 decision.

LEGAL PRECEDENT

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that 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 she cannot perform such light duty. As part of this burden, 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 light-duty job requirements.⁵

ANALYSIS

The Office accepted that appellant sustained bilateral carpal tunnel syndrome due to her repetitive work duties. In late 1998, appellant's limited-duty work restricted her from engaging in repetitive hand motions for prolonged periods and lifting, pushing or pulling more than 20 pounds. She stopped work in January 1999 and claimed that she sustained a recurrence of total disability between January 1999 and November 14, 2004 due to her accepted condition of bilateral carpal tunnel syndrome.

The Board finds that appellant has not submitted sufficient medical evidence to establish that she sustained a recurrence of total disability between January 1999 and November 14, 2004 due to her accepted condition of bilateral carpal tunnel syndrome. Appellant submitted several reports of Dr. Brenner, an attending Board-certified orthopedic surgeon, which discussed her upper extremity condition. However, these reports are of limited probative value on the relevant issue of the present case in that they do not contain an opinion that appellant sustained total disability between January 1999 and November 14, 2004 due to carpal tunnel syndrome.

On July 30, 2001 Dr. Brenner stated that he had not seen appellant for approximately two years. He indicated that she had full unrestricted motion of her hands but showed clinical signs of bilateral carpal tunnel syndrome with "tolerable symptoms." Dr. Brenner stated that appellant had a six percent permanent impairment of her right hand and a four percent permanent

⁵ *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

impairment of her left hand due to carpal tunnel syndrome. On April 29, 2003 he indicated that appellant had swelling of her right hand and arm and stated that she had an additional one percent impairment of her right arm due to her “subjective increased level of pain.”⁶ Although these reports show that appellant had continuing residuals of carpal tunnel syndrome they provide no indication that, between January 1999 and November 14, 2004, her carpal tunnel syndrome prevented her from performing the limited-duty work she was performing in late 1998.⁷

For these reasons, appellant did not show that a change in the nature and extent of her work-related condition caused total disability between January 1999 and November 14, 2004. She alleged that in late 1998 she had to perform duties beyond her work restrictions including extensive driving, handling mail, taking notes and typing on the computer. However, appellant did not present any evidence to support these contentions. Therefore, she did not show that a change in the nature and extent of her light-duty job requirements caused disability for any period. Therefore, the Office properly denied appellant’s recurrence of disability claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of total disability between January 1999 and November 14, 2004 due to her accepted condition of bilateral carpal tunnel syndrome.

⁶ The Office granted appellant schedule awards for a seven percent permanent impairment of her right arm and a four percent permanent impairment of her left arm.

⁷ On April 26, 2006 Dr. Brenner indicated that appellant exhibited a positive Phalen’s sign and bilateral volar wrist and intrathenar pain but noted that the examination was “basically unremarkable.” He indicated that appellant could not work due to her “variety of medical problems and deconditioning.” However, Dr. Brenner did not provide an opinion that appellant’s employment-related carpal tunnel syndrome contributed to disability between January 1999 and November 14, 2004.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 28, 2006 decision is affirmed.

Issued: April 11, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board